AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

Federal Register

8–29–03 Friday
Vol. 68 No. 168 Aug. 29, 2003

Pages 51871–52076

The **FEDERAL REGISTER** (ISSN 0097–6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

The **FEDERAL REGISTER** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see *http://www.nara.gov/fedreg.*

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** *www.access.gpo.gov/nara,* available through GPO Access, is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

For more information about GPO Access, contact the GPO Access User Support Team, call toll free 1-888-293-6498; DC area 202-512-1530; fax at 202-512-1262; or via email at *gpoaccess@gpo.gov.* The Support Team is available between 7:00 a.m. and 5:30 p.m. Eastern Time, Monday–Friday, except official holidays.

The annual subscription price for the **Federal Register** paper edition is $699, or $764 for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $264. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $10.00 for each issue, or $10.00 for each group of pages as actually bound; or $2.00 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 40% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard, American Express, or Discover. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954; or call toll free 1-866-512-1800, DC area 202-512-1800; or go to the U.S. Government Online Bookstore site, *bookstore@gpo.gov.*

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 68 FR 12345.

Postmaster: Send address changes to the Superintendent of Documents, Federal Register, U.S. Government Printing Office, Washington DC 20402, along with the entire mailing label from the last issue received.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	**202–512–1800**
Assistance with public subscriptions	**202–512–1806**

General online information **202–512–1530; 1–888–293–6498**

Single copies/back copies:

Paper or fiche	**202–512–1800**
Assistance with public single copies	**1–866–512–1800 (Toll-Free)**

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	**202–741–6005**
Assistance with Federal agency subscriptions	**202–741–6005**

What's NEW!

Federal Register Table of Contents via e-mail

Subscribe to FEDREGTOC, to receive the **Federal Register** Table of Contents in your e-mail every day.

If you get the HTML version, you can click directly to any document in the issue.

To subscribe, go to **http://listserv.access.gpo.gov** and select:

Online mailing list archives
FEDREGTOC-L
Join or leave the list

Then follow the instructions.

What's NEW!

Special Values on Selected Volumes of the 2002 **Code of Federal Regulations**

Selected volumes of the 2002 Code of Federal Regulations are now available for sale by the Government Printing Office at special prices.

Go to: **http://bookstore.gpo.gov/values/cfr.html**

Printed on recycled paper.

Contents

Federal Register

Vol. 68, No. 168

Friday, August 29, 2003

Agriculture Department
See Animal and Plant Health Inspection Service
See Food and Nutrition Service
See Forest Service

Air Force Department
PROPOSED RULES
Privacy Act; implementation, 51958–51959
NOTICES
Privacy Act:
Systems of records, 51998–52009

Animal and Plant Health Inspection Service
RULES
Noxious weeds:
Witchweed; regulated areas, 51875–51876
Plant related quarantine; domestic:
Mexican fruit fly, 51876–51877
User fees:
Ruminants; export certificates, 51878–51887

Antitrust Division
NOTICES
National cooperative research notifications:
IMS Global Learning Consortium, Inc., 52055
Inter Company Collaboration for AIDS Drug Development, 52055–52056
Optical Internetworking Forum, 52056
Salutation Consortium, Inc., 52056
Silicon Integration Initiative, Inc., 52057

Army Department
NOTICES
Privacy Act:
Systems of records, 52009–52011

Blind or Severely Disabled, Committee for Purchase From People Who Are
See Committee for Purchase From People Who Are Blind or Severely Disabled

Broadcasting Board of Governors
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 51963

Centers for Disease Control and Prevention
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 52040–52041
Inventions, Government-owned; availability for licensing, 52041

Centers for Medicare & Medicaid Services
RULES
Medicaid:
Outpatient prescription drugs coverage; rebate agreements with manufacturers; price recalculations time limitation and recordkeeping requirements, 51912–51917
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 52041–52043
Medicaid:
State plan amendments, reconsideration; hearings—Oklahoma, 52043–52044

Chemical Safety and Hazard Investigation Board
NOTICES
Meetings; Sunshine Act, 51963–51964

Children and Families Administration
See Community Services Office

Citizenship and Immigration Services Bureau
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 52047–52048

Coast Guard
RULES
Regatta and marine parades:
Hampton Bay Days Festival, VA, 51906
NOTICES
Environmental statements; availability, etc.:
Port Pelican LLC Deepwater Port License Application, LA, 52048–52049
Seattle Monorail Project, WA; Lake Washington Ship Canal and Duwamish Waterway bridgework, 52049–52050

Commerce Department
See Economic Analysis Bureau
See Foreign-Trade Zones Board
See International Trade Administration
See Minority Business Development Agency
See National Oceanic and Atmospheric Administration

Committee for Purchase From People Who Are Blind or Severely Disabled
NOTICES
Procurement list; additions and deletions, 51961–51963

Community Services Office
NOTICES
Grant and cooperative agreement awards:
Rural Community Assistance Program, 52044

Customs and Border Protection Bureau
RULES
Merchandise, special classes:
Ethnological material from Cyprus; emergency import restrictions, 51903–51904

Defense Department
See Air Force Department
See Army Department
NOTICES
Meetings:
Defense Policy Board Advisory Committee, 51998
Privacy Act:
Systems of records
Marine Corps, 51998

Economic Analysis Bureau
PROPOSED RULES
International services surveys:
BE-15; annual survey of foreign direct investment in U.S., 51942–51944
BE-85; quarterly survey of financial services transactions between U.S. financial services providers and unaffiliated foreign persons, 51939–51941

Education Department
NOTICES
Privacy Act:
Computer matching programs, 52011–52012

Employment and Training Administration
NOTICES
Adjustment assistance:
VF Imagewear et al., 52059–52060
Agency information collection activities; proposals, submissions, and approvals, 52060–52062

Employment Standards Administration
NOTICES
Minimum wages for Federal and federally-assisted construction; general wage determination decisions, 52062–52063

Energy Department
See Energy Efficiency and Renewable Energy Office
See Federal Energy Regulatory Commission

Energy Efficiency and Renewable Energy Office
RULES
Consumer products; energy conservation program:
Energy conservation standards and test procedures—Dishwashers, 51887–51903

Engraving and Printing Bureau
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 52072–52073

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
Wisconsin, 51906–51911
NOTICES
Air pollution control:
Citizens suits; proposed settlements—
New York Public Interest Research Group, 52014–52016
Committees; establishment, renewal, termination, etc.:
Pesticide Program Dialogue Committee, 52016–52017
Confidential business information and data transfer, 52017
Environmental statements; availability, etc.:
Agency statements—
Comment availability, 52017–52018
Weekly receipts, 52018–52019
Superfund; response and remedial actions, proposed settlements, etc.:
Sav-Cote Chemical Labs. Site, NJ, 52019–52020

Executive Office of the President
See Presidential Documents

Federal Aviation Administration
RULES
Class E airspace; correction, 52075

Federal Communications Commission
RULES
Digital television stations; table of assignments:
South Carolina, 51918–51919
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 52020–52023

Federal Emergency Management Agency
RULES
National Flood Insurance Program:
Community eligibility; suspension, 51917–51918

Federal Energy Regulatory Commission
NOTICES
Hydroelectric applications, 52012–52013
Meetings:
Open access transmission service and standard electricity market design; remedying undue discrimination; technical conference, 52013–52014
Practice and procedure:
Off-the-record communications, 52014
Applications, hearings, determinations, etc.:
Enbridge Pipelines (KPC), 52012

Federal Reserve System
PROPOSED RULES
Bank holding companies and change in bank control (Regulation Y):
Anti-tying restrictions; exception, 51938–51939
NOTICES
Bank Holding Company Act Amendments of 1970:
Anti-tying restrictions; intrepretation and supervisory guidance; comment request, 52024–52035
Banks and bank holding companies:
Change in bank control, 52035

Fish and Wildlife Service
RULES
Migratory bird hunting:
Federal Indian reservations, off-reservation trust lands, and ceded lands, 51919–51928

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
Lufenuron, mibemycin oxime and lufenuron, and nitenpyram tablets, 51904–51906
NOTICES
Reports and guidance documents; availability, etc.:
Human pharmaceutical applications and related submissions; providing regulatory submissions in electronic format, 52044–52045

Food and Nutrition Service
PROPOSED RULES
Food stamp and food distribution program:
Maximum excess shelter expense deduction; benefits adjustment, 51932–51938

Foreign-Trade Zones Board
NOTICES
Applications, hearings, determinations, etc.:
California
Ricoh Electronics, Inc.; copiers, printers, thermal paper, and related products manufacturing facilities, 51964

Georgia
Ricoh Electronics, Inc.; toner cartridges, related toner products, and thermal paper products manufacturing plant, 51964–51965
North Carolina, 51965

Forest Service
NOTICES
Settlement agreements:
Coconino County, AZ; Jordan Road Shooting Range, 51961

General Services Administration
RULES
Federal travel:
Per diem expenses; incidental expense allowance increase, 51911–51912
NOTICES
Federal travel:
Maximum per diem rates for continental United States; bulletin availability, 52035–52036

Harry S. Truman Scholarship Foundation
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 52036

Health and Human Services Department
See Centers for Disease Control and Prevention
See Centers for Medicare & Medicaid Services
See Community Services Office
See Food and Drug Administration
See Health Resources and Services Administration
See National Institutes of Health
NOTICES
Grant and cooperative agreement awards:
Association of American Medical Colleges, 52036–52040

Health Resources and Services Administration
NOTICES
Meetings:
National Health Service Corps National Advisory Council, 52045

Homeland Security Department
See Citizenship and Immigration Services Bureau
See Coast Guard
See Customs and Border Protection Bureau
See Federal Emergency Management Agency
NOTICES
Meetings:
Customs and Border Protection Bureau; Commercial Operations Advisory Committee, 52046–52047

Housing and Urban Development Department
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 52050–52052
Grants and cooperative agreements; availability, etc.:
Facilities to assist homeless—
Excess and surplus Federal property, 52052

Interior Department
See Fish and Wildlife Service
See Land Management Bureau

Internal Revenue Service
PROPOSED RULES
Income taxes:
Contingent payment debt instruments for one or more payments denominated in or determined by reference to nonfunctional currency; treatment, 51944–51958
NOTICES
Meetings:
Taxpayer Advocacy Panels, 52073–52074
Senior Executive Service:
Performance Review Board; membership, 52074

International Trade Administration
NOTICES
Countervailing duties:
Pasta from—
Italy, 51965

Justice Department
See Antitrust Division
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 52055

Labor Department
See Employment and Training Administration
See Employment Standards Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 52057–52059
Committees; establishment, renewal, termination, etc.:
Employee Welfare and Pension Benefit Plans Advisory Council, 52059

Land Management Bureau
NOTICES
Realty actions; sales, leases, etc.:
Nevada, 52052–52054

Maritime Administration
NOTICES
Meetings:
Private International Law Advisory Committee, 52068

Minority Business Development Agency
NOTICES
Grants and cooperative agreements; availability, etc.:
Minority Business Development Center Program, 51965–51981
Native American Business Development Center Program—
North Carolina Cherokee/Ashville et al., 51981–51995

National Institutes of Health
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 52045–52046
Meetings:
National Institute of Child Health and Human Development, 52046
National Institute of Environmental Health Sciences, 52046

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:

Alaska; fisheries of Exclusive Economic Zone—
Atka mackerel, 51929–51931
Pollock, 51928–51929
PROPOSED RULES
Endangered and threatened species:
Critical habitat designations—
Northern right whales [**Editorial Note:** This document, published at 68 FR 51758 in the **Federal Register** of Thursday, August 28, 2003, was inadvertently listed as a Rule in that day's Table of Contents.]
Fishery conservation and management:
Northeastern United States fisheries—
New England Fishery Management Council; meetings, 51959–51960
NOTICES
Endangered and threatened species:
Andromous fish take—
Siltcoos and Tahkenitch Lakes, OR; Oregon coast coho salmon, 51995
Meetings:
New England Fishery Management Council, 51995–51996
Pacific Fishery Management Council, 51996
South Atlantic Fishery Management Council, 51997–51998

Nuclear Regulatory Commission
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 52063
Environmental statements; availability, etc.:
Florida Power & Light Co., 52063–52064
Reports and guidance documents; availability, etc.:
Containment failure modes and bypass events; approach for estimating frequencies; comment request, 52064–52065

Postal Service
NOTICES
Meetings; Sunshine Act, 52065

Presidential Documents
PROCLAMATIONS
Israel; extension of duty-free treatment for certain agricultural products (Proc. 7696), 51871–51873

Research and Special Programs Administration
NOTICES
Hazardous materials:
Applications; exemptions, renewals, etc., 52069–52071

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
New York Stock Exchange, Inc., 52065
Pacific Exchange, Inc., 52065–52066
Applications, hearings, determinations, etc.:
Hydro-Quebec et al.; correction, 52075

State Department
NOTICES
Art objects; importation for exhibition:
Colorful Impressions: The Printmaking Revolution in Eighteenth-Century France, 52066
Manet and the Sea, 52066
Turning Point: Oribe and the Arts of Sixteenth-Century Japan, 52066–52067
Two and One: Printmaking in Germany (1945-1991), 52067
International Joint Commission:
Boundary Waters Treaty of 1909—
Kootenay River, BC, Canada; dykes surrounding Duck Lake and operations inside lake; public hearing and comment request, 52067
Meetings:
Private International Law Advisory Committee, 52068

Surface Transportation Board
RULES
Practice and procedure:
Rate procedures—
Railroad divisions of revenue; removal of regulations, 51919
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 52071
Railroad operation, acquisition, construction, etc.:
Burlington Northern & Santa Fe Railway Co., 52071–52072

Tennessee Valley Authority
NOTICES
Meetings; Sunshine Act, 52068

Transportation Department
See Federal Aviation Administration
See Maritime Administration
See Research and Special Programs Administration
See Surface Transportation Board
NOTICES
Aviation proceedings:
Agreements filed; weekly receipts, 52068
Certificates of public convenience and necessity and foreign air carrier permits; weekly applications, 52069

Treasury Department
See Engraving and Printing Bureau
See Internal Revenue Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 52072

Reader Aids

Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR

Proclamations:

6962 (See Proclamation 7696) 51871

7554 (See Proclamation 7696) 51871

7696 51871

7 CFR

301 (2 documents) 51875, 51876

354 51878

Proposed Rules:

273 51932

9 CFR

97 51878

130 51878

10 CFR

430 51887

12 CFR

Proposed Rules:

225 51938

14 CFR

71 52075

15 CFR

Proposed Rules:

801 51939

806 51942

19 CFR

12 51903

21 CFR

520 51904

26 CFR

Proposed Rules:

1 51944

32 CFR

Proposed Rules:

806b 51958

33 CFR

100 51906

40 CFR

52 51906

41 CFR

Ch. 301 51911

42 CFR

447 51912

44 CFR

64 51917

47 CFR

73 51918

49 CFR

1137 51919

50 CFR

20 51919

679 (3 documents) 51928, 51929, 51931

Proposed Rules:

648 51959

Federal Register
Vol. 68, No. 168
Friday, August 29, 2003

Presidential Documents

Title 3—

The President

Proclamation 7696 of August 27, 2003

To Extend Duty-Free Treatment for Certain Agricultural Products of Israel

By the President of the United States of America

A Proclamation

1. On April 22, 1985, the United States entered into the Agreement on the Establishment of a Free Trade Area between the Government of the United States of America and the Government of Israel (FTA), which the Congress approved in the United States-Israel Free Trade Area Implementation Act of 1985 (the ''FTA Act'')(19 U.S.C. 2112 Note).

2. On November 4, 1996, the United States entered into an agreement with Israel concerning certain aspects of trade in agricultural products, effective from December 4, 1996, through December 31, 2001 (the ''1996 Agreement''), in order to maintain the general level of reciprocal and mutually advantageous concessions with respect to agricultural trade while acknowledging differing interpretations as to the meaning of certain rights and obligations in the FTA as to such trade.

3. Section 4(b) of the FTA Act provides that, whenever the President determines that it is necessary to maintain the general level of reciprocal and mutually advantageous concessions with respect to Israel provided for by the FTA, the President may proclaim such withdrawal, suspension, modification, or continuance of any duty, or such continuance of existing duty-free or excise treatment, or such additional duties as the President determines to be required or appropriate to carry out the FTA.

4. Consistent with section 4(b) of the FTA Act, President Clinton issued Proclamation 6962 of December 2, 1996, to provide to Israel through the close of December 31, 2001, access into the United States customs territory for specified quantities of certain agricultural products of Israel free of duty or certain fees or other import charges, consistent with the 1996 Agreement.

5. On December 31, 2001, the United States entered into an agreement with Israel to extend the 1996 Agreement through December 31, 2002, in order to allow for additional time to negotiate a successor arrangement to the 1996 Agreement. Consistent with section 4(b) of the FTA Act, I issued Proclamation 7554, of May 3, 2002, to provide to Israel through the close of December 31, 2002, access into the United States customs territory for specified quantities of certain agricultural products of Israel free of duty or certain fees or other import charges. Several rounds of negotiations were held in 2002 but did not result in conclusion of a successor arrangement to the 1996 Agreement.

6. On December 31, 2002, the 1-year extension of the 1996 Agreement expired. In order to allow additional time to conclude negotiations, the United States and Israel each have elected to extend through 2003 the tariff treatment provided for agricultural products in 2002 under the 1996 Agreement. Israel has already extended through 2003 the tariff benefits for United States agricultural imports provided in 2002 under the 1996 Agreement.

7. Consistent with section 4(b) of the FTA Act, I have determined that it is necessary, in order to maintain the general level of reciprocal and

mutually advantageous concessions with respect to Israel provided for by the FTA, to provide through the close of December 31, 2003, duty-free treatment for specified quantities of certain agricultural products of Israel.

8. Section 604 of the Trade Act of 1974 (19 U.S.C. 2483) (the ''Trade Act'') authorizes the President to embody in the Harmonized Tariff Schedule of the United States (HTS) the substance of the relevant provisions of that act, and of other acts affecting import treatment, and actions thereunder, including removal, modification, continuance, or imposition of any rate of duty or other import restriction.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States, including section 4 of the FTA Act and section 604 of the Trade Act, do hereby proclaim:

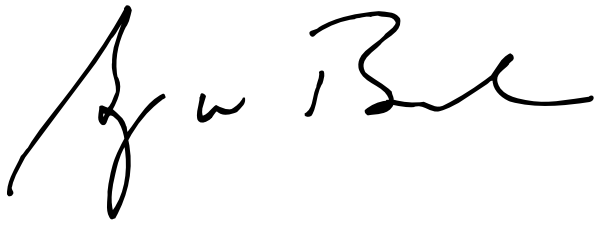
(1) In order to maintain the general level of reciprocal and mutually advantageous concessions with respect to Israel provided for by the FTA, and, in particular, to provide duty-free treatment for specified quantities of certain agricultural products of Israel, subchapter VIII of chapter 99 of the HTS is modified as provided in the Annex to this proclamation.

(2) Any provisions of previous proclamations and Executive Orders that are inconsistent with the actions taken in this proclamation are superseded to the extent of such inconsistency.

(3)(a) The modifications to the HTS made by the Annex to this proclamation shall be effective with respect to goods that are the product of Israel and are entered, or withdrawn from warehouse for consumption, on or after January 1, 2003, including entries for which the liquidation of duties has not become final under section 514 of the Tariff Act of 1930, as amended (19 U.S.C. 1514).

(b) The provisions of subchapter VIII of chapter 99 of the HTS, as modified by the Annex to this proclamation, shall continue in effect through the close of December 31, 2003.

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



Billing code 3195–01–P

Annex

Modifications to Subchapter VIII of Chapter 99 of the Harmonized Tariff Schedule of the United States

Effective with respect to goods that are the product of Israel and are entered, or withdrawn from warehouse for consumption, on or after January 1, 2003, and through the close of December 31, 2003, subchapter VIII of chapter 99 of the HTS is modified as provided herein:

1. U.S. note 1 to such subchapter is modified by striking ''December 31, 2002,'' and by inserting in lieu thereof ''December 31, 2003,''.

2. U.S. note 3 is modified by inserting at the end of the table therein the following additional applicable time period and quantity: ''Calendar year 2003.....383,000''.

3. U.S. note 4 is modified by inserting at the end of the table therein the following additional applicable time period and quantity: ''Calendar year 2003.....1,160,000''.

4. U.S. note 5 is modified by inserting at the end of the table therein the following additional applicable time period and quantity: ''Calendar year 2003.....1,279,000''.

5. U.S. note 6 is modified by inserting at the end of the table therein the following additional applicable time period and quantity: ''Calendar year 2003.....116,000''.

6. U.S. note 7 is modified by inserting at the end of the table therein the following additional applicable time period and quantity: ''Calendar year 2003.....405,317''.

[FR Doc. 03–22347
Filed 8–28–03; 8:45 am]
Billing code 3190–01–M

Rules and Regulations

Federal Register
Vol. 68, No. 168
Friday, August 29, 2003

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

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 02–042–2]

Witchweed; Regulated Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are adopting as a final rule, with several changes, an interim rule that amended the witchweed quarantine and regulations by updating the list of regulated areas to add or remove areas in North Carolina and South Carolina. Based on information received from the States of North Carolina and South Carolina, this final rule adds two farms and removes four from the list of regulated areas that appeared in the interim rule. These actions are necessary to prevent the artificial spread of witchweed from areas where the weed has been detected and to remove restrictions that are no longer necessary on the interstate movement of regulated articles from areas where witchweed has been eradicated.

EFFECTIVE DATE: August 29, 2003.

FOR FURTHER INFORMATION CONTACT: Dr. Alan V. Tasker, National Weed Program Coordinator, Invasive Species and Pest Management, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–5708.

SUPPLEMENTARY INFORMATION:

Background

Witchweed (*Striga.* spp.) is a parasitic plant that feeds off the roots of its host, causing degeneration of corn, sorghum, and other grassy crops. Within the United States, witchweed is only found in parts of North Carolina and South Carolina. The witchweed quarantine and regulations, contained in 7 CFR 301.80 through 301.80–10 (referred to below as the regulations), quarantine the States of North Carolina and South Carolina and restrict the interstate movement of certain articles from regulated areas in those States for the purpose of preventing the spread of witchweed.

In an interim rule effective February 4, 2003, and published in the **Federal Register** on February 10, 2003 (68 FR 6603–6605, Docket No. 02–042–1), we amended the list of regulated areas in the regulations by adding and removing areas in North Carolina and South Carolina. These actions were necessary to prevent the artificial spread of witchweed from areas where the weed has been detected and to remove restrictions that are no longer necessary on the interstate movement of regulated articles from areas where witchweed has been eradicated.

We solicited comments concerning the interim rule for 60 days ending April 11, 2003. We received one comment by that date, from a weed specialist with the North Carolina Department of Agriculture and Consumer Services. The commenter informed us that one of the farms in Cumberland County that was listed in the interim rule has been released from quarantine by the State of North Carolina and thus should no longer be listed as a regulated area in the regulations. Given that the witchweed regulated areas described in our regulations are derived from, and are intended to be consistent with, the regulated areas described by our State cooperators in their quarantine regulations, we have removed the farm cited by the commenter from the list in § 301.80–2a of regulated areas in North Carolina. Similarly, following the close of the comment period, the State of South Carolina brought to our attention that it had amended its witchweed quarantine by adding two farms in Horry County and by removing three farms, one in Horry County and two in Marion County. Again, for consistency with the regulated areas described by our State cooperators in their quarantine regulations, we have amended the list in § 301.80–2a of regulated areas in South Carolina to reflect the changes made by the State of South Carolina. We have also reordered the listing of regulated areas in South Carolina so that they appear in alphabetical order, and have made several nonsubstantive editorial changes for clarity or to correct typographical errors.

Therefore, for the reasons given in the interim rule and in this document, we are adopting the interim rule as a final rule, with the changes discussed in this document.

This final rule also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

Effective Date

Pursuant to the administrative procedure provisions in 5 U.S.C. 553, we find good cause for making this rule effective less than 30 days after publication in the **Federal Register**. The interim rule adopted as final by this rule was effective on February 4, 2003. This rule amends the description of the regulated areas in the interim rule. Immediate action is necessary to amend the description of the regulated areas in order to prevent the artificial spread of witchweed from areas where the weed has been detected and to remove restrictions that are no longer necessary on the interstate movement of regulated articles from areas where witchweed has been eradicated. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective upon publication in the **Federal Register**.

List of Subjects in 7 CFR Part 301

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

■ Accordingly, the interim rule amending 7 CFR part 301 that was published at 68 FR 6603–6605 on February 10, 2003, is adopted as a final rule with the following changes:

PART 301—DOMESTIC QUARANTINE NOTICES

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

Authority: 7 U.S.C. 7701–7772; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 also issued under Sec. 204, Title II, Pub. L. 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–

16 also issued under Sec. 203, Title II, Pub. L. 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

■ 2. Section 301.80–2a is amended as follows:

■ a. Under the heading ''North Carolina,'' paragraph (2), under Cumberland County, by removing the entry for the Lewis, David, farm.

■ b. Under the heading ''South Carolina,'' by revising paragraph (2) to read as set forth below.

§ 301.80–2a Regulated areas; generally infested and suppressive areas.

* * * * *

South Carolina

* * * * *

(2) *Suppressive areas.*

Horry County. That area bounded by a line beginning at a point where U.S. Highway 9 intersects the Horry-Marion County line, then east along U.S. Highway 9 to State Secondary Highway 19, then southeast along State Secondary Highway 19 to Lake Swamp, then southwest along Lake Swamp to State Secondary Highway 99, then south and southwest along State Secondary Highway 99 to U.S. Highway 501, then west along U.S. Highway 501 to the Little Pee Dee River, then north along the Little Pee Dee River to the Lumber River, then north along the Lumber River to U.S. Highway 9, the point of beginning.

The Adams, Lena J., farm located on the west side of State Highway 90, 1.2 miles west of its junction with the State Secondary Road known as Pint Circle.

The Chestnut, Alberta, farm located on the west side of State Highway 90, 0.3 mile west of its junction with the State Secondary Road known as Pint Circle.

The James, Norman, farm located west of State Highway 90, 0.4 mile west of its junction with an unpaved road known as Thompson Road.

The Jenerette, Miriam, farm located on the east side of State Secondary Road 23, 3.4 miles south of its junction with State Highway 917.

The Lewis, Lula, farm located on the west side of State Highway 90, 0.4 mile west of its junction with an unpaved road known as Livingston Lane and 0.1 mile east of its junction with an unpaved road known as Beecher Lane.

The Livingston, Donnie, farm located on the east side of State Highway 90, 0.5 mile southeast of its junction with the State Secondary Road known as Bombing Range Road, 0.6 mile southeast of its junction with an unpaved road known as Dewitt Road, and 0.2 mile west of its junction with an unpaved road known as Sand Hill Lane.

The Livingston, Pittman, farm located on the east side of State Highway 90, 2.2 miles north of its junction with State Highway 22.

The Montgomery, Harry, farm located on the northwest side of State Highway 76 in the Causey community, 2.2 miles northwest of its junction with the State Secondary Road known as Sand Trap Road, 3.7 miles northeast of its junction with an unpaved road known as Causey Road, 0.1 mile northwest of its junction with an unpaved road known as Griffins Landing, and 0.15 mile northeast of its junction with an unpaved road known as Flat River Road.

The Permenter, Lucille, farm located on the east and west side of State Highway 57 at Worthar Cutoff junction, 0.5 mile south of the North Carolina/South Carolina State line.

The Stanley, Andrew, farm located on the east side of State Highway 90, 0.2 mile east of its junction with an unpaved road known as Andrew Road.

The Todd, Don, farm located west of State Highway 90, 0.4 mile west of its junction with an unpaved road known as Tilley Swamp Road.

The Vereen, Rufus C., farm located east of State Highway 90, 0.4 mile east of its junction with the State Secondary Road known as Old Chesterfield Road.

Marion County. The Brown, Lewis, farm located on the south side of State Highway 76, 1.4 miles south of its junction with State Secondary Road 201.

The Fowler, Herbert, Estate, farm located east of State Highway 501, 1.4 miles northeast of its junction with an unpaved road known as Bowling Green Road and 0.1 mile north of its junction with an unpaved road known as Salem Road.

The Rowell, Molite, farm located on the west side of State Secondary Road 9, 0.2 mile west of its junction with an unpaved road known as Molite Road.

The Taw Caw Plantation farm located on the south side of State Highway 76, 1.3 miles south of its junction with an unpaved road known as Bubba Road.

Done in Washington, DC, this 26th day of August, 2003.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–22142 Filed 8–28–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 02–121–3]

Mexican Fruit Fly; Removal of Regulated Area

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Mexican fruit fly regulations by removing a portion of Los Angeles County, CA, from the list of regulated areas and removing restrictions on the interstate movement of regulated articles from that area. This action is necessary to relieve restrictions that are no longer necessary to prevent the spread of the Mexican fruit fly into noninfested areas of the United States.

DATES: This interim rule was effective August 26, 2003. We will consider all comments that we receive on or before October 28, 2003.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 02–121–3, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 02–121–3. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 02–121–3'' on the subject line.

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

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

FOR FURTHER INFORMATION CONTACT: Mr. Stephen A. Knight, Senior Staff Officer, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–8247.

SUPPLEMENTARY INFORMATION:

Background

The Mexican fruit fly (*Anastrepha ludens*) is a destructive pest of citrus and many other types of fruit. The short life cycle of the Mexican fruit fly allows rapid development of serious outbreaks that can cause severe economic losses in commercial citrus-producing areas.

The Mexican fruit fly regulations, contained in 7 CFR 301.64 through 301.64–10 (referred to below as the regulations), were established to prevent the spread of the Mexican fruit fly to noninfested areas of the United States. The regulations impose restrictions on the interstate movement of regulated articles from the regulated areas.

In an interim rule effective on December 13, 2002, and published in the **Federal Register** on December 23, 2002 (67 FR 78127–78128, Docket No. 02–121–1), we amended the regulations by adding the Monterey Park area of Los Angeles County, CA, as a regulated area. In a second interim rule effective on January 17, 2003, and published in the **Federal Register** on January 24, 2003 (68 FR 3373–3374, Docket No. 02–121–2), we amended the regulations by expanding the regulated area to include the South Pasadena area of Los Angeles County, CA.

Based on trapping surveys by inspectors of California State and county agencies and by inspectors of the Animal Plant Health Inspection Service, we have determined that the Mexican fruit fly has been eradicated from the Monterey Park and South Pasadena areas of Los Angeles County, CA. The last findings of Mexican fruit fly in the Los Angeles County, CA, regulated area was October 12, 2002, in Monterey Park and December 2, 2002, in South Pasadena. Since then, no evidence of Mexican fruit fly infestation has been found in the area.

Accordingly, we are amending the regulations in § 301.64–3 by removing that portion of Los Angeles County, CA, from the list of areas regulated for the Mexican fruit fly.

Immediate Action

Immediate action is warranted to relieve restrictions that are no longer necessary. A portion of Los Angeles County, CA, was regulated to prevent the Mexican fruit fly from spreading to noninfested areas of the United States. Since we have concluded that the Mexican fruit fly no longer exists in that portion of Los Angeles County, immediate action is warranted to remove the area from the list of regulated areas and to relieve restrictions on the interstate movement of regulated articles from that area. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (*see* **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

Executive Order 12866 and Regulatory Flexibility Act

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

This rule amends the Mexican fruit fly regulations by removing a portion of Los Angeles County, CA, from the list of regulated areas. County records indicate that within that area there are approximately 389 small entities that may be affected by this rule. These include 351 fruit sellers, 3 growers, 33 nurseries, 1 certified farmers' market, and 1 swapmeet. These 389 entities comprise less than 1 percent of the total number of similar entities operating in the State of California.

We expect that the effect of this interim rule on the small entities referred to above will be minimal. Small entities located within the regulated area that sell regulated articles do so primarily for local intrastate, not interstate, movement, so the effect, if any, of this rule on these entities appears likely to be minimal. In addition, the effect on any small entities that may move regulated articles interstate has been minimized during the quarantine period by the availability of various treatments that allow these small entities, in most cases, to move regulated articles interstate with very little additional cost. Thus, just as the previous interim rules establishing the regulated area in Los Angeles County, CA, had little effect on the small growers in the area, the lifting of the quarantine in this interim rule will also have little effect.

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

Executive Order 12372

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

Executive Order 12988

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

Paperwork Reduction Act

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

List of Subjects in 7 CFR Part 301

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

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

PART 301—DOMESTIC QUARANTINE NOTICES

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

Authority: 7 U.S.C. 7701–7772; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 also issued under Sec. 204, Title II, Pub. L. 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 also issued under Sec. 203, Title II, Pub. L. 106–224, 114 Stat. 400 (7 U.S.C. 1421 *note*).

§ 301.64–3 [Amended]

■ 2. In § 301.64–3, paragraph (c) is amended by removing, under the heading ''California'', the entry for Los Angeles County.

Done in Washington, DC, this 26th day of August 2003.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–22143 Filed 8–28–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 354

9 CFR Parts 97 and 130

[Docket No. 02–040–2]

Veterinary Services User Fees; Fees for Endorsing Export Certificates for Ruminants

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the user fees for endorsing export health certificates by establishing a separate user fee that covers the cost of endorsing certificates that do not require verification of tests or vaccinations for ruminants. We are making this change to ensure that we recover all of the costs associated with providing that service. We are also making several miscellaneous changes to clarify the existing regulations.

EFFECTIVE DATE: October 1, 2003.

FOR FURTHER INFORMATION CONTACT: For information concerning program operations, contact Ms. Inez Hockaday, Director, Management Support Staff, VS, APHIS, 4700 River Road, Unit 44, Riverdale, MD 20737–1231; (301) 734–7517.

For information concerning rate development, contact Ms. Kris Caraher, Accountant, User Fee Section, Financial Management Division, APHIS, 4700 River Road, Unit 54, Riverdale, MD 20737–1231; (301) 734–5901.

SUPPLEMENTARY INFORMATION:

Background

User fees to reimburse the Animal and Plant Health Inspection Service (APHIS) for the costs of providing veterinary diagnostic services and import- and export-related services for animals, animal products, birds, germ plasm, organisms, and vectors are contained in 9 CFR part 130. Section 130.20 lists user fees we charge for endorsing health certificates for animals, birds, or animal or nonanimal products exported from the United States.

On March 21, 2003, we published a proposal in the **Federal Register** (68 FR 13861–13872, Docket No. 02–040–1) to establish a new certificate category and user fee that would cover all of the costs associated with endorsing export health certificates that do not require verification of tests or vaccinations for ruminants, except for ruminants exported for slaughter to Mexico or Canada, which would continue to be covered by a separate category. In that document, we also proposed to make several miscellaneous changes to clarify the existing regulations.

We solicited comments concerning our proposal for 60 days ending May 20, 2003. We received two comments by that date. They were from a representative of a State government and a private citizen. They are discussed below.

One commenter stated that he or she was opposed to the new user fees based on his or her dissatisfaction with APHIS in general, but did not offer any specific information regarding user fees to which we could respond. Another commenter also stated that he or she was opposed to the new user fees and, moreover, the application of any user fee for export-related services, because he or she believes that those fees reduce the competitiveness of United States livestock in international trade. That commenter urged APHIS to seek funding from Congress to meet the needs of Veterinary Services without the use of user fees.

In response to that comment, we note that APHIS has received no directly appropriated funds to provide import- and export-related services for animals, animal products, birds, germ plasm, organisms, and vectors since fiscal year (FY) 1992. Rather, the Food, Agriculture, Conservation, and Trade Act of 1990 authorized the United States Department of Agriculture to prescribe and collect user fees for those services. Therefore, to continue to provide those services, we must recover our costs from the customers who benefit from them. As our costs increase, we must increase our user fees. We realize that any increase in user fees will increase the up-front cost of doing business for exporters. However, we do not anticipate that exports will decline significantly as a result of the new user fees set forth in this final rule. As discussed below under the heading ''Executive Order 12866 and Regulatory Flexibility Act,'' the increase in user fees represents a small amount of the average export value of cattle and is small compared to the total value of livestock usually included on a single health certificate, as most certificates are issued for more than one animal and the new user fee will apply to a single certificate, regardless of the number of animals covered.

Our proposal concerned the establishment of a specific user fee, not the administration of our user fee program in general or the allocation of tax dollars for our export-related services. As a result, we are not making any changes to the rule in response to those comments. However, we are making two changes in this document to correct errors contained in our proposal. In § 130.20, the table in paragraph (b) lists user fees we charge to endorse export health certificates that require verification of tests or vaccinations. When we set out that table in our proposal, we inadvertently omitted the row of user fees for certificates that require verification of 1–2 tests or vaccinations for nonslaughter horses exported to Canada. We did not intend to remove that row of user fees. Therefore, we have restored the correct user fees for that service in this final rule. Furthermore, when we set out the table in § 130.20(a) in our proposal, we inadvertently omitted part of the title for the new user fee category we are establishing in this final rule. Therefore, we have set out the complete title for this category in this document, which is ''Ruminants, except slaughter animals moving to Canada or Mexico.''

In addition, we are also making several miscellaneous changes in this document to clarify the existing regulations. In our proposal, we proposed to amend the user fee tables in 7 CFR part 354 and 9 CFR parts 97 and 130 by removing columns that list fees for fiscal years 2001 and 2002. Because this final rule will take effect on the first day of fiscal year 2004 (October 1, 2003), we are also amending the tables in 7 CFR part 354 and 9 CFR parts 97 and 130 by removing the columns that list fees for fiscal year 2003.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, with the changes discussed in this document.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

APHIS charges flat-rate user fees to individuals, firms, corporations, and other entities for the endorsement of export health certificates for animals, birds, or animal or nonanimal products. These user fees vary, depending on whether or not the importing country requires verification of tests and the type and quantity of animals, birds, or products covered by the certificate. There is one user fee schedule for certificates that require verification of tests or vaccinations and another

schedule for certificates that do not require such verification.

Certifications for ruminants that do not require verification of tests or vaccinations, other than certifications for slaughter ruminants exported to Mexico or Canada, have been covered by a miscellaneous ''catchall'' user fee certificate category. (Ruminants exported to Mexico and Canada for slaughter are covered by a separate user fee that includes all slaughter animals, except poultry, exported to those two countries). Based on our review of the costs associated with endorsing export health certificates, we have determined that the user fee charged for the miscellaneous certificate category does not cover all of our costs to endorse such certificates for ruminants. As a result, we are establishing a new certificate category and user fee for that service, which will increase the amount charged to endorse certificates that do not require verification of tests or vaccinations for ruminants, except slaughter ruminants exported to Mexico or Canada. Under the miscellaneous user fee category, the fiscal year 2004 user fee will be $24 for each endorsement; under the new certificate category, the user charged for each endorsement will be $33, an increase of $9. We are making this change to ensure that we recover our costs for providing that service, which include direct labor costs, administrative support costs, billing and collection costs, Agency overhead, departmental charges, and a reserve component.

This final rule will affect entities that export ruminants, other than slaughter ruminants exported to Mexico or Canada, to countries that do not require that export health certificates include verification of tests or vaccinations. Because entities who export ruminants to Mexico or Canada for immediate slaughter are covered by a separate user fee category, such entities will not be affected by this final rule. Whether or not an importing country requires verification of tests or vaccinations for ruminants depends upon such factors as the type of animal exported, the time of year exportation occurs, and the health status of an animal's herd or State of origin. A representative overview of countries that import ruminants from the United States (including Brazil, Canada, China, the Dominican Republic, Japan, Mexico, Nicaragua, the Philippines, and Turkey) indicates that most countries require that export health certificates include verification of testing or vaccinations for ruminants.[1] For example, importing countries almost always require U.S.-origin ruminants to be tested for brucellosis and tuberculosis, and frequently require those animals to be tested for such diseases as anaplasmosis, bluetongue, Johne's disease, leptospirosis, and vesicular stomatitis, among others. However, two countries, Mexico and Canada, do not currently require verification of tests or vaccinations for some cattle, sheep, and goats, under certain conditions.

As shown in table 1, below, trade statistics indicate that the majority of U.S.-origin cattle, sheep, and goats are exported to Mexico and Canada. For example, 56.6 percent of purebred cattle, 99.6 percent of not purebred cattle, 99.5 percent of sheep, and 82.3 percent of goats exported from the United States during 1999–2001 were shipped to Mexico or Canada. Of those animals listed in table 1, animals categorized as ''not purebred cattle'' (which include feeder cattle, cattle exported for immediate slaughter, and other not purebred cattle) comprise the single largest category, accounting for 83 percent of the total number of cattle, sheep, and goats exported from the United States during 1999–2001.

TABLE 1.—VALUE OF U.S. EXPORTS OF CATTLE, SHEEP, AND GOATS TO MEXICO, CANADA, AND THE REST OF THE WORLD (DOLLAR AMOUNTS AND PERCENTAGE SHARES OF EACH LIVESTOCK CATEGORY AS ANNUAL AVERAGES FOR 1999–2001)

	Mexico	Canada	Rest of the world
Purebred cattle	$9.86 million (45.8%)	$2.39 million (10.8%)	$9.39 million (43.4%)
Not purebred cattle	70.77 million (32.4%)	145.74 million (67.2%)	718,000 million (0.4%)
Sheep	18.00 million (97.4%)	391,000 (2.1%)	85,000 (0.5%)
Goats	1.95 million (74.2%)	206,000 (8.1%)	487,000 (17.7%)

Source: World Trade Atlas, based on U.S. Census data.

Because Mexico and Canada are the principal markets for ruminants exported from the United States that do not require health certificates to include verification of tests or vaccinations, we can expect that entities who export cattle, sheep, and goats to those two countries will be most affected by this final rule. As a result, this analysis focuses on the importation requirements of Mexico and Canada for U.S.-origin cattle, sheep, and goats.

U.S. Ruminant Exports to Mexico

Mexico does not require verification of tests or vaccinations for the following ruminants imported from the United States: Steers and spayed heifers shipped as feeder cattle; slaughter cattle, unless from Texas or Missouri; sheep other than rams; and goats other than breeding stock. Because Texas and Missouri are not designated as brucellosis Class-Free States, cattle imported for slaughter from those two States must be tested for that disease. Breeding cattle imported into Mexico from any State are required to be tested for brucellosis only if the animal is less than 6 months of age, or is an official calfhood vaccinate less than 20 months of age raised for dairy production or a vaccinate less than 24 months of age raised for beef. However, all breeding cattle, except for those animals under 1 month of age, must be tested for tuberculosis. For sheep and goats, Mexico requires that breeding and feeder rams be tested for brucellosis and breeding goats be tested for tuberculosis.

As mentioned above, animals other than poultry exported to Mexico and Canada for slaughter are covered by a separate user fee category. As a result, exporters of slaughter ruminants, including slaughter cattle, exported to Mexico or Canada will not be affected by this final rule. Slaughter cattle account for the majority of not purebred cattle exported to Mexico from the United States.[2] As shown in table 1, the annual value of not purebred cattle exported to Mexico from the United States is estimated to be about $71 million. APHIS export certification data indicate that approximately 62 percent of not purebred cattle shipped to

[1] Import health requirements of foreign countries, including required certification statements and testing, may be found on the Internet at *http://www.aphis.usda.gov/vs/ncie/iregs/animals/*.

[2] APHIS, Centers for Epidemiology & Animal Health (CEAH), 1999–2001.

Mexico were exported from the United States for purposes other than slaughter.[3] We can expect, therefore, that the annual value of not purebred cattle exported to Mexico that will be affected by this final rule will be approximately $44 million ($70.77 million multiplied by 0.62).

This final rule will have a negligible economic impact on exporters of sheep and goats shipped to Mexico, as over 99 percent of sheep and 96 percent of goats from the United States to Mexico are intended for slaughter and are not, therefore, covered by the certificate category and user fee established in this document.

U.S. Ruminant Exports to Canada

Ruminants exported to Canada that do not require testing or vaccination are feeder cattle from Hawaii, Montana, and Washington; sheep and goats intended for immediate slaughter; and some purebred cattle, sheep, and goats, depending on the health status of the State or herd from which the animal originated and the time of year the animals are shipped.

Canada requires feeder cattle imported from most States to be tested for tuberculosis and anaplasmosis, and requires certain feeder cattle to be tested for brucellosis and bluetongue. Brucellosis testing is not required for steers and spayed heifers and official calfhood vaccinates that were vaccinated with Strain 19 vaccine. For all other cattle, brucellosis testing requirements depend on the brucellosis status of the animal's herd and State. Currently, all States except Missouri and Texas are classified as brucellosis Class-Free. As a result, feeder cattle exported to Canada from all States except Missouri and Texas are exempt from brucellosis testing. Bluetongue testing requirements depend on whether the animal comes from a low-, medium-, or high-incidence State and/or the time of year the animal is exported. For example, feeder cattle imported into Canada between October 1 and December 31 are not required to be tested for bluetongue, regardless of the State of origin.

As an alternative to the foregoing testing requirements, Canada accepts shipments of untested feeder cattle under its Restricted Feeder Cattle Program.[4] To participate in this program, a State must meet certain requirements, including being free of brucellosis and tuberculosis and classified as a low risk for bluetongue, and must submit to Canada summary data for anaplasmosis. Currently, Hawaii, Montana, and Washington are allowed to export untested feeder cattle to Canada under the Restricted Feeder Cattle Program. Cattle imported by Canada under this program may only enter the country between October 1 and March 31.

Testing requirements for breeding cattle exported to Canada depend on an animal's particular circumstances. For example, brucellosis and anaplasmosis testing requirements depend on the health status of the herd and State, and bluetongue testing requirements depend on the State's classification and/or the time of year the animal is exported to Canada. Breeding cattle need not be tested for tuberculosis if the entire herd from which the animal originated is tested within the 12 months preceding exportation.

Sheep and goats exported to Canada for immediate slaughter need not be tested for bluetongue. For all other sheep and goats, testing for bluetongue depends on the status of the exporting State and/or the time of year of the export. For example, Canada does not require sheep and goats exported from any State between October 1 and December 31 to be tested for bluetongue, assuming that the animals have resided only in the United States or Canada.

As shown in table 1, ''not purebred cattle,'' which predominantly consist of feeder cattle, account for the single largest category of ruminants exported to Canada that could be affected by this final rule. Because Hawaii, Montana, and Washington are the only States currently allowed to export feeder cattle to Canada without tests or vaccinations under the Restricted Feeder Cattle Program, we can expect that exporters of ruminants from those three States will be most affected by this final rule. Table 2 shows approximate average annual values of feeder cattle exported to Canada from Hawaii, Montana, and Washington, 1999–2001. These values are for cattle classified under Harmonized Schedule code 010290 (not purebred), and, therefore, may include animals exported for immediate slaughter and other not purebred animals; however, the majority of cattle under this classification are imported by Canada under its Restricted Feeder Cattle Program for feeding and subsequent slaughter.

TABLE 2.—APPROXIMATE AVERAGE ANNUAL VALUES OF FEEDER CATTLE EXPORTS TO CANADA FROM THE STATES OF HAWAII, MONTANA, AND WASHINGTON, 1999–2001

Hawaii	$2,383,000
Montana	84,999,000
Washington	8,821,000
Total	96,203,000

Source: Industry Canada, Trade Data Online, based on data obtained from Statistics Canada and the U.S. Census Bureau, U.S. Department of Commerce.

Note: Values are for Harmonized Schedule code 010290—Bovine, live—Not Pure-bred, which are predominantly feeder cattle, but may include other cattle. The values, therefore, are only approximate feeder cattle values.

Montana's livestock exporters, in particular, have benefitted from the Restricted Feeder Cattle Program. A total of 127,643 restricted feeder cattle were shipped to Canada from Montana during the 1999–2000 season. In the 2000–2001 season, Montana shipped 133,240 head.[5] The total value of feeder cattle exported from the three States to Canada, shown in table 2 to be approximately $96 million, comprises two-thirds of the approximately $146 million shown in table 1 for all ''not purebred cattle'' exported to Canada.

Statistics on other ruminants exported to Canada and affected by this final rule are not available. However, as mentioned above, exports of such ruminants, which include certain breeding stock, are not nearly as important as exports of not purebred cattle.

The User Fee Increase and Ruminant Export Values

The total value of ruminant exports that could be affected by this final rule and for which statistics are available is approximately $140 million annually. This figure accounts for about 54 percent of the cattle, sheep, and goats exported from the United States.[6] However, even though a sizable percentage of U.S. ruminant exports may be affected by the user fee increase, we do not expect that this final rule will have a significant impact on a

[3] APHIS, CEAH, 1999–2001.

[4] Canadian Food Inspection Agency, Client Services Information Sheet No. 14, Restricted Feeder Cattle from the United States.

[5] Montana Department of Livestock.

[6] Feeder cattle exports to Canada from Hawaii, Montana, and Washington ($96 million) + not purebred cattle exports to Mexico ($44 million) = $140 million. (Overcounting of affected cattle and smallstock shipments to Mexico is assumed to be balanced by undercounting of affected cattle and smallstock shipments to Canada.) All U.S. exports total about $260 million (Table 1).

substantial number of entities. The $9 increase in user fees for the endorsement of certificates that do not require verification of tests or vaccinations for ruminants represents a small amount of the average export value of cattle. Furthermore, the $9 increase in user fees is small compared to the total value of livestock usually included on a single health certificate, as most health certificates are issued for more than one animal and the new user fee of $33 will apply for all animals covered by a single certificate.

This final rule will have the largest effect on exporters of ''not purebred cattle'' intended for export to Mexico and Canada. Table 3 shows the average value for each animal for those ruminant categories. The $9 increase in user fees represents approximately 2 percent of the average value of ''not purebred cattle'' exported to Mexico and Canada from the United States.

TABLE 3.—AVERAGE VALUES OF NOT PUREBRED CATTLE EXPORTED TO MEXICO AND CANADA AND PERCENTAGES OF THE VALUES REPRESENTED BY THE PROPOSED $9 INCREASE IN USER FEES

	Average value per animal ($)	$9 user fee increase as a percentage of the average value
Not Purebred Cattle:		
Exported to Mexico	464	2.0
Exported to Canada	504	1.8

Source: World Trade Atlas, based on U.S. Census Bureau data. Values are annual averages for 1999, 2000, and 2001.

However, these percentages overstate the impact of the user fee increase, as numerous animals are usually exported using a single certificate. For example, from 1999 through 2001, the average number of feeder cattle exported to Canada per certificate numbered 798 head.[7] Based on this average number of cattle per certificate, the $9 user fee increase would account for only 0.002 percent of the total value of livestock included in a single health certificate.[8]

Impact on Small Entities

The Regulatory Flexibility Act requires agencies to consider the economic impact of their rules on small entities, such as small businesses, organizations, and governmental jurisdictions. This final rule could affect livestock operations that export ruminants to Mexico or Canada, which include such entities as cattle ranches and farms, sheep and goat farms, and cattle feedlots.

Under the standards established by the Small Business Administration (SBA), a business, firm, organization, or other entity engaged in cattle ranching and farming, sheep farming, or goat farming is considered small if the entity has annual sales of $750,000 or less.[9] In 1997, there were 651,542 cattle farms and 29,790 sheep and goat farms. Of those entities, 99 percent of cattle farms (656,181) and 99 percent of sheep and goat farms (29,938) are small entities under the SBA's standards.[10]

Cattle feedlots are considered small under the SBA's standards if their annual sales are $1.5 million or less.[11] Over 97 percent of feedlots (95,000 of 97,091) have capacities of fewer than 1,000 head, and average annual sales of about 420 head.[12] Assuming each head sold for $1,000, fewer-than-1,000 head capacity feedlots would generate, on average, $420,000 in sales. Clearly, most feedlots that export ruminants to Mexico or Canada are small entities under the SBA's standards.

The $9 increase in user fees for the endorsement of ruminant export health certificates that do not require verification of testing or vaccination, except for ruminants exported from Mexico or Canada, will not have a significant economic impact on a substantial number of entities, large or small, given the value, and number, of animals usually listed on a single health certificate. Although the majority of entities affected by this final rule are small entities, and the majority of cattle, sheep, and goats exported by the United States do not require testing or vaccination, the user fee increase is small compared to the average total value of livestock normally included on a single health certificate.

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

Executive Order 12372

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

Executive Order 12988

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

Paperwork Reduction Act

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

List of Subjects

7 CFR Part 354

Exports, Government employees, Imports, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Travel and transportation expenses.

9 CFR Part 97

Exports, Government employees, Imports, Livestock, Poultry and poultry products, Travel and transportation expenses.

9 CFR Part 130

Animals, Birds, Diagnostic reagents, Exports, Imports, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements, Tests.

[7] Calculated from data obtained from APHIS CEAH.

[8] Average total value of feeder cattle exported to Canada, for each health certificate, is $402,192: ($9 divided by $402,192) multiplied by 100 = 0.002 percent.

[9] Cattle ranching and farming, North American Industry Classification System (NAICS) code 112120; sheep farming, NAICS 112410; and goat farming, NAICS 112420.

[10] 1997 Census of Agriculture, USDA National Agricultural Statistics Service (NASS). Sales information for these farms identifies a data break at annual sales of $500,000, not at $750,000.

[11] Cattle feedlots, NAICS 112112.

[12] ''Cattle on Feed,'' NASS, February 2001.

■ Accordingly, we are amending 7 CFR part 354 and 9 CFR parts 97 and 130 to read as follows:

PART 354—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS; AND USER FEES

■ 1. The authority citation for part 354 continues to read as follows:

Authority: 7 U.S.C. 8301–8317; 21 U.S.C. 136 and 136a; 49 U.S.C. 80503; 7 CFR 2.22, 2.80, and 371.3.

■ 2. Section 354.1 is amended as follows:

■ a. In paragraph (a)(1), introductory text, the table is revised to read as set forth below.

■ b. In paragraph (a)(1)(iii), the table is revised to read as set forth below.

§ 354.1 Overtime work at border ports, sea ports, and airports.

(a)(1) * * *

OVERTIME FOR INSPECTION, LABORATORY TESTING, CERTIFICATION, OR QUARANTINE OF PLANT, PLANT PRODUCTS, ANIMALS, ANIMAL PRODUCTS OR OTHER REGULATED COMMODITIES

Outside the employee's normal tour of duty	Overtime rates (per hour)		
	Oct. 1, 2003–Sept. 30, 2004	Oct. 1, 2004–Sept. 30, 2005	Beginning Oct. 1, 2005
Monday through Saturday and holidays	$48.00	$49.00	$51.00
Sundays	63.00	65.00	67.00

* * * * *

(iii) * * *

OVERTIME FOR COMMERCIAL AIRLINE INSPECTION SERVICES [1]

Outside the employee's normal tour of duty	Overtime rates (per hour)		
	Oct. 1, 2003–Sept. 30, 2004	Oct. 1, 2004–Sept. 30, 2005	Beginning Oct. 1, 2005
Monday through Saturday and holidays	$39.00	$40.00	$41.00
Sundays	51.00	53.00	55.00

[1] These charges exclude administrative overhead costs.

* * * * *

PART 97—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS

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

Authority: 7 U.S.C. 8301–8317; 49 U.S.C. 80503; 7 CFR 2.22, 2.80, and 371.4.

■ 4. Section 97.1 is amended as follows:

■ a. In the introductory text of paragraph (a), the table is revised to read as set forth below.

■ b. In paragraph (a)(3), the table is revised to read as set forth below.

§ 97.1 Overtime services relating to imports and exports.

(a) * * *

OVERTIME FOR INSPECTION, LABORATORY TESTING, CERTIFICATION, OR QUARANTINE OF ANIMALS, ANIMAL PRODUCTS OR OTHER REGULATED COMMODITIES

Outside the employee's normal tour of duty	Overtime rates (per hour)		
	Oct. 1, 2003–Sept. 30, 2004	Oct. 1, 2004–Sept. 30, 2005	Beginning Oct. 1, 2005
Monday through Saturday and holidays	$48.00	$49.00	$51.00
Sundays	63.00	65.00	67.00

* * * * *

(3) * * *

OVERTIME FOR COMMERCIAL AIRLINE INSPECTION SERVICES [1]

Outside the employee's normal tour of duty	Overtime rates (per hour)		
	Oct. 1, 2003–Sept. 30, 2004	Oct. 1, 2004–Sept. 30, 2005	Beginning Oct. 1, 2005
Monday through Saturday and holidays	$39.00	$40.00	$41.00
Sundays	51.00	53.00	55.00

[1] These charges exclude administrative overhead costs.

* * * * *

PART 130—USER FEES

■ 5. The authority citation for part 130 continues to read as follows:

Authority: 5 U.S.C. 5542; 7 U.S.C. 1622 and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 3701, 3716, 3717, 3719, and 3720A; 7 CFR 2.22, 2.80, and 371.4.

■ 6. Section 130.2 is amended as follows:

■ a. In paragraph (a), the table is revised to read as set forth below.

■ b. In paragraph (b), the table is revised to read as set forth below.

§ 130.2 User fees for individual animals and certain birds quarantined in APHIS-owned or -operated animal quarantine facilities, including APHIS Animal Import Centers.

(a) * * *

Animal or bird	Daily user fee Beginning Oct. 1, 2003
Birds (excluding ratites and pet birds imported in accordance with Part 93 of this subchapter):	
0–250 grams	$1.75
251–1,000 grams	5.75
Over 1,000 grams	13.00
Domestic or zoo animals (except equines, birds, and poultry):	
Bison, bulls, camels, cattle, or zoo animals	102.00
All others, including, but not limited to, alpacas, llamas, goats, sheep, and swine	27.00
Equines (including zoo equines, but excluding miniature horses):	
1st through 3rd day (fee per day)	270.00
4th through 7th day (fee per day)	195.00
8th and subsequent days (fee per day)	166.00
Miniature horses	61.00
Poultry (including zoo poultry):	
Doves, pigeons, quail	3.50
Chickens, ducks, grouse, guinea fowl, partridge, pea fowl, pheasants	6.25
Large poultry and large waterfowl, including, but not limited to game cocks, geese, swans, and turkeys	15.00
Ratites:	
Chicks (less than 3 months old)	9.25
Juveniles (3 months through 10 months old)	14.00
Adults (11 months old and older)	27.00

(b) * * *

Bird or poultry (nonstandard housing, care, or handling)	Daily user fee Beginning Oct. 1, 2003
Birds 0–250 grams and doves, pigeons, and quail	$5.75
Birds 251–1,000 grams and poultry such as chickens, ducks, grouse, guinea fowl, partridge, pea fowl, and pheasants	13.00
Birds over 1,000 grams and large poultry and large waterfowl, including, but not limited to game cocks, geese, swans, and turkeys	25.00

* * * * *

■ 7. In § 130.3, paragraph (a)(1), the table is revised to read as follows:

§ 130.3 User fees for exclusive use of space at APHIS Animal Import Centers.

(a)(1) * * *

Animal import center	Monthly user fee Beginning Oct. 1, 2003
Newburgh, NY:	
Space A—5,396 sq. ft. (503.1 sq. m.)	$59,254
Space B—8,903 sq. ft. (827.1 sq. m.)	97,764
Space C—905 sq. ft. (84.1 sq. m.)	9,938

* * * * *

■ 8. In § 130.4, the table is revised to read as follows:

§ 130.4 User fees for processing import permit applications.

* * *

Service	Unit	User fee Beginning Oct. 1, 2003
1. Import compliance assistance:		
i. Simple (2 hours or less)	Per release	$70.00
ii. Complicated (more than 2 hours)	Per release	180.00

Service	Unit	User fee Beginning Oct. 1, 2003
2. Processing an application for a permit to import live animals, animal products or byproducts, organisms, vectors, or germ plasm (embryos or semen) or to transport organisms or vectors [1]		
i. Initial permit	Per application	94.00
ii. Amended permit	Per amended application.	47.00
iii. Renewed permit [2]	Per application	61.00
3. Processing an application for a permit to import fetal bovine serum when facility inspection is required.	Per application	322.00

[1] Using Veterinary Services Form 16–3, ''Application for Permit to Import or Transport Controlled Material or Organisms or Vectors,'' or Form 17–129, ''Application for Import or In Transit Permit (Animals, Animal Semen, Animal Embryos, Birds, Poultry, or Hatching Eggs).''
[2] Permits to import germ plasm and live animals are not renewable.

■ 9. In § 130.6, paragraph (a), the table is revised to read as follows:

§ 130.6 User fees for inspection of live animals at land border ports along the United States-Mexico border.

(a) * * *

Type of live animal	Per head user fee Beginning Oct. 1, 2003
Any ruminants (including breeder ruminants) not covered below	$9.00
Feeder	2.50
Horses, other than slaughter	44.00
In-bond or in-transit	5.75
Slaughter	3.75

* * * * *

■ 10. In § 130.7, paragraph (a), the table is revised to read as follows:

§ 130.7 User fees for import or entry services for live animals at land border ports along the United States-Canada border.

(a) * * *

Type of live animal	Unit	User fee Beginning Oct. 1, 2003
Animals being imported into the United States:		
Breeding animals (Grade animals, except horses):		
Sheep and goats	Per head	$0.50
Swine	Per head	0.75
All others	Per head	3.25
Feeder animals:		
Cattle (not including calves)	Per head	1.50
Sheep and calves	Per head	0.50
Swine	Per head	0.25
Horses (including registered horses), other than slaughter and in-transit	Per head	29.00
Poultry (including eggs), imported for any purpose	Per load	50.00
Registered animals (except horses)	Per head	6.00
Slaughter animals (except poultry)	Per load	25.00
Animals transiting [1] the United States:		
Cattle	Per head	1.50
Sheep and goats	Per head	0.25
Swine	Per head	0.25
Horses and all other animals	Per head	6.75

[1] The user fee in this section will be charged for in-transit authorizations at the port where the authorization services are performed. For additional services provided by APHIS, at any port, the hourly user fee rate in § 130.30 will apply.

* * * * *

■ 11. In § 130.8, paragraph (a), the table is revised to read as follows:

§ 130.8 User fees for other services.

(a) * * *

Service	Unit	User fee Beginning Oct. 1, 2003
Germ plasm being exported: [1]		

Service	Unit	User fee Beginning Oct. 1, 2003
Embryo:		
Up to 5 donor pairs	Per certificate	$83.00
Each additional group of donor pairs, up to 5 pairs per group, on the same certificate	Per group of donor pairs.	37.00
Semen	Per certificate	51.00
Release from export agricultural hold:		
Simple (2 hours or less)	Per release	70.00
Complicated (more than 2 hours)	Per release	180.00

[1] This user fee includes a single inspection and resealing of the container at the APHIS employee's regular tour of duty station or at a limited port. For each subsequent inspection and resealing required, the hourly user fee in § 130.30 will apply.

* * * * *

■ 12. Section 130.10 is amended as follows:

■ a. In paragraph (a), the table is revised to read as set forth below.

■ b. In paragraph (b), the table is revised to read as set forth below.

§ 130.10 User fees for pet birds.

(a) * * *

Service	Unit	User fee Beginning Oct. 1, 2003
(1) Which have been out of the United States 60 days or less	Per lot	$108.00
(2) Which have been out of the United States more than 60 days	Per lot	257.00

(b) * * *

Number of birds in isolette	Daily user fee Beginning Oct. 1, 2003
1	$9.25
2	11.00
3	13.00
4	15.00
5 or more	18.00

* * * * *

■ 13. In § 130.11, paragraph (a), the table is revised to read as follows:

§ 130.11 User fees for inspecting and approving import/export facilities and establishments.

(a)

* * * * *

Service	Unit	User fee Beginning Oct. 1, 2003
Embryo collection center inspection and approval (all inspections required during the year for facility approval).	Per year	$380.00
Inspection for approval of biosecurity level three laboratories (all inspections related to approving the laboratory for handling one defined set of organisms or vectors).	Per inspection	977.00
Inspection for approval of pet food manufacturing, rendering, blending, or digest facilities:		
Initial approval	For all inspections required during the year.	404.75
Renewal	For all inspections required during the year.	289.00
Inspection for approval of pet food spraying and drying facilities:		
Initial approval	For all inspections required during the year.	275.00
Renewal	For all inspections required during the year.	162.00
Inspection for approval of slaughter establishment:		
Initial approval (all inspections)	Per year	373.00

Service	Unit	User fee Beginning Oct. 1, 2003
Renewal (all inspections)	Per year	323.00
Inspection of approved establishments, warehouses, and facilities under 9 CFR parts 94 through 96:		
Approval (compliance agreement) (all inspections for first year of 3-year approval)	Per year	398.00
Renewed approval (all inspections for second and third years of 3-year approval)	Per year	230.00

* * * * *

■ 14. Section 130.20 is amended as follows:

■ a. In paragraph (a), the table is revised to read as set forth below.

■ b. In paragraph (b)(1), the table is revised to read as set forth below.

130.20 User fees for endorsing export certificates.

(a) * * *

Certificate categories	User fee Beginning Oct. 1, 2003
Animal and nonanimal products	$32.00
Hatching eggs	30.00
Poultry, including slaughter poultry	30.00
Ruminants, except slaughter ruminants moving to Canada or Mexico	33.00
Slaughter animals (except poultry but including ruminants) moving to Canada or Mexico	35.00
Other endorsements or certifications	24.00

(b)(1) * * *

Number of tests or vaccinations and number of animals or birds on the certificate	User fee Beginning Oct. 1, 2003
1–2 tests or vaccinations	
Nonslaughter horses to Canada:	
First animal	$38.00
Each additional animal	4.25
Other animals or birds:	
First animal	76.00
Each additional animal	4.25
3–6 tests or vaccinations	
First animal	94.00
Each additional animal	7.25
7 or more tests or vaccinations	
First animal	109.00
Each additional animal	8.50

* * * * *

■ 15. Section 130.30 is amended to read as follows:

■ a. In paragraph (a), the table is revised to read as set forth below.

■ b. In paragraph (b), the table is revised to read as set forth below.

§ 130.30 Hourly rate and minimum user fees.

(a) * * *

	User fee Beginning Oct. 1, 2003
Hourly rate	
Per hour	$84.00
Per quarter hour	21.00
Per service minimum fee	25.00

(b) * * *

Overtime rates (outside the employee's normal tour of duty)	Premium rate user fee Beginning Oct. 1, 2003
Premium hourly rate Monday through Saturday and holidays:	

Overtime rates (outside the employee's normal tour of duty)	Premium rate user fee Beginning Oct. 1, 2003
Per hour	$100.00
Per quarter hour	25.00
Premium hourly rate for Sundays:	
Per hour	112.00
Per quarter hour	28.00

* * * * *

■ 16. In § 130.50, paragraph (b)(3)(i), the table is revised to read as follows:

§ 130.50 Payment of user fees.

* * * * *

(b) * * *

(3) * * *

(i) * * *

OVERTIME FOR FLAT RATE USER FEES [1, 2]

	Outside of the employee's normal tour of duty	Overtime rates (per hour)		
		Oct. 1, 2003–Sept. 30, 2004	Oct. 1, 2004–Sept. 30, 2005	Beginning Oct. 1, 2005
Rate for inspection, testing, certification or quarantine of animals, animal products or other commodities.[3].	Monday-Saturday and holidays	$48.00	$49.00	$51.00
	Sundays	63.00	65.00	67.00
Rate for commercial airline inspection services.[4]	Monday-Saturday and holidays	39.00	40.00	41.00
	Sundays	51.00	53.00	55.00

[1] Minimum charge of 2 hours, unless performed on the employee's regular workday and performed in direct continuation of the regular workday or begun within an hour of the regular workday.

[2] When the 2-hour minimum applies, you may need to pay commuted travel time. (*See* § 97.1(b) of this chapter for specific information about commuted travel time.)

[3] *See* § 97.1(a) of this chapter or 7 CFR 354.3 for details.

[4] *See* § 97.1(a)(3) of this chapter for details.

* * * * *

Done in Washington, DC, this 26th day of August 2003.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–22141 Filed 8–28–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

[Docket No. EE–RM/TP–99–500]

RIN 1904–AB10

Energy Conservation Program for Consumer Products: Test Procedure for Dishwashers

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Final rule.

SUMMARY: Under Part B of title III of the Energy Policy and Conservation Act (EPCA or the Act), the Department of Energy (DOE or the Department) promulgates a rule amending its test procedure to determine the energy efficiency of residential dishwashers. This amendment provides a new test procedure for testing the energy consumption of soil-sensing models, requires that manufacturers or private labelers include the measurement of standby power consumption in the estimated annual operating cost and estimated annual energy use calculations for all dishwasher models, and adds new specifications for instrumentation requirements. It also revises the number of cycles per year used for calculating the estimated annual operating cost, based on new survey data concerning consumer practices.

EFFECTIVE DATES: This rule is effective September 29, 2003. The incorporation by reference of certain publications listed in this rule is approved by the Director of the Federal Register as of September 29, 2003.

ADDRESSES: You can read copies of all materials related to this rulemaking in the Freedom of Information Reading Room (Room 1E–190) at the U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Barbara Twigg, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–8714, e-mail: *barbara.twigg@ee.doe.gov;* Francine Pinto, Esq., U.S. Department of Energy, Office of General Counsel, GC–72, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–7432, e-mail: *Francine.Pinto@hq.doe.gov;* or Thomas DePriest, Esq., U.S. Department of Energy, Office of General Counsel, GC–72, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–2946, e-mail: *Thomas.DePriest@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: You may obtain copies of the standard referenced in this final rule and referred to as ANSI/AHAM DW–1 (American National Standard, Household Electric Dishwashers, ANSI/AHAM DW–1–1992) from the Association of Home Appliance Manufacturers (AHAM), 1111 19th Street, NW., Suite 402, Washington, DC 20036, (202) 872–5955. Information regarding this rulemaking is also available on the Buildings Program Web site at the following address: *http://www.eere.energy.gov/buildings/appliance_standards/.*

I. Introduction
A. Authority
B. Background

C. Summary of the Test Procedure Revisions
II. Discussion
A. General Discussion
B. Updated Representative Average Dishwasher Use
C. New Three-Level Test Procedure for Soil-Sensing Dishwashers
D. New Test Procedure To Measure Standby Power Consumption
E. New Definitions
F. Modifications To Improve the Clarity and Repeatability of the Test Procedure
G. Effective Date of New Test Procedure
H. Reporting Requirements
I. Determination of Non-Compliant Models
J. Comments Outside the Scope of this Rulemaking
K. Implementation and Effect of New Test Procedure
III. Procedural Requirements
A. Review Under the National Environmental Policy Act of 1969
B. Review Under Executive Order 12866, ''Regulatory Planning and Review'
C. Review Under Executive Order 13211, ''Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use''
D. Review Under the Regulatory Flexibility Act
E. Review Under Executive Order 13132, ''Federalism''
F. Review Under Executive Order 12630, ''Governmental Actions and Interference With Constitutionally Protected Property Rights''
G. Review Under the Paperwork Reduction Act
H. Review Under Executive Order 12988, ''Civil Justice Reform''
I. Review Under Section 32 of the Federal Energy Administration Act of 1974
J. Review Under the Unfunded Mandates Reform Act of 1995
K. Review Under the Treasury and General Government Appropriations Act, 1999
L. Review Under the Treasury and General Government Appropriations Act, 2001
M. Congressional Notification
N. Approval by the Office of the Secretary

I. Introduction

A. Authority

Title III of EPCA established the Energy Conservation Program for Consumer Products Other Than Automobiles (Program). The products currently subject to this Program (''covered products'') include residential dishwashers, the subject of today's final rule. (42 U.S.C. 6291 *et seq.*)

Under the Act, the Program consists of three parts: Testing, labeling, and the Federal energy conservation standards. The Department, in consultation with the National Institute of Standards and Technology (NIST), may amend or establish test procedures as appropriate for each of the covered products. (42 U.S.C. 6293) The purpose of the test procedures is to measure energy efficiency, energy use, or estimated annual operating cost of a covered product during a representative average use cycle or period of use. The test procedures must not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3))

If DOE amends a test procedure, EPCA requires DOE to determine whether the new test procedure would change the measured energy efficiency or measured energy use of any covered product as determined under the existing test procedure. (42 U.S.C. 6293(e)(1)) If DOE determines that a change would result, DOE must amend the applicable energy conservation standard during the rulemaking that establishes the new test procedure. (42 U.S.C. 6293(e)(2)) In setting any new energy conservation standard, DOE is required to measure, with the new test procedure, the energy efficiency or energy use of a representative sample of covered products that minimally comply with the existing standard. The average energy efficiency or energy use of these representative samples under the new test procedure shall constitute the amended energy conservation standard for the applicable covered products. (42 U.S.C. 6293(e)(2))

Effective 180 days after DOE prescribes or establishes an amended or new test procedure for a covered product, no manufacturer, distributor, retailer, or private labeler may make any representation with respect to the energy use, efficiency, or cost of energy consumed by the product, unless the product has been tested in accordance with such amended or new DOE test procedure and the representation fairly discloses the results of that testing. (42 U.S.C. 6293(c)(2)) This restriction on representations will take effect 180 days after the date this final rule is ''prescribed'' (*i.e.*, the date this rule is published in the **Federal Register**). Because this final rule itself will become effective 30 days after its publication in the **Federal Register**, a manufacturer, distributor, retailer, or private labeler may begin using the new test procedure to make representations with respect to the energy use, efficiency, or cost of energy consumed by the product beginning with the effective date of this rule.

B. Background

On December 18, 2001, the Department published a final rule amending the dishwasher test procedure that had been in effect since 1987 (hereafter referred to as the ''2001 final rule''). 66 FR 65091. That rulemaking tightened some testing specifications, changed the definitions of compact and standard models, and reduced the average number of use cycles per year from 322 to 264. It did not, however, finalize the revised test procedure that the Department had proposed to measure the energy consumption of the newer soil-sensing models. Manufacturers were unable to adequately test these models with the existing test load of clean dishes. In the 2001 final rule, the Department concluded that it needed to conduct additional research regarding how to test accurately the variety of soil-sensing technologies used, and to collect more data regarding consumer dishwasher behavior. In the following year, the Department worked with industry and other stakeholders to explore possible approaches and to collect additional data to support the development of a new test method. In addition, the Department hired an independent research organization, Arthur D. Little, Inc. (ADL), whose technology and innovation business has become known as TIAX LLC, to collect and evaluate all available surveys and studies regarding consumer dishwasher use. The ADL research addressed both frequency of use and frequency of pre-rinsing the dish load. DOE placed the December 18, 2001, ADL report and the March 5, 2002, ADL research addendum on its Building Research and Standards website for stakeholder review and comment.

The Department published a Notice of Proposed Rulemaking (NOPR) on September 3, 2002 (hereafter referred to as the September 2002 NOPR or NOPR), defining two types of dishwashers, soil-sensing and non-soil-sensing, according to whether a dishwasher could automatically adjust its wash cycle in response to the amount of food left on the dish load. 67 FR 56232. The Department did not propose any changes to the existing test procedure for non-soil-sensing dishwashers, which still would use clean dishes, tested during the normal cycle. However, using the recommendations from the ADL research, the Department proposed for soil-sensing dishwashers a new test procedure using soiled dishes instead of clean ones. The procedure required that manufacturers or private labelers run a series of three tests using heavy, medium, and light soil loads in order to test a dishwasher's soil-sensing mechanism at different soil levels. This procedure allowed the energy factor for a soil-sensing dishwasher to become an aggregated number, the average of the energy consumption figures from the three soiled test loads, weighted according to user frequency. For soiling the dishes, the test procedure required

the same food soils used in the ANSI/AHAM DW–1 performance test, but with fewer soiled place-settings for each of the three test levels. 67 FR 56243.

In the September 2002 NOPR, DOE also proposed adding a method for calculating the standby power consumption for all dishwashers, both soil-sensing and non-soil-sensing, and including that energy in the estimated annual operating cost and estimated annual energy use calculations, but not in the energy factor. 67 FR 56242, 56244. The NOPR provided instrumentation requirements for measuring standby power and proposed changing the electrical energy supply requirements to 120 volts ±2 percent, instead of 115 volts. The NOPR also proposed a further reduction in the average number of use cycles from 264 to 215 per year based on new consumer use data.

This final rule adopts most of the test procedure provisions proposed in the September 2002 NOPR, and also incorporates certain changes that were presented and discussed at the October 22, 2002, public hearing with some modifications as discussed below. A few additional changes in test specifications resulted from information learned when NIST began testing two soil-sensing dishwashers using the proposed test procedure. The Department used NIST testing to verify that the test procedure language was clear and that the test was able to capture the machine's energy performance.

C. Summary of the Test Procedure Revisions

The following are the major revisions to the dishwasher test procedure included in this final rule:

1. Updated representative average dishwasher use
2. New three-level test procedure for soil-sensing dishwashers:
   - Detergent and rinse agent
   - Specifications for dish load
3. New test procedure to measure standby power consumption:
   - ''Standby mode'' definition
   - New measurement procedures
   - New instrumentation requirements
   - Corrected calculation procedure for the estimated annual energy use
4. New definitions:
   - Non-soil-sensing dishwashers
   - Soil-sensing dishwashers
   - Sensor heavy response
   - Sensor light response
   - Sensor medium response
   - Truncated sensor heavy response
   - Truncated sensor light response
   - Truncated sensor medium response
5. Modifications to improve the clarity and repeatability of the test procedure:
   - Clarify the definition of water-heating dishwasher
   - Retain testing voltage of 115 Volts
   - Reword definition of dryer energy, E_D
   - Reword calculation of the number of standby hours per year, H_s, and duration of wash cycle, L
   - Correct typographical error in equation for Energy Factor (EF)
   - Reword flow rate tolerance
   - Reduce 140 °F tolerance from ±5 °F to ±2 °F
   - Revise format of measurement descriptions of machine electrical energy consumption and water consumption

II. Discussion

A. General Discussion

This final rule defines two types of dishwashers, soil-sensing and non-soil-sensing models, provides a new test procedure for soil-sensing dishwashers, and makes some modifications applicable to both soil-sensing and non-soil sensing test procedures. Manufacturers or private labelers must calculate the energy factor for soil-sensing models using a weighted average of the results from three tests with three different soiled loads of dishes: Heavy, medium, and light. The test procedure for non-soil-sensing models requires only one test using a load of clean dishes. In addition, manufacturers or private labelers must use a new test method to calculate the standby power consumption of any dishwasher that uses standby power technology (including both soil-sensing and non-soil-sensing dishwashers) and must add that value to the Estimated Annual Operating Cost (EAOC) and Estimated Annual Energy Use (EAEU) figures. At this time, however, the energy factor for dishwashers will not include the standby power consumption amounts. This final rule also reduces the representative average number of use cycles per year in the calculations for the EAOC to 215, down from 264 cycles per year.

The new test procedure for soil-sensing dishwashers reflects the combined efforts of many stakeholders who have worked with the Department to find a more accurate way of testing dishwasher models which use smart technology to sense and adjust the length of the wash cycle according to the soil level of the dish load. A series of meetings and discussions and the sharing of DOE draft proposals for comment on the web revealed a coincidence of views on the major features of the test procedure among stakeholders at the October 22, 2002, public hearing on the NOPR. The Association of Home Appliance Manufacturers (AHAM) commented that it was in general agreement with the NOPR. (Public Hearing Tr. p. 39) [1] The Consortium for Energy Efficiency (CEE) also stated that it was very supportive of the proposed test for soil-sensing dishwashers. (Public Hearing Tr. p. 89)

Although AHAM and CEE would like to see standby power energy consumption included in the energy factor at some point in the future, these stakeholders agreed that the more important goal at this time was the completion of a test procedure for soil-sensing models as quickly as possible. (AHAM No. 33 at 4; CEE No. 35 at 1) [2] The following sections discuss specific components of the new test procedure and changes that the Department made to the NOPR as a result of stakeholder comments.

B. Updated Representative Average Dishwasher Use

One figure needed for computing the EAOC is a number the Department selects to represent the average number of times consumers run their dishwashers in the course of one year. In 1983, DOE amended the dishwasher test procedure to reduce the representative average use from 416 cycles per year to 322 cycles per year based on surveys of consumer use conducted prior to 1982. In 2001, DOE further reduced the representative average use from 322 cycles per year to 264 cycles per year based on the Soap and Detergent Association's data for available years between 1985 and 1995. (66 FR 65092, December 18, 2001) For this rulemaking, DOE commissioned a study by ADL to identify new consumer use data that could be used to evaluate the 264 cycle requirement and update it if appropriate. The findings of this study established that consumer use ranged from 200 to 233 cycles per year. (ADL No. 25 at 20) Therefore, in the September 2002 NOPR, DOE proposed 215 as the average number of dishwasher use cycles per year, selecting the approximate midpoint of the 200–233 cycle range.

At the October 22, 2002, public hearing, the Oregon Office of Energy (OOE) stated that the American Water Works Association (AWWA) had data

[1] ''Public Hearing Tr. p. 39'' refers to the page number of the transcript of the ''Dishwasher Test Procedure Proposed Rule Public Hearing'' held in Washington, DC on October 22, 2002.

[2] No. 33 and No. 35 refer to the numbers of the written comments and supporting documents included in the docket for this rulemaking (Docket Number EE–RM/TP–99–500). Numbers 4 and 1 refer to the cited page numbers in those written comments.

obtained by sub-metering consumers that could establish the number of dishwasher cycles per year more accurately than surveys. (OOE, Public Hearing Tr. p. 124) Following the public hearing, DOE obtained the AWWA data and found: (1) That water use specific to dishwashers was not listed separately from other appliances and (2) that the study was not nationally representative. Later, in a written comment, OOE stated that further research into the data from AWWA on dishwasher cycles per year determined that the dishwasher data was combined with, and inseparable from, household lavatory and kitchen sink water use. As a result, OOE concluded ''that the data and analysis presented by ADL at the October 22nd public hearing probably represents the best basis for establishing today's annual dishwasher use, in cycles per year.'' (OOE No. 36 at 2) As a result of DOE's own analysis and OOE's comment, the Department has decided not to use the AWWA data in this rulemaking.

AHAM commented that DOE should consider selecting 208 cycles per year, a value that exactly represents using a dishwasher four times per week (4 cycles per week × 52 weeks = 208 cycles per year). It stated that since that number is reasonably close to DOE's proposal of 215, and still within the range of 200 to 233 supported by ADL research, the selection of 208 cycles per year would aid the consumer in understanding the content of the Federal Trade Commission's (FTC) EnergyGuide label. (AHAM No. 33 at 3) The OOE, however, stated that it concurred with the Department's proposed cycles-per-year estimate of 215, and found no issue in not using four cycles per week on EnergyGuide labels, in spite of the resulting mathematical difference between 208 and 215. It believed that the annual dollar cost difference of slightly more than a dollar, if consumers noticed it at all, would be a negligible difference. (OOE No. 36 at 2)

While the Department recognizes that the FTC generally rounds average use to an integer value and the number 208 would represent a perfect four wash cycles per week, the Department does not believe that the number of cycles per year should be selected on the basis of numerical alignment.

The best data available to DOE establishes a consumer use range from 200 to 233 cycles per year, and DOE proposed a midpoint in this range because ''this range is appropriate but no definitive number within that range appears to be better than any other.'' 67 FR 56235. Comment was divided on the best number to use in this range, but none of the comments offered any persuasive argument or analysis for adopting a number different from the one DOE had proposed. Therefore, DOE is retaining 215 cycles per year as the representative average number of use cycles per year. This number represents a significant drop from the current value of 264 cycles per year and is appropriate because it is based on an analysis of the best available data. Section 430.23(c) of subpart B of the test procedure now includes 215 as the value of ''N'', the representative average number of dishwasher cycles per year used in the formula for calculating the EAOC.

C. New Three-Level Test Procedure for Soil-Sensing Dishwashers

At the October 22nd public hearing and in the written comments DOE received, there was general agreement regarding the major components of the proposed procedure for testing soil-sensing dishwashers. The new test procedure adopts a three-level soil test based on the soils used in ANSI/AHAM DW–1. The energy factor for a soil-sensing dishwasher will be computed using a weighted average of the normal wash responses from testing the dishwasher three separate times with three soil levels: heavy, medium, and light. Those conducting the tests will measure and calculate the energy consumption responses for each of the three cycles (*i.e.*, sensor heavy, sensor medium, and sensor light for soil-sensing dishwashers) in the same way as the test procedure for non-soil-sensing dishwashers which uses clean dishes in the normal cycle. However, DOE will base the machine energy and water energy components for a soil-sensing dishwasher on a weighted average of the three energy consumption tests, according to the frequency with which consumers wash light, medium, and heavy loads. Thus, under sections 5.1.2, 5.2.2, and 5.3.2 of the test procedure, the energy factor will be a number computed from the three test cycles to represent the normal energy efficiency of the soil-sensing machine.

From available survey data, ADL determined the following distributions of typical soil levels for U.S. households using dishwashers: 5 percent heavy level of soil, 33 percent medium level of soil, and 62 percent light level of soil. (Review of Survey Data to Support Revisions to DOE's Dishwasher Test Procedure, December 18, 2001; ADL No. 25 at 8) The Department is using the distribution of these three soil level categories to establish the weighting factors, F, as follows: for the heavy response, $F_{hr} = 0.05$; for the medium response, $F_{mr} = 0.33$; and for the light response, $F_{lr} = 0.62$. The resulting equation for the machine energy, M, for soil-sensing dishwashers is:

$$M = (M_{hr} \times F_{hr}) + (M_{mr} \times F_{mr}) + (M_{lr} \times F_{lr}).$$

The resulting equation for the amount of water used, V, for soil-sensing dishwashers is:

$$V = (V_{hr} \times F_{hr}) + (V_{mr} \times F_{mr}) + (V_{lr} \times F_{lr}).$$

AHAM submitted a written comment supporting the weighting factors for the three soil levels, stating that ''the proposed test procedure aligns well with actual consumer practices.'' (AHAM No. 33 at 2) Along with supporting the soil weighting factors, the OOE also agreed with the Department's selection of the soils and soiling method specified for industry use in the ANSI/AHAM DW–1 standard, commenting that it is confident that AHAM's DW–1 test method is the best basis for a methodology that can deliver repeatable results for these models. (OOE No. 36 at 2)

Detergent and Rinse Agent

In addition to supporting the overall test methodology, commenters recommended two changes regarding the amount of detergent and rinse agent (also referred to as rinse additive or rinse aid) used in the proposed test. In its comment, Maytag Corporation suggested the Department reduce by at least half the amount of detergent which DOE specified in the September 2002 NOPR because of the smaller size of the test loads. The firm commented that the ANSI/AHAM DW–1 soiled dish load which industry uses as a performance test ''is 10–12 place settings and the 0.5 percent detergent concentration that is stated in the ANSI/AHAM DW–1 test protocol is based on that amount of soil level. The detergent amount is to improve cleanability not to impact energy consumption.'' (Maytag No. 32 at 1) AHAM also indicated that, because the soil levels in the DOE test procedure are so much smaller than the soil level in the original ANSI/AHAM DW–1 procedure, the amount of detergent stated in the September 2002 NOPR should be reduced accordingly: to one-half the amount of detergent used in the AHAM performance test. (AHAM No. 33 at 6) Maytag also stated, ''Rinse additive should not be used in the test for the following reason. Rinse additive is usually released into the dishwasher in the last rinse before the heated dry [cycle] and is used to help improve drying and reduce spotting. It does not impact energy consumption of the dishwasher.'' (Maytag No. 32 at 1) The OOE commented that since the use of

rinse aid has no demonstrated impact on energy or water use, to require it for energy use testing would amount to a senseless waste of money and chemicals. (OOE No. 36 at 4) The Department agrees with these comments regarding the reduction of unnecessary chemical use and is therefore reducing the amount of detergent by half in section 2.8 of the test procedure and omitting the instruction to use rinse agent that DOE had proposed in section 2.7 of the NOPR.

This final rule reflects the consensus on the appropriateness of the current soil loads and weighting factors of the new test procedure as proposed, and incorporates the above changes regarding detergent and rinse agent.

Specifications for Dish Load

In the September 2002 NOPR, DOE proposed incorporating the August 20, 1999, ''Addendum to Appendix A of AHAM DW–1–1992'' by reference into the final rule to specify the type of dishes to be used in the test procedure. At the October 22 public hearing, however, AHAM stated that because some dishes in the ANSI/AHAM DW–1 Addendum are no longer available, DOE should use a new reference list which will be included in the ANSI/AHAM DW–1 revision currently under consideration. (Public Hearing Tr. p. 54) AHAM further suggested that since the new list is not yet available as part of ANSI/AHAM DW–1 for formal incorporation by reference, the Department should publish the specific table containing the recommended dishware, glassware, and flatware in the rule to address manufacturers' concerns about availability. (Public Hearing Tr. p. 54)

There was considerable discussion at the public hearing that confirmed both the comparability of the new list of dishware with what is currently being used during testing, and also the availability problems regarding the ANSI/AHAM DW–1 Addendum list as DOE had proposed in the September 2002 NOPR. The Department agrees that it would be best to use the most current list of available dishware, and therefore has directly included that list in the text of the test procedure as section 2.7. This test load list supercedes the specifications for dishware included in ANSI/AHAM DW–1. Thus, when testing soil-sensing dishwashers, ANSI/AHAM DW–1 should be used for determining the types and quantities of soils and the size of a place setting, but the table in section 2.7 of the test procedure should be used for determining the specific types of dishware, glassware, and flatware. The insertion of this table in section 2.7 (previously the section for detergent and rinse agent) alters the numbering sequence for sections 2.7 through 2.9 as they appeared in the September 2002 NOPR, and creates a new section 2.10 for preconditioning requirements (previously section 2.9). The following sections of the test procedure now include references to section 2.7 for specifying the test load of dishware, glassware, and flatware: sections 1.2, 1.13, 2.6.2, 2.6.3.1, 2.6.3.2, and 2.6.3.3 of Appendix C to Subpart B, and paragraph (f) of section 430.32 of Subpart C.

D. New Test Procedure To Measure Standby Power Consumption

The Department presented a comprehensive method for computing standby power consumption in the September 2002 NOPR. Later, however, DOE learned that the International Electrotechnical Commission (IEC) was circulating a July 12, 2002, committee draft document for measuring standby power in household electrical appliances which contained some alternate technical specifications. (IEC No. 39 at 6–9, 14–15) The IEC is a worldwide organization which publishes international standards and promotes international cooperation on questions concerning standardization in the electrical and electronic fields. Thus, in order to make the proposed dishwasher test procedure as consistent as possible with international specifications that the IEC is developing on standby power, DOE presented at the October 22 public hearing an enhanced version of the original method set out in the September 2002 NOPR, based on specifications the Department adapted from the draft IEC document. These changes addressed the definition for ''standby mode'' and the instrumentation requirements, as well as the measurement and calculation procedures. (Public Hearing Tr. p. 131). The Department used the discussions at the hearing and comments received to improve the test procedure as described below.

''Standby Mode'' Definition

AHAM commented that the definition of standby mode in the September 2002 NOPR, ''the power consumption condition when the dishwasher is connected to the main electricity supply and the door lock is unlatched'' (67 FR 56242), would not be appropriate for all dishwashers. (AHAM No. 30FF at 4). AHAM stated that some new models of dishwashers may not be in the standby mode when a door is unlatched, and that some did not even have traditional doors. As a result of this comment, DOE presented for discussion at the public hearing the following alternative definition which was based on the draft definition in the IEC document: '' *'Standby mode'* means the lowest power consumption mode which cannot be switched off or influenced by the user, a non-operational mode not affected by the dishwasher's primary function which may persist for an indefinite time when the dishwasher is connected to the main electricity supply and used in accordance with the manufacturer's instructions.'' (Public Hearing Tr. p. 132)

At the public hearing, AHAM also presented the IEC draft definition but did not include the words ''a non-operational mode not affected by the dishwasher's primary function'' which the IEC draft had listed as a note in its draft, but not as part of the definition itself. (AHAM No. 30FF at 4) The AHAM representative explained at the hearing that the inclusion of those words seemed like adding ''redundant and unnecessary verbiage to the definition because you've already defined the fact that you're in the non-operational mode by saying it's the lowest power consumption mode that can't be switched off.'' (Public Hearing Tr. p. 138) The Department reviewed the text and agrees that the words AHAM cited are redundant for defining standby mode. Overall, there was broad support among commenters for drawing from the IEC expertise on this issue. For example, the OOE commented that it supported DOE's test procedure being consistent with the IEC definition. (Public Hearing Tr. p. 129) In light of the discussion at the public hearing and the comments received, the Department agrees with the criticisms of the ''standby mode'' definition in the September 2002 NOPR and believes that the IEC draft definition for standby mode is the better choice. Therefore, the Department has adopted it in section 1.14 of this rule. The Department's text, however, specifically names dishwashers in the definition, rather than using the more general term ''appliance'' which the IEC uses in its broader definition for standby mode.

New Measurement Procedures

The September 2002 NOPR proposed a procedure for the measurement of standby power which required measuring the standby energy consumption using a watt-hour meter and prorating the value over the measurement period. (67 FR 56243) Based on an AHAM comment and the IEC draft document containing a procedure for measuring standby power, DOE presented revisions to the

September 2002 NOPR at the October 22 public hearing. These revisions added provisions for measuring stable standby power consumption using a wattmeter and for measuring unstable standby power consumption using a watt-hour meter.

The modified measurement method, which is set forth in section 4.4 of the test procedure, requires allowing the dishwasher's standby power consumption to stabilize for five minutes, and then monitoring the dishwasher for an additional five minutes to determine whether the dishwasher's standby power consumption meets the criteria for stability (discussed below). If stable, the standby power could be measured directly using a wattmeter to obtain an instantaneous reading in watts. AHAM had recommended this alternative to measuring standby power in watt-hours and prorating the value for the measurement period as a way to simplify, and perhaps improve, the accuracy of the measurement. (AHAM No. 33 at 5)

The Department presented the criteria for stability as a power level drift of not more than 1 percent from the maximum observed value during the monitoring period with no cyclic or pulsing behavior. (Public Hearing Tr. p. 154) AHAM pointed out that the U.S. Technical Advisory Group had submitted comments to the IEC recommending a 5 percent drift instead of a 1 percent drift, stating that ''at the levels that you're monitoring, typically three to five watts, a drift of five percent is almost negligible. One percent drift is extremely tight.'' (Public Hearing Tr. p. 156) The Department followed up with the IEC committee and learned that the IEC was in the process of revising its July 12, 2002, committee draft and had accepted the 5 percent drift as a revised specification. The March 7, 2003, IEC committee draft included the 5 percent specification in section 4.3.1. (IEC No. 40 at 8) In the interest of harmonization, and because DOE agrees based on the data and comments presented that the 1 percent drift tolerance is too restrictive, DOE is changing the 1 percent drift tolerance to 5 percent drift tolerance in section 4.4 of the test procedure.

The modified procedure, which is based on the March 7, 2003, IEC committee draft document, provides instructions for measuring the standby power for dishwashers which fail to meet the stability criteria presented above. In the case where the standby power varies over a cycle, the energy must be accumulated over a period of one or more complete cycles and prorated over a period of at least five minutes in order to get the average standby power. (Public Hearing Tr. p. 154) The final rule also includes the editorial change of replacing ''not less than 5 minutes'' with ''at least 5 minutes'' to express the required time interval consistently throughout section 4.4, and retains the original NOPR method for measuring standby power using a watt-hour meter.

The Department is making these modifications to provide more flexibility in testing, to increase harmonization with the IEC, and to maintain accuracy and improve clarity of the procedure. The Department believes that permitting the use of a single point measurement using a wattmeter has no negative impact on measurement accuracy and is an acceptable alternative to measuring in watt-hours and prorating the value for the measurement period. Thus, section 4.4 of the test procedure now includes two measurement options, allowing standby power measurements using a wattmeter or a watt-hour meter.

New Instrumentation Requirements

Section 3.5 of the September 2002 NOPR defined the instrumentation requirements for the standby power meter. At the October 22 public hearing, DOE stated that it was considering an additional requirement: ''The meter shall have a maximum error no greater than 1 percent of the measured value.'' This specification establishes a level of accuracy for the instrumentation used to measure standby power. It is the same level of accuracy already required of the watt-hour meter used for measuring the machine electrical energy consumption of the dishwasher to ensure reliable results and does not present a significant test burden. There were no written or public hearing comments regarding this proposed requirement.

Discussion at the public hearing, however, did explore the differences in the RMS (root mean squared) value and the crest factor value (a measure of the instrument's capability to get good readings during power fluctuations). The NOPR proposed a value of 5 RMS whereas the IEC draft proposed a value of 3 or more RMS. Whirlpool Corporation recommended 3 RMS, commenting that 5 RMS would potentially increase the cost of the measuring equipment beyond what is practical for this level. (Public Hearing Tr. p. 152) The OOE raised the question of whether independently modifying the requirements for total harmonic distortion (THD) and the crest factor created a conflict in the specifications, and recommended that the test procedure be consistent with the IEC whenever possible. (Public Hearing Tr. p. 154)

Following the public hearing, DOE contacted an equipment manufacturer of power meters, Yokogawa Electric Corporation, to determine if there was any conflict in the specifications as written in the NOPR and to discuss whether 5 RMS was unnecessarily restrictive. From this discussion, DOE learned that it is important to match the crest factor with RMS and that the way DOE had written the specification in the NOPR was incorrect. The manufacturer also confirmed that the 5 RMS requirement would be more restrictive than necessary for ensuring accurate testing and would require manufacturers or private labelers to purchase equipment that was considerably more expensive.

As a result of this discussion and the public comments, DOE has concluded that reducing the crest factor requirement to 3 or more RMS would still ensure accurate testing, while at the same time reduce unnecessary manufacturer expense and establish a testing value consistent with the IEC. Therefore, DOE has adopted this change. For clarification purposes, DOE also restructured the format of the instrumentation section to present the requirements for each of the power meters separately. The requirements for the watt-hour meter to measure the machine electrical energy consumption of the dishwasher are in section 3.5. The requirements for the standby wattmeter to measure standby power are in section 3.6. The requirements for the standby watt-hour meter to measure standby power are in section 3.7.

Corrected Calculation Procedure for the Estimated Annual Energy Use

The September 2002 NOPR provided equations for incorporating standby power into the calculations of the EAOC and EAEU. Those equations only calculated the per-cycle energy consumption and did not calculate values for annual usage. In written comments, AHAM suggested a change in the way DOE calculated the EAEU in the NOPR, editing the equations for EAEU to include the number of cycles per year so that the energy consumption is calculated for annual consumption. (AHAM No. 30FF at 7) The Department agrees that this change improves the utility of the EAEU equations proposed in the NOPR. The revised equations for EAEU in section 10 CFR 430.23(c)(3) now reflect the total annual energy use of the dishwasher.

It should be noted that only the EAOC and EAEU calculations include standby power consumption; the energy factor

calculation does not include it at this time. As currently defined in the test procedure, the energy factor represents the amount of energy used during a cycle. Since standby power is energy consumed outside the wash cycle of a dishwasher, it is not a parameter in the energy factor calculation. Stakeholders supported this as an initial strategy. Both AHAM and CEE commented that they supported the proposal to include standby power in the EAOC and EAEU. However, they also voiced strong support for including standby power in the energy factor whenever in the future the energy efficiency standard for dishwashers is revised. (AHAM No. 33 at 4; CEE No. 35 at 1)

E. New Definitions

The Department presented nine new definitions in the September 2002 NOPR (67 FR 56242), all of which elicited comments. The change in the definition for ''standby mode'' was discussed in the previous section. This section addresses all other definitions.

Non-Soil-Sensing Dishwasher and Soil-Sensing Dishwasher

For this test procedure, the Department developed definitions for two types of dishwashers: non-soil-sensing dishwasher and soil-sensing dishwasher. The designation of dishwasher type determines whether a dishwasher will be tested with clean or soiled dishes. The two definitions use the ability or lack of ability to adjust automatically any energy consuming aspect of a wash cycle based on the soil load of the dishes as the determinant for distinguishing dishwasher type.

AHAM questioned the wording of these proposed definitions and recommended that the Department change the more general phrase of ''wash cycle'' to ''normal wash cycle,'' since the test procedure only tests the normal cycle. (Public Hearing Tr. p. 88) However, in order to provide a clear definition for the purposes of classification, DOE believes that a dishwasher should be classified as a soil-sensing dishwasher if it can sense soils and respond to that information, regardless of the cycle type. Using the more narrow specification of ''normal cycle'' in the definition could provide an incentive for manufacturers to have a separate button activating the use of a soil sensor so that the normal cycle would operate as a non-soil-sensing dishwasher. This cycle configuration would enable a dishwasher to be tested on the normal cycle with clean dishes, thus avoiding the more difficult and costly test method using soils. For these reasons, DOE is retaining the original definitions with the more general reference to ''wash cycle'' and is not adding the word ''normal'' to sections 1.5 and 1.12.

Sensor Response

In the September 2002 NOPR, the Department proposed a set of six definitions to characterize the energy consumption test cycles that would result when soil-sensing dishwashers were tested with the three levels of soil used in the test procedure in sections 1.9, 1.10, 1.11, 1.15, 1.16, 1.17, and 1.18. AHAM recommended that the Department change this entire set of soil-sensing cycle definitions, suggesting that the word ''response'' replace the word ''cycle.'' It believes that the word ''response'' more accurately characterizes the way that a dishwasher will react to the varying soiled loads in the soil-sensing tests, since there is no actual button or setting which can initiate the cycle in the way that a traditional cycle can be selected by a dishwasher user. (AHAM No. 33 at 8)

The Department agrees that changing the word ''cycle'' to ''response'' would more accurately reflect the way a dishwasher is challenged to react to the heavy, medium, and light soil levels, and therefore DOE has adopted this change. However, by using the word ''response'' as part of the term to be defined, the Department believes that the later words in the proposed definitions, ''that constitutes the response,'' become redundant and should be eliminated. Thus, DOE has made conforming changes to the NOPR definitions set out in section 1 of this final rule. In addition, the Department has modified references to these terms throughout the test procedure to reflect the change, specifically in section 2.6.3 and its subsections, sections 5.1.2 and 5.2.2, and section 5.6.

F. Modifications To Improve the Clarity and Repeatability of the Test Procedure

Clarify the Definition of Water-Heating Dishwasher

Discussion at the October 22nd public hearing brought forth one issue that DOE had not raised in the September 2002 NOPR. CEE questioned the clarity of the existing definition of the normal cycle for water-heating dishwashers in section 1.19 of the regulations proposed in the NOPR, believing that the language as written offered a possible testing ''loophole.'' (Public Hearing Tr. p. 174) It was the intent of the definition, already in effect with the December 18, 2001, final rule, to require that all water-heating dishwashers heat water to 120 °F during testing. However, the wording of the definition using the phrase ''may operate'' did not seem to require it definitively. CEE suggested that under the current definition, one might interpret the requirement to allow the testing of a water-heating dishwasher using 50 °F water, instead of the 120 °F temperature, thereby reducing its apparent energy consumption. The CEE representative stated, ''Our position is that it leaves too much wiggle room for someone to abuse that. * * * We would suggest that you require at least one cycle be heated to 120 degrees.'' (Public Hearing Tr. p. 170)

Much discussion ensued at the hearing as stakeholders offered their interpretations of the definition. Whirlpool, for example, commented that a reading of the definition could be that the test procedure did not require a dishwasher that uses cold inlet, defined as nominal 50 °F, to heat at least one wash phase to 120 °F. (Public Hearing Tr. p. 173) The stakeholders at the hearing agreed that the intent of the definition was to require the necessary water-heating in at least one cycle, and several offered suggestions as to how the language might be clarified to make sure that the definition includes that requirement. AHAM and CEE submitted additional suggestions in written comments for revising the definitions. AHAM's and CEE's definitions proposed replacing the word ''may'' with the word ''must.'' (AHAM No. 33 at 9; CEE No. 35 at 2) After reviewing the suggested changes, the Department selected the wording submitted by AHAM for use in section 1.9 of this test procedure. The Department believes that AHAM's proposed language most clearly states the requirement that all water-heating dishwashers must heat to at least 120 °F, regardless of the inlet temperature. The change in this definition represents a clarification of language to support the original intent of the test procedure, not a new definition.

OOE also questioned in written comments whether there is any justification for even providing the option of testing water heating dishwashers with 50 °F inlet temperature, since it would lengthen the dishwashing test cycle significantly. (OOE No. 36 at 5) Dropping the 50 °F testing option, however, was not discussed at the public hearing as part of the discussion to tighten the definition. Commenters' concern focused on closing the testing loophole that may have existed within the definition of water-heating dishwashers for conducting 50-degree tests, and not on eliminating the 50-degree testing

option entirely. Since the new definition for water-heating dishwashers in this final rule clarifies the testing procedure for those models, the Department believes that it is appropriate to retain the option to test a dishwasher using cold water. The Department does not wish to restrict manufacturers from developing a dishwasher that heats cold water (nominal 50 °F) as long as it can meet the testing requirements.

Retain Testing Voltage of 115 Volts

The September 2002 NOPR proposed changing the testing voltage from 115 volts within 2 percent of the nameplate frequency to 120 volts ±2 percent to be consistent with manufacturers' instructions which specify 120 volts in the installation procedures. AHAM commented that although this change was potentially a good one, at this time, it would endanger the compliance of minimally compliant models. While AHAM conceptually supported a test voltage revision to 120 volts ±2 percent, it was concerned with the impact of this proposed change on the ratings of all dishwashers, especially on minimally compliant models. AHAM explained that since wattage use increases based on the square of the voltage, the tested power consumption could increase by 3 to 5 percent. Therefore, to avoid triggering the statutory requirement that the applicable energy conservation standard (presently 2.174 kWh per cycle maximum) be amended, AHAM recommended that DOE retain the existing voltage ranges. (AHAM No. 30FF at 4) OOE also recommended keeping 115 volts for the time being and suggested that DOE examine this issue in more detail when developing a new efficiency standard. (OOE No. 36 at 3)

The Department agrees that it would be more appropriate to address this change during a standards rulemaking at a future time, since it would alter the power consumption of all models and potentially impact compliance. The Department is therefore retaining the 115 volt specification in section 2.2.1 of the test procedure. In order to make the test procedure instructions more clear and precise, DOE is rewriting the existing tolerance ''within two percent of 115 volts'' as ''115 volts ±2 percent,'' and the existing tolerance in section 2.2.2 as ''240 volts ±2 percent.'' This wording change does not change in any way the meaning or effect of the existing tolerance.

Reword Definition of Drying Energy, E_D

In testing two soil-sensing dishwashers using the proposed test procedure, NIST found that more detailed instructions were necessary to complete the determination of the drying energy, E_D, for soil-sensing dishwashers. NIST observed that while the new test procedure required testing soil-sensing dishwashers with three different soil levels, it did not specify how to compile the drying energy from the heavy response, medium response, and light response. Although there was no negative comment on this issue at the October 22nd public hearing or in written comments in response to the September 2002 NOPR, DOE is correcting this omission by defining the drying energy, E_D, for soil-sensing dishwashers as the mathematical average of the three soil level tests. This approach compiles the results of three tests to represent the normal cycle for a soil-sensing dishwasher and is consistent with the procedure for calculating representative machine energy and water consumption values. For non-soil-sensing dishwashers, the procedure is unchanged. The instructions for determining the E_D for soil-sensing and non-soil-sensing dishwashers are in section 5.2 of this rule.

The Department also determined that an additional clarification was necessary regarding the definition of the drying energy, E_D, that the NOPR described as ''the energy consumed after the normal cycle is interrupted to eliminate the power-dry portion of the cycle.'' 67 FR 56241. The definition provides instructions on when to begin recording the drying energy: at the point separating the truncated normal cycle from the normal cycle. 67 FR 56241. Rather than representing the energy consumed by the drying portion of the cycle, the Department was concerned that use of the word ''eliminate'' could inaccurately suggest that the drying cycle is stopped entirely, resulting in zero drying energy. Because DOE's intent is to capture the drying energy for the normal cycle, the Department concluded that the definition should clearly state that E_D is the energy consumed using the power-dry feature. With this non-substantive clarification, the Department believes the revised definition will clearly instruct manufacturers or private labelers to measure the energy consumed during the drying cycle, correcting an oversight in the computation method for drying energy presented in the September 2002 NOPR. The revised definition, located in section 430.23 (c)(1)(i) of the test procedure, specifies E_D as the drying energy consumed after the termination of the last rinse option.

Reword Calculation of the Number of Standby Hours Per Year, H_s, and Duration of Wash Cycle, L

The test procedures for both soil-sensing, non-soil-sensing dishwashers calculate the number of standby hours per year, H_s, by subtracting the number of hours that the dishwasher is in use from the total number of hours per year. The estimated usage value is the product of the representative average number of use cycles per year, N, (215 in this final rule), and the average duration of the test wash cycle, L. In a written comment, OOE called attention to an inconsistency in the way that the manufacturers calculated the duration of the normal wash cycle for determining the number of standby hours. It stated that the computation proposed in the September 2002 NOPR for the number of standby hours was inconsistent with the method of calculating annual energy use because it multiplied the number of cycles times the normal cycle time to get the number of hours the dishwasher was operating and did not take into account any use of the truncated normal cycle. 67 FR 56244. OOE recommended ''that the treatment of normal cycle time be consistent with normal cycle energy use computations—namely, that half of the normal cycles be *with* heated drying, and half *without*. It would be *highly* inappropriate to be inconsistent in this regard.'' (OOE No. 36 at 4, emphasis in original)

Although this change was not discussed at the hearing, the Department believes this suggested change corrects an oversight in the NOPR concerning the computation method for standby power. Not making this change would result in a slight overestimation of the annual wash time because the use of the truncated normal cycle shortens the wash time. By more accurately dividing the time spent in a wash cycle and the time spent in standby mode (for both conventional and soil-sensing dishwashers), DOE is making the calculation consistent with the current method of averaging the normal and truncated normal cycle values. Therefore, the Department has changed the definition of ''L'' in section 5.6 of this final rule in response to this comment to improve the accuracy in estimating the duration of the wash cycle.

In written comments after the public hearing, AHAM requested that DOE change the words ''sensor medium cycle'' to ''sensor medium response'' in the definition of L. (AHAM No. 33 at 10) The Department will make this change which is consistent with the

modification to the definition of ''sensor medium response'' in this rule. The Department will also make conforming changes with the additions of ''sensor heavy response'' and ''sensor light response'' to the definition of L. The Department has also modified the equation of H_s published in the NOPR by replacing ''215 cycles/year'' with ''N'' and defining ''N'' in section 5.6 of the final rule as ''the representative average dishwasher use of 215 cycles per year.'' This change has no effect on the value calculated, but gives a clearer presentation of the equation, and is consistent with the definition of N presented in section 430.23 (c)(1)(i) for computing the EAOC.

Correct Typographical Error in Equation for Energy Factor (EF)

This final rule corrects a typographical error, a missing equal sign in the equation for EF on the first column of page 56242 of the September 2002 NOPR. (67 FR 56242)

Reword Flow Rate Tolerance

In section 3.3 of the September 2002 NOPR, the specifications for the water meter stated that the maximum error can be no greater than 1.5 percent for all water flow rates from one to five gallons per minute. AHAM suggested that the specification be changed to plus or minus 1.5 percent of the actual measured flow rate. This would ''reflect the actual range of dishwasher operating flow rates for the tested product instead of a blanket range of one to five gallons per minute.'' (AHAM No. 33 at 7) Following the October 22nd public hearing, OOE submitted a comment endorsing this change. (OOE No. 36 at 4) The Department recognizes that the revised specification has the potential to reduce the testing burden for manufacturers or private labelers because the flow meter would only need to meet the specification of a maximum error of 1.5 percent at the test flow rate. Because it is irrelevant how the flow meter operates at flow rates outside of the testing range, manufacturers or private labelers would no longer be required to ensure a maximum error of 1.5 percent at flow rates outside of the test range. The Department believes this revision retains the original testing accuracy while potentially reducing instrumentation costs. Therefore, DOE has made this change in section 3.3 of the test procedure.

Reduce 140 °F Tolerance from ±5 °F to ±2 °F

Section 2.3.2 of the existing test procedure requires a tolerance of plus or minus 2 °F for maintaining the water supply temperature when testing with 120 °F inlet water temperature. Section 2.3.1 requires plus or minus 5 °F when testing with 140 °F inlet water temperature. Because water temperature is an important factor in calculating energy consumption, AHAM proposed that the tolerance at 140 °F be reduced to plus or minus 2 °F as well. (AHAM No. 33 at 7) This change narrows the testing band and thereby reduces variability in the test procedure. Because of this, and because industry suggested the change and does not view it as a test burden, DOE is incorporating the change into section 2.3.1 of this final rule.

Revise Format of Measurement Descriptions of Machine Electrical Energy Consumption and Water Consumption

The measurement instructions presented in sections 4.2 and 4.3 of the September 2002 NOPR contained some minor inconsistencies regarding the placement order of machine electrical energy consumption, ''M'', and water consumption, ''W''. With some minor rewording, the Department has improved the clarity of the instructions and the consistency of the format. These editorial modifications improve the description of the measurements without changing any test procedure requirements.

G. Effective Date of New Test Procedure

In the interest of making the new test procedure effective and available for use as soon as possible, Whirlpool, AHAM, OOE, and CEE recommended that the new rule take effect 30 days after publication of the rule. (Whirlpool No. 34 at 2; AHAM No. 33 at 6; OOE No. 36 at 4; CEE No. 35 at 1) Because the new test procedure will enable manufacturers or private labelers to test soil-sensing machines with greater accuracy, DOE agrees with this comment and has adopted a 30-day effective date to facilitate accuracy in testing and labeling. Thus, as early as 30 days after this final rule is published in the **Federal Register**, a manufacturer, distributor, retailer, or private labeler may begin using the new test procedure to make representations with respect to the energy use, efficiency, or cost of energy consumed by a dishwasher model. As noted above, effective 180 days after this final rule is published in the **Federal Register**, no manufacturer, distributor, retailer, or private labeler may make any representation with respect to the energy use, efficiency, or cost of energy consumed by a dishwasher model, unless the dishwasher has been tested in accordance with the new DOE test procedure and the representation fairly discloses the results of that testing.

H. Reporting Requirements

In the September 2002 NOPR, DOE requested comments regarding the possibility that the Department would at some future time ''require manufacturers to produce reports concerning the testing of soil-sensing models pursuant to the amended test procedure.'' (67 FR 56238–56239) AHAM commented that the requirement of additional reports would be ''misguided,'' believing that present reporting requirements adequately communicate energy usage of residential dishwashers. (AHAM No. 33 at 4) It commented that existing penalties would continue to deter incorrect reporting, and did not support new reporting requirements that would increase the complexity of, or the effort for, reporting energy usage. (AHAM No. 33 at 4) Whirlpool reiterated that it would not want to have to create additional documentation other than modifications to documents that it was already submitting. (Public Hearing Tr. p. 199)

The Department agrees that current reporting requirements do appear to cover the information necessary for conveying the energy usage of both non-soil-sensing and soil-sensing machines and will not require additional reports to DOE at this time. Although this final rule requires that the EAOC and EAEU must be calculated to include standby power, it does not require these figures be submitted to the DOE as part of a certification report. At the October 22 public hearing, there were no objections to calculating the EAEU in addition to the EAOC that manufacturers or private labelers already calculate. Manufacturers or private labelers should maintain their test records, including the EAOC and EAEU, as part of their permanent appliance files on each dishwasher model.

This final rule clarifies one change in a reporting requirement. The December 18, 2001, final rule (66 FR 65097) changed the definitions of compact and standard dishwashers, making place-setting capacity the determining factor instead of the width of the dishwasher. That final rule, however, did not eliminate the existing requirement in section 430.62(a)(4)(vi) to report the width of a dishwasher to DOE in certification reports. Because the width measurement no longer determines whether a dishwasher is a compact or standard model, DOE is not requiring manufacturers or private labelers to measure and report it. Instead, they

must report in their certification reports whether a dishwasher is a compact or standard model, determined according to the number of ANSI/AHAM DW–1 place settings it will hold at one time. (Section 430.62(a)(4)(vi)) This is a conforming change in light of the 2001 final rule.

I. Determination of Non-Compliant Models

Recognizing that the proposed new test procedure would alter the energy factors for soil-sensing models, the Department requested in the September 2002 NOPR that manufacturers or private labelers provide the Department with information on whether soil-sensing models that minimally comply with energy conservation standards when tested under the current test procedure would comply with the standards using the proposed new test procedure. AHAM submitted a written comment that one of the proposed changes in the test procedure would affect compliance for some dishwasher models: The proposal to change the test voltage from 115 volts to 120 volts. (67 FR 56243) If that change were made, AHAM stated that a significant number of units would no longer comply with the current energy conservation standards, since the 120 volts requirement would affect energy consumption by between three and five percent. However, if the test voltage were to remain at 115 volts, AHAM stated that it was not aware of any units that would fall out of compliance with the applicable energy conservation standards by using the proposed new test procedure. (AHAM No. 33 at 8) This issue was discussed at the October 22 public hearing, and the manufacturers agreed that aside from changing the voltage, the new test procedure would not create any compliance issues. AHAM commented at the public hearing, ''We feel very confident that our response represents the entire industry in saying that there are not products that would approach minimal compliance from a soil sensor standpoint.'' (Public Hearing Tr. p. 115) When DOE asked the stakeholders at the hearing to confirm the Department's understanding that there are no soil-sensing models that are minimally compliant with the existing standard or that would fall out of compliance once the new test procedure is used, AHAM responded, ''correct.'' (Public Hearing Tr. p. 115)

Since DOE has decided to maintain the test voltage at 115V and the comments and information DOE received demonstrate there are no dishwasher models that ''minimally comply'' with the energy conservation standards using the existing test procedure and that would fall out of compliance once the new test procedure is used, the Department is not required by EPCA section 323(e)(2) to make any changes to energy conservation standards at this time. The Department has therefore determined that although today's amended test procedure will alter the measured efficiency or measured energy use of some dishwasher models, it is not necessary to test models with the new test procedure or to consider or make any modifications to energy conservation standards.

J. Comments Outside the Scope of This Rulemaking

The previous sections of this Supplementary Information discussed comments concerning issues which directly affect this rulemaking. Many comments submitted to DOE in this proceeding, however, made suggestions which fell outside the scope and authority of this rulemaking, but raised interesting questions for the future. For example, although stakeholders reached a general consensus that the Department is using the best available data and information to determine the weighted soil loads at this time, Consumers Union (CU) and OOE questioned the process by which DOE would update that data in the future, if consumer pre-rinsing habits change. (CU No. 27 at 1; OOE No. 36 at 4) Because pre-rinsing consumes significant amounts of water, and overall a household uses less energy if dishes are not pre-rinsed before they are placed in a dishwasher, it is possible and desirable that consumer pre-rinsing habits will decrease over time. For example, CU expressed concern about the high percentage weighting which the light soil load receives in the test procedure and felt that the energy efficiency standard should also encourage the most efficient use patterns possible, rather than reflect the current widespread practice of pre-rinsing dishes. It urged the Department to establish a specific goal for improving consumer behavior, and to include in the rulemaking a system for making periodic adjustments to the weighting factors. It recommended that DOE conduct a survey of consumer rinsing practices at least every four years, beginning in 2006. (CU No. 27 at 1) However, AHAM stated that based on industry experience, customer usage habits do not change quickly. It commented that the dishwasher industry has lobbied consumers for years to reduce or eliminate pre-rinsing with little success, as the number of pre-rinsers has consistently hovered around two-thirds. AHAM believes that pre-rinsing practices and the associated soil levels going into the dishwasher are likely to remain stable for a long period of time. (AHAM No. 30FF at 6) The Department recognizes the importance of accurate consumer use data and urges stakeholders to inform DOE of any new information or studies. Interested parties can petition the Department to amend the test procedure when changes in consumer practices justify it. (42 U.S.C. 6293(b)(2))

General Electric (GE) requested that the ENERGY STAR® requirements stay at the current levels after the new test procedure takes effect. (GE No. 30EE at 1) Although the ENERGY STAR program is outside the scope of this test procedure rulemaking, the issue was discussed at the October 22nd public hearing. A DOE representative of the ENERGY STAR program explained that currently, the ENERGY STAR level for dishwashers is set at a level 25 percent higher (more efficient) than the minimum Federal energy efficiency standard. Recognizing that this rulemaking concerns test procedures and not energy efficiency standards, the DOE representative stated that ENERGY STAR levels would be revised only if the new test procedure also resulted in changes to the applicable energy conservation standards. As discussed above, no changes in applicable energy conservation standards are necessitated or are being made at this time. As far as standby energy was concerned, the DOE representative indicated that the ENERGY STAR program is also interested in how test results with the new test procedure come in, and how that would play into any future ENERGY STAR criteria. (Public Hearing Tr. p. 74–75)

Representatives of Energy Efficient Strategies and the Australian Greenhouse Office together submitted extensive comments addressing components of the dishwasher test procedure and broader issues concerning the U.S. testing and labeling program for appliances. Their comments addressed the following: Requiring both non-soil-sensing and soil-sensing dishwashers to use the soil test; the importance of assessing wash performance along with energy consumption to prevent the subversion of the test; incorporating the use of a reference machine with which to compare test results; measuring the energy of low power modes in addition to standby; and following the IEC test procedure as much as possible. They believed the dishwasher test procedure as proposed in the September 2002

NOPR would be too complex and prohibitively expensive from the manufacturers' perspective. Rather than relying on unquantifiable consumer behavior to set three different test levels, they stated that it would be better to use an arbitrarily selected soil load such as the IEC soil load of dishes that would provide a realistic basis for testing all dishwashers—an artificial but fair rating point for comparing products. (Australia No. 37 at 5)

These comments touch on many important questions. However, DOE rejects these suggestions. The rule DOE has decided to finalize today has received extensive scrutiny from U.S. manufacturers and stakeholders and earned significant consensus support. The commenters have not demonstrated that DOE's proposed test procedure is too complex or expensive; in fact, stakeholder consensus in support of the new test procedure and other modifications demonstrates otherwise. DOE further believes that the best empirical data available to it supports DOE's final rule. Finally the issue of coupling an assessment of wash performance with energy consumption testing is outside the scope of the Department's current appliance testing program and outside the scope of this rulemaking.

K. Implementation and Effect of New Test Procedure

Today's final rule will produce a more accurate and complete picture of dishwasher energy consumption by providing two test procedures according to dishwasher type. Manufacturers or private labelers first determine whether a dishwasher is a soil-sensing or non-soil-sensing model according to the definitions in sections 1.12 and 1.5 of the rule, and then follow instructions specific to that type of model. They must test soil-sensing dishwashers using a three-level, soil-based test which will yield an energy factor that is based on a range of challenges to the machines' automatic sensing systems. For non-soil-sensing dishwashers, manufacturers or private labelers still will use the original test procedure with clean dishes to determine the energy factor as the average of the test results from the normal and truncated normal cycles. In addition, manufacturers or private labelers must calculate the standby power consumption for any dishwasher using energy in standby mode and add that figure to the EAOC and EAEU totals, but not to the energy factor.

The test procedure for soil-sensing dishwashers requires manufacturers or private labelers to use ANSI/AHAM DW–1 to specify the size and composition of the place settings and the quantities and types of soils which they must apply to the dishes for the series of three soil tests: Heavy, medium and light. This final rule specifies in section 2.7 of the test procedure the type of dishware for manufacturers or private labelers to use, and in section 2.8 requires only half the detergent used in the ANSI/AHAM DW–1 performance test and no rinse agent. After they run a preconditioning cycle (section 2.10), the test procedure for standard size dishwasher models requires manufacturers or private labelers to conduct the following three tests in this order: First, the test for a dishwasher's heavy response, using four soiled place settings; second, the test for the medium response, using two soiled place settings; and third, the test for the light response, using one half the soil load for a single place setting. (Section 2.6.3) Tests of compact models follow the same order, but reduce the soiled loads for the heavy and medium tests by half. The light soil load is the same as for standard models. During each of the three test runs, the test procedure requires manufacturers or private labelers to calculate the machine energy consumption, drying energy consumption, water consumption, and water energy consumption. For soil-sensing dishwashers, the energy factor will combine the results of the three tests, averaged with the following weighted percentages which represent the frequency of those consumer loads: 0.05 for the heavy response, 0.33 for the medium response, and 0.62 for the light response. (Sections 5.1.2 and 5.2.2)

The test procedure defines standby mode and details the equipment and method for calculating standby energy consumption. (Section 4.4) Two options are available for measuring standby energy consumption, depending on whether the power is stable. If the stability criteria in section 4.4 are met, manufacturers or private labelers can measure the standby power directly using a wattmeter. If the standby power consumption is not stable, that is, there is excessive variation in the power levels, then the manufacturers or private labelers must measure the power consumption using a watt-hour meter over a period of at least five minutes. Then they calculate the average standby power by dividing the value measured using the watt-hour meter by measurement period. These changes provide the means to obtain a quantitative value for the level of standby power which the dishwasher consumes. Manufacturers or private labelers must add this standby power amount to the machine and water energy computed for the normal cycle and representative normal cycle for soil-sensing models, and include those amounts in the EAOC and EAEU.

By combining standby power consumption with the energy consumed by the wash cycle, this test procedure will calculate information that will provide consumers with more realistic and accurate estimates of the complete operating cost and energy use of each dishwasher. With the soil test, soil-sensing dishwashers have a test procedure that challenges the cycle responses which the sensing technology controls. It will provide a better approximation of the actual energy consumption of soil-sensing models as consumers use them than did the original test which used clean dishes and did not engage the action of the soil-sensing mechanisms to take a dishwasher beyond the lightest wash cycles.

III. Procedural Requirements

A. Review Under the National Environmental Policy Act of 1969

In this rule, the Department finalizes amendments to test procedures that are used to implement energy conservation standards for dishwashers. The Department has reviewed the rule under the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, the regulations of the Council on Environmental Quality, 40 CFR parts 1500–1508, and the Department's regulations for compliance with NEPA, 10 CFR part 1021. The Department has determined that this rule falls into a class of actions that are categorically excluded from review under NEPA. This rule will not affect the quality or distribution of energy usage and, therefore, will not result in any environmental impacts. The Department has therefore determined that this rule is covered by Categorical Exclusion A5, for rulemakings that interpret or amend an existing rule without changing its environmental effect, as set forth in the Department's NEPA regulations in appendix A to subpart D, 10 CFR part 1021. Accordingly, neither an environmental impact statement nor an environmental assessment is required.

B. Review Under Executive Order 12866, ''Regulatory Planning and Review''

Today's final rule is not a ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866, ''Regulatory Planning and Review'' 58 FR 51735 (October 4, 1993). Accordingly, today's action is not subject to review under the Executive

Order by the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget.

C. Review Under Executive Order 13211, ''Action Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use''

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OIRA a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgates or is expected to lead to the promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

Today's final rule is not a significant regulatory action, nor will it have a significant adverse effect on the supply, distribution, or use of energy. Therefore, today's final rule is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

D. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601–612, requires that an agency prepare an initial regulatory flexibility analysis for every rule which the agency must propose for public comment, by law, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. A regulatory flexibility analysis examines the impact of the rule on small entities and considers alternative ways of reducing negative impacts. 5 U.S.C. 605.

Today's rule prescribes test procedures that will be used to test compliance with energy conservation standards and labeling. Because the rule affects only test procedures and not the minimum energy efficiency standard levels for dishwasher models, the Department believes that it will not have a significant economic impact. Instead, it will provide common testing methods for all dishwasher manufacturers or private labelers, and will improve the accuracy of information provided to consumers. The overall size of the dishwasher manufacturing industry also negates the necessity for a regulatory flexibility analysis. The Small Business Administration (SBA) considers an entity to be a small business if, together with its affiliates, it employs fewer than a threshold number of workers specified in 13 CFR part 121 according to the North American Industry Classification System (NAICS) codes. The threshold number for NAICS classification 335228, which includes dishwashers with other major household appliances, is 500 workers. Using this SBA size standard, the Department determined that there are very few small entities among dishwasher manufacturers or private labelers. Furthermore, two such companies identified as small do not manufacture or distribute any dishwasher models that would be affected by the new test procedure. Because the companies presently have no models using soil-sensing technology or standby power, their testing requirements would not change as a result of this rule. Therefore, DOE certifies that today's rule would not have a ''significant economic impact on a substantial number of small entities,'' and the preparation of a regulatory flexibility analysis is not warranted.

E. Review Under Executive Order 13132, ''Federalism'

Executive Order 13132, ''Federalism,'' (64 FR 43255, August 4, 1999), requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the Federal Government and the States, or in the distribution of power and responsibilities among various levels of government. If there are substantial direct effects, then this Executive Order requires preparation of a Federalism assessment to be used in all decisions involved in promulgating and implementing a policy action.

The rule published today would not regulate or otherwise affect the States. Accordingly, DOE has determined that preparation of a Federalism assessment is unnecessary.

F. Review Under Executive Order 12630, ''Governmental Actions and Interference With Constitutionally Protected Property Rights''

DOE has determined under Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' (52 FR 8859, March 18, 1988), that this rule will not result in any takings which might require compensation under the Fifth Amendment to the United States Constitution.

G. Review Under the Paperwork Reduction Act

No new information or record keeping requirements are imposed by this rulemaking. Accordingly, no OMB clearance is required under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

H. Review Under Executive Order 12988, ''Civil Justice Reform'

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by sections 3(a) and 3(b) of the Executive Order, Executive agencies must make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of the Executive Order requires agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them.

DOE reviewed today's final rule under the standards of section 3 of the Executive Order and determined that, to the extent permitted by law, the final regulations meet the requirements of those standards.

I. Review Under Section 32 of the Federal Energy Administration Act of 1974

Under section 301 of the Department of Energy Organization Act (Pub. L. 95–91), the Department of Energy must comply with section 32 of the Federal Energy Administration Act of 1974, as amended by the Federal Energy Administration Authorization Act of

1977. (15 U.S.C. 788). Section 32 provides in essence that, where a rule contains or involves use of commercial standards, the rulemaking must inform the public of the use and background of such standards.

The September 2002 NOPR proposed a new test procedure for soil-sensing dishwashers. This test procedure incorporated a commercial standard (*i.e.*, ANSI/AHAM DW–1–1992) that previously had been incorporated into the test procedure applicable to dishwashers generally, and therefore the public already had been informed about the use and background of that standard and DOE already had performed any consultation required prior to its incorporation into a test procedure. The September 2002 NOPR also proposed incorporating an August 20, 1999 addendum to ANSI/AHAM DW–1–1992, and therefore DOE stated that as required by section 32 of the Federal Energy Administration Act of 1974, it would consult with the Attorney General and the Chairman of the Federal Trade Commission concerning its impact on competition, prior to prescribing a final rule. (67 FR 56240) This addendum specified the kind of test load (dishware and flatware) to be used in the test procedure. However, so that the test procedure will use the most up to date specifications for currently available dishware and flatware, the Department has decided not to incorporate this addendum in its test procedure. Instead, the Department is listing the specified dishware and flatware in the text of the test procedure as set forth in this final rule. Because the final rule does not incorporate by reference any new industry standards, the Department is not required by section 32(c) to consult with the Attorney General and the Chairman of the Federal Trade Commission concerning the impact on competition of any such new standards. Therefore, the Department has not done so.

J. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and tribal governments and the private sector. The Act also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and tribal governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under the Act (62 FR 12820). The rule published today does not contain any Federal mandate, so these requirements do not apply.

K. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. No. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule or policy that may affect family well-being. Today's final rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

L. Review Under the Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). The Department has reviewed today's notice under the OMB and DOE guidelines, and has concluded that it is consistent with applicable policies in those guidelines.

M. Congressional Notification

As required by 5 U.S.C. 801, DOE will submit to Congress a report regarding the issuance of today's final rule prior to the effective date set forth at the outset of this notice. The report will state that it has been determined that the rule is not a ''major rule'' as defined by 6 U.S.C. 801(2).

N. Approval by the Office of the Secretary

The Secretary of Energy has approved issuance of this final rule.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Energy conservation, Household appliances, Incorporation by reference.

Issued in Washington, DC, on August 25, 2003.

David K. Garman,

Assistant Secretary, Energy Efficiency and Renewable Energy.

■ For the reasons set forth in the preamble, the Department amends part 430 of chapter II of title 10, Code of Federal Regulations, to read as follows:

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

■ 1. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

■ 2. Section 430.22 is amended in subpart B by revising paragraph (b)(7) to read as follows:

§ 430.22 Reference Sources.

* * * * *

(b) * * *

(7) Association of Home Appliance Manufacturers, 1111 19th Street, NW., Suite 402, Washington, DC 20036, (202) 872–5955, ''American National Standard, Household Electric Dishwashers, ANSI/AHAM DW–1–1992,'' hereinafter referred to as ANSI/AHAM DW–1.

* * * * *

■ 3. Section 430.23 of subpart B is amended by revising paragraph (c) to read as follows:

* * * * *

(c) *Dishwashers.* (1) The Estimated Annual Operating Cost (EAOC) for dishwashers must be rounded to the nearest dollar per year and is defined as follows:

(i) When cold water (50 °F) is used,

(A) For dishwashers having a truncated normal cycle as defined in section 1.15 of appendix C to this subpart,

$$EAOC = (D_e \times S) + (D_e \times N \times (M - (E_D/2))).$$

(B) For dishwashers not having a truncated normal cycle,

$$EAOC = (D_e \times S) + (D_e \times N \times M)$$

Where,

D_e = the representative average unit cost of electrical energy, in dollars per kilowatt-hour, as provided by the Secretary,

S = the annual standby electrical energy in kilowatt-hours per year and determined according to section 5.6 of Appendix C to this subpart,

N = the representative average dishwasher use of 215 cycles per year,

M = the machine electrical energy consumption per-cycle for the normal cycle as defined in section

1.6 of Appendix C to this subpart, in kilowatt-hours and determined according to section 5.1 of Appendix C to this subpart,

E_D = the drying energy consumption defined as energy consumed using the power-dry feature after the termination of the last rinse option of the normal cycle and determined according to section 5.2 of appendix C to this subpart.

(ii) When electrically-heated water (120 °F or 140 °F) is used,

(A) For dishwashers having a truncated normal cycle as defined in section 1.15 of appendix C to this subpart,

$EAOC = (D_e \times S) + (D_e \times N \times (M - (E_D/2))) + (D_e \times N \times W)$

(B) For dishwashers not having a truncated normal cycle,

$EAOC = (D_e \times S) + (D_e \times N \times M) + (D_e \times N \times W)$

Where,

D_e, S, N, M, and E_D, are defined in paragraph (c)(1)(i) of this section, and

W = the total water energy consumption per cycle for the normal cycle as defined in section 1.6 of Appendix C to this subpart, in kilowatt-hours per cycle and determined according to section 5.4 of Appendix C to this subpart.

(iii) When gas-heated or oil-heated water is used,

(A) For dishwashers having a truncated normal cycle as defined in section 1.15 of appendix C to this subpart,

$EAOC_g = (D_e \times S) + (D_e \times N \times (M - (E_D/2))) + (D_g \times N \times W_g)$

(B) For dishwashers not having a truncated normal cycle,9

$EAOC_g = (D_e \times S) + (D_e \times N \times M) + (D_g \times N \times W_g)$

Where,

D_e, S, N, M, and E_D are defined in paragraph (c)(1)(i) of this section,

D_g = the representative average unit cost of gas or oil, as appropriate, in dollars per Btu, as provided by the Secretary, and

W_g = the total water energy consumption per cycle for the normal cycle as defined in section 1.6 of appendix C to this subpart, in Btu's per cycle and determined according to section 5.5 of appendix C to this subpart.

(2) The energy factor for dishwashers, EF, expressed in cycles per kilowatt-hour is defined as follows:

(i) When cold water (50 °F) is used,

(A) For dishwashers having a truncated normal cycle as defined in section 1.15 of appendix C to this subpart,

$EF = 1/(M - (E_D/2))$

(B) For dishwashers not having a truncated normal cycle,

$EF = 1/M$

Where,

M, and E_D are defined in paragraph (c)(1)(i) of this section.

(ii) When electrically-heated water (120 °F or 140 °F) is used,

(A) For dishwashers having a truncated normal cycle as defined in section 1.15 of appendix C to this subpart,

$EF = 1/(M - (E_D/2) + W)$

(B) For dishwashers not having a truncated normal cycle,

$EF = 1/(M + W)$

Where,

M, and E_D are defined in paragraph (c)(1)(i) of this section, and W is defined in paragraph (c)(1)(ii)of this section.

(3) The estimated annual energy use, EAEU, expressed in kilowatt-hours per year is defined as follows:

(i) For dishwashers having a truncated normal cycle as defined in section 1.15 of appendix C to this subpart,

$EAEU = (M - (E_D/2) + W) \times N + S$

Where,

M, E_D, N and S are defined in paragraph (c)(1)(i) of this section, and W is defined in paragraph (c)(1)(ii) of this section.

(ii) For dishwashers not having a truncated normal cycle,

$EAEU = (M + W) \times N + S$

Where,

M, N and S are defined in paragraph (c)(1)(i) of this section, and W is defined in paragraph (c)(1)(ii) of this section.

(4) Other useful measures of energy consumption for dishwashers are those which the Secretary determines are likely to assist consumers in making purchasing decisions and which are derived from the application of appendix C to this subpart.

* * * * *

■ 4. Appendix C to subpart B of part 430 is revised to read as follows:

Appendix C to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Dishwashers

The provisions of this Appendix C shall apply to products manufactured after September 29, 2003. The restriction on representations concerning energy use or efficiency in 42 U.S.C. 6293(c)(2) shall apply on February 25, 2004.

1. Definitions

1.1 ''*AHAM*'' means the Association of Home Appliance Manufacturers.

1.2 ''*Compact dishwasher*'' means a dishwasher that has a capacity of less than eight place settings plus six serving pieces as specified in ANSI/AHAM DW–1 (*see* § 430.22), using the test load specified in section 2.7 of this Appendix.

1.3 ''*Cycle*'' means a sequence of operations of a dishwasher which performs a complete dishwashing function, and may include variations or combinations of washing, rinsing, and drying.

1.4 ''*Cycle type*'' means any complete sequence of operations capable of being preset on the dishwasher prior to the initiation of machine operation.

1.5 ''*Non-soil-sensing dishwasher*'' means a dishwasher that does not have the ability to adjust automatically any energy consuming aspect of a wash cycle based on the soil load of the dishes.

1.6 ''*Normal cycle*'' means the cycle type recommended by the manufacturer for completely washing a full load of normally soiled dishes including the power-dry feature.

1.7 ''*Power-dry feature*'' means the introduction of electrically generated heat into the washing chamber for the purpose of improving the drying performance of the dishwasher.

1.8 ''*Preconditioning cycle*'' means any cycle that includes a fill, circulation, and drain to ensure that the water lines and sump area of the pump are primed.

1.9 ''*Sensor heavy response*'' means, for standard dishwashers, the set of operations in a soil-sensing dishwasher for completely washing a load of dishes, four place settings of which are soiled according to ANSI/AHAM DW–1 (Incorporated by reference, *see* § 430.22). For compact dishwashers, this definition is the same, except that two soiled place settings are used instead of four.

1.10 ''*Sensor light response*'' means, for both standard and compact dishwashers, the set of operations in a soil-sensing dishwasher for completely washing a load of dishes, one place setting of which is soiled with half of the gram weight of soils for each item specified in a single place setting according to ANSI/AHAM DW–1 (Incorporated by reference, *see* § 430.22).

1.11 ''*Sensor medium response*'' means, for standard dishwashers, the set of operations in a soil-sensing dishwasher for completely washing a load of dishes, two place settings of which are soiled according to ANSI/AHAM DW–1 (Incorporated by reference, see § 430.22). For compact dishwashers, this definition is the same, except that one soiled place setting is used instead of two.

1.12 ''*Soil-sensing dishwasher*'' means a dishwasher that has the ability to adjust any energy consuming aspect of a wash cycle based on the soil load of the dishes.

1.13 ''*Standard dishwasher*'' means a dishwasher that has a capacity equal to or greater than eight place settings plus six serving pieces as specified in ANSI/AHAM DW–1 (Incorporated by reference, see § 430.22), using the test load specified in section 2.7 of this Appendix.

1.14 ''*Standby mode*'' means the lowest power consumption mode which cannot be switched off or influenced by the user and

that may persist for an indefinite time when the dishwasher is connected to the main electricity supply and used in accordance with the manufacturer's instructions.

1.15 ''*Truncated normal cycle*'' means the normal cycle interrupted to eliminate the power-dry feature after the termination of the last rinse operation.

1.16 ''*Truncated sensor heavy response*'' means the sensor heavy response interrupted to eliminate the power-dry feature after the termination of the last rinse operation.

1.17 ''*Truncated sensor light response*'' means the sensor light response interrupted to eliminate the power-dry feature after the termination of the last rinse operation.

1.18 ''*Truncated sensor medium response*'' means the sensor medium response interrupted to eliminate the power-dry feature after the termination of the last rinse operation.

1.19 ''*Water-heating dishwasher*'' means a dishwasher which, as recommended by the manufacturer, is designed for heating cold inlet water (nominal 50 °F) or designed for heating water with a nominal inlet temperature of 120 °F. Any dishwasher designated as water-heating (50 °F or 120 °F inlet water) must provide internal water heating to above 120 °F in at least one wash phase of the normal cycle.

2. Testing conditions:

2.1 *Installation Requirements.* Install the dishwasher according to the manufacturer's instructions. A standard or compact under-counter or under-sink dishwasher must be tested in a rectangular enclosure constructed of nominal 0.374 inch (9.5 mm) plywood painted black. The enclosure must consist of a top, a bottom, a back, and two sides. If the dishwasher includes a counter top as part of the appliance, omit the top of the enclosure. Bring the enclosure into the closest contact with the appliance that the configuration of the dishwasher will allow.

2.2 *Electrical energy supply.*

2.2.1 *Dishwashers that operate with an electrical supply of 115 volts.* Maintain the electrical supply to the dishwasher at 115 volts ± 2 percent and within 1 percent of the nameplate frequency as specified by the manufacturer.

2.2.2 *Dishwashers that operate with an electrical supply of 240 volts.* Maintain the electrical supply to the dishwasher at 240 volts ± 2 percent and within 1 percent of its nameplate frequency as specified by the manufacturer.

2.3 *Water temperature.* Measure the temperature of the water supplied to the dishwasher using a temperature measuring device as specified in section 3.1 of this Appendix.

2.3.1 *Dishwashers to be tested at a nominal 140 °F inlet water temperature.* Maintain the water supply temperature at 140° ± 2 °F.

2.3.2 *Dishwashers to be tested at a nominal 120 °F inlet water temperature.* Maintain the water supply temperature at 120° ± 2 °F.

2.3.3 *Dishwashers to be tested at a nominal 50 °F inlet water temperature.* Maintain the water supply temperature at 50° ± 2 °F.

2.4 *Water pressure.* Using a water pressure gauge as specified in section 3.4 of this Appendix, maintain the pressure of the water supply at 35 ± 2.5 pounds per square inch gauge (psig) when the water is flowing.

2.5 *Ambient and machine temperature.* Using a temperature measuring device as specified in section 3.1 of this Appendix, maintain the room ambient air temperature at 75° ± 5 °F, and ensure that the dishwasher and the test load are at room ambient temperature at the start of each test cycle.

2.6 *Test Cycle and Load.*

2.6.1 *Non-soil-sensing dishwashers to be tested at a nominal inlet temperature of 140 °F.* These units must be tested on the normal cycle and truncated normal cycle without a test load if the dishwasher does not heat water in the normal cycle.

2.6.2 *Non-soil-sensing dishwashers to be tested at a nominal inlet temperature of 50 °F or 120 °F.* These units must be tested on the normal cycle with a clean load of eight place settings plus six serving pieces, as specified in section 2.7 of this Appendix. If the capacity of the dishwasher, as stated by the manufacturer, is less than eight place settings, then the test load must be the stated capacity.

2.6.3 *Soil-sensing dishwashers to be tested at a nominal inlet temperature of 50 °F, 120 °F, or 140 °F.* These units must be tested first for the sensor heavy response, then tested for the sensor medium response, and finally for the sensor light response with the following combinations of soiled and clean test loads.

2.6.3.1 For tests of the sensor heavy response, as defined in section 1.9 of this Appendix:

(A) For standard dishwashers, the test unit is to be loaded with a total of eight place settings plus six serving pieces as specified in section 2.7 of this Appendix. Four of the eight place settings must be soiled according to ANSI/AHAM DW–1 (Incorporated by reference, *see* § 430.22) while the remaining place settings, serving pieces, and all flatware are not soiled.

(B) For compact dishwashers, the test unit is to be loaded with four place settings plus six serving pieces as specified in section 2.7 of this Appendix. Two of the four place settings must be soiled according to ANSI/AHAM DW–1 (Incorporated by reference, *see* § 430.22) while the remaining place settings, serving pieces, and all flatware are not soiled.

2.6.3.2 For tests of the sensor medium response, as defined in section 1.11 of this Appendix:

(A) For standard dishwashers, the test unit is to be loaded with a total of eight place settings plus six serving pieces as specified in section 2.7 of this Appendix. Two of the eight place settings must be soiled according to ANSI/AHAM DW–1 (Incorporated by reference, *see* § 430.22) while the remaining place settings, serving pieces, and all flatware are not soiled.

(B) For compact dishwashers, the test unit is to be loaded with four place settings plus six serving pieces as specified in section 2.7 of this Appendix. One of the four place settings must be soiled according to ANSI/AHAM DW–1 (Incorporated by reference, *see* § 430.22) while the remaining place settings, serving pieces and all flatware are not soiled.

2.6.3.3 For tests of the sensor light response, as defined in section 1.10 of this Appendix:

(A) For standard dishwashers, the test unit is to be loaded with a total of eight place settings plus six serving pieces as specified in section 2.7 of this Appendix. One of the eight place settings must be soiled with half of the soil load specified for a single place setting according to ANSI/AHAM DW–1 (Incorporated by reference, *see* § 430.22) while the remaining place settings, serving pieces, and all flatware are not soiled.

(B) For compact dishwashers, the test unit is to be loaded with four place settings plus six serving pieces as specified in section 2.7 of this Appendix. One of the four place settings must be soiled with half of the soil load specified for a single place setting according to the ANSI/AHAM DW–1 (Incorporated by reference, *see* § 430.22) while the remaining place settings, serving pieces, and all flatware are not soiled.

2.7 *Test Load.*

Dishware/glassware/flatware item	Primary source	Description	Primary No.	Alternate source	Alternate source No.
Dinner Plate	Corning Comcor®/Corelle®	10 inch Dinner Plate	6003893		
Bread and Butter Plate	Corning Comcor®/Corelle®	6.75 inch Bread & Butter	6003887	Arzberg	8500217100
Fruit Bowl	Corning Comcor®/Corelle®	10 oz. Dessert Bowl	6003899	Arzberg	3820513100
Cup	Corning Comcor®/Corelle®	8 oz. Ceramic Cup	6014162	Arzberg	3824732100
Saucer	Corning Comcor®/Corelle®	6 inch Saucer	6010972	Arzberg	3824731100
Serving Bowl	Corning Comcor®/Corelle®	1 qt. Serving Bowl	6003911		
Platter	Corning Comcor®/Corelle®	9.5 inch Oval Platter	6011655		
Glass-Iced Tea	Libbey		551 HT		
Flatware—Knife	Oneida®—Accent		2619KPVF		
Flatware—Dinner Fork	Oneida®—Accent		2619FRSF		
Flatware—Salad Fork	Oneida®—Accent		2619FSLF		
Flatware—Teaspoon	Oneida®—Accent		2619STSF		
Flatware—Serving Fork	Oneida®—Flight		2865FCM		

Dishware/glassware/flatware item	Primary source	Description	Primary No.	Alternate source	Alternate source No.
Flatware—Serving Spoon	Oneida®—Accent	.....	2619STBF		

2.8 *Detergent.* Use half the quantity of detergent specified according to ANSI/AHAM DW–1 (Incorporated by reference, *see* § 430.22).

2.9 *Testing requirements.* Provisions in this Appendix pertaining to dishwashers that operate with a nominal inlet temperature of 50 °F or 120 °F apply only to water-heating dishwashers as defined in section 1.19 of this Appendix.

2.10 *Preconditioning requirements.* Precondition the dishwasher by establishing the testing conditions set forth in sections 2.1 through 2.5 of this Appendix. Set the dishwasher to the preconditioning cycle as defined in section 1.8 of this Appendix, without using a test load, and initiate the cycle.

3. Instrumentation

Test instruments must be calibrated annually.

3.1 *Temperature measuring device.* The device must have an error no greater than ± 1 °F over the range being measured.

3.2 *Timer.* Time measurements for each monitoring period shall be accurate to within 2 seconds.

3.3 *Water meter.* The water meter must have a resolution of no larger than 0.1 gallons and a maximum error no greater than ± 1.5 percent of the measured flow rate for all water temperatures encountered in the test cycle.

3.4 *Water pressure gauge.* The water pressure gauge must have a resolution of one pound per square inch (psi) and must have an error no greater than 5 percent of any measured value over the range of 35 ± 2.5 psig.

3.5 *Watt-hour meter.* The watt-hour meter must have a resolution of 1 watt-hour or less and a maximum error of no more than 1 percent of the measured value for any demand greater than 50 watts.

3.6 *Standby wattmeter.* The standby wattmeter must have a resolution of 0.1 watt or less, a maximum error of no more than 1 percent of the measured value, and must be capable of operating within the stated tolerances for input voltages up to 5 percent total harmonic distortion. The standby wattmeter must be capable of operating at frequencies from 47 hertz through 63 hertz. Power measurements must have a crest factor of 3 or more at currents of 2 amps RMS or less.

3.7 *Standby watt-hour meter.* The standby watt-hour meter must meet all the requirements of the standby wattmeter and must accumulate watt-hours at a minimum power level of 20 milliwatts.

4. Test Cycle and Measurements

4.1 *Test cycle.* Perform a test cycle by establishing the testing conditions set forth in section 2 of this Appendix, setting the dishwasher to the cycle type to be tested, initiating the cycle, and allowing the cycle to proceed to completion.

4.2 *Machine electrical energy consumption.* Measure the machine electrical energy consumption, M, expressed as the number of kilowatt-hours of electricity consumed by the machine during the entire test cycle, using a water supply temperature as set forth in section 2.3 of this Appendix and using a watt-hour meter as specified in section 3.5 of this Appendix.

4.3 *Water consumption.* Measure the water consumption, V, expressed as the number of gallons of water delivered to the machine during the entire test cycle, using a water meter as specified in section 3.3 of this Appendix.

4.4 *Standby power.* Connect the dishwasher to a standby wattmeter or a standby watt-hour meter as specified in sections 3.6 and 3.7, respectively, of this Appendix. Select the conditions necessary to achieve operation in the standby mode as defined in section 1.14 of this Appendix. Monitor the power consumption but allow the dishwasher to stabilize for at least 5 minutes. Then monitor the power consumption for at least an additional 5 minutes. If the power level does not change by more than 5 percent from the maximum observed value during the later 5 minutes and there is no cyclic or pulsing behavior of the load, the load can be considered stable. For stable operation, standby power, S_m, can be recorded directly from the standby watt meter in watts or accumulated using the standby watt-hour meter over a period of at least 5 minutes. For unstable operation, the energy must be accumulated using the standby watt-hour meter over a period of at least 5 minutes and must capture the energy use over one or more complete cycles. Calculate the average standby power, S_m, expressed in watts by dividing the accumulated energy consumption by the duration of the measurement period.

5. Calculation of Derived Results From Test Measurements

5.1 *Machine energy consumption.*

5.1.1 *Machine energy consumption for non-soil-sensing electric dishwashers.* Take the value recorded in section 4.2 of this Appendix as the per-cycle machine electrical energy consumption. Express the value, M, in kilowatt-hours per cycle.

5.1.2 *Machine energy consumption for soil-sensing electric dishwashers.* The machine energy consumption for the sensor normal cycle, M, is defined as:

$$M = (M_{hr} \times F_{hr}) + (M_{mr} \times F_{mr}) + (M_{lr} \times F_{lr})$$

where,

M_{hr} = the value recorded in section 4.2 of this Appendix for the test of the sensor heavy response, expressed in kilowatt-hours per cycle,

M_{mr} = the value recorded in section 4.2 of this Appendix for the test of the sensor medium response, expressed in kilowatt-hours per cycle,

M_{lr} = the value recorded in section 4.2 of this Appendix for the test of the sensor light response, expressed in kilowatt-hours per cycle,

F_{hr} = the weighting factor based on consumer use of heavy response = 0.05,

F_{mr} = the weighting factor based on consumer use of medium response = 0.33,

F_{lr} = the weighting factor based on consumer use of light response = 0.62.

5.2 Drying energy.

5.2.1 *Drying energy consumption for non-soil-sensing electric dishwashers.* Calculate the amount of energy consumed using the power-dry feature after the termination of the last rinse option of the normal cycle. Express the value, E_D, in kilowatt-hours per cycle.

5.2.2 *Drying energy consumption for soil-sensing electric dishwashers.* The drying energy consumption, E_D, for the sensor normal cycle is defined as:

$$E_D = (E_{Dhr} + E_{Dmr} + E_{Dlr})/3$$

Where,

E_{Dhr} = energy consumed using the power-dry feature after the termination of the last rinse option of the sensor heavy response, expressed in kilowatt-hours per cycle,

E_{Dmr} = energy consumed using the power-dry feature after the termination of the last rinse option of the sensor medium response, expressed in kilowatt-hours per cycle,

E_{Dlr} = energy consumed using the power-dry feature after the termination of the last rinse option of the sensor light response, expressed in kilowatt-hours per cycle.

5.3 *Water consumption.*

5.3.1 *Water consumption for non-soil-sensing dishwashers using electrically heated, gas-heated, or oil-heated water.*

Take the value recorded in section 4.3 of this Appendix as the per-cycle water energy consumption. Express the value, V, in gallons per cycle.

5.3.2 *Water consumption for soil-sensing dishwashers using electrically heated, gas-heated, or oil-heated water.*

The water consumption for the sensor normal cycle, V, is defined as:

$$V = (V_{hr} \times F_{hr}) + (V_{mr} \times F_{mr}) + (V_{lr} \times F_{lr})$$

Where,

V_{hr} = the value recorded in section 4.3 of this Appendix for the test of the sensor heavy response, expressed in gallons per cycle,

V_{mr} = the value recorded in section 4.3 of this Appendix for the test of the sensor medium response, expressed in gallons per cycle,

V_{lr} = the value recorded in section 4.3 of this Appendix for the test of the sensor light response, expressed in gallons per cycle,

F_{hr} = the weighting factor based on consumer use of heavy response = 0.05,

F_{mr} = the weighting factor based on consumer use of medium response = 0.33,

F_{lr} = the weighting factor based on consumer use of light response = 0.62.

5.4 *Water energy consumption for non-soil-sensing or soil-sensing dishwashers using electrically heated water.*

5.4.1 *Dishwashers that operate with a nominal 140 °F inlet water temperature, only.* For the normal and truncated normal test cycle, calculate the water energy consumption, W, expressed in kilowatt-hours per cycle and defined as:

$W = V \times T \times K$

Where,

V = water consumption in gallons per cycle, as determined in section 5.3.1 of this Appendix,

T = nominal water heater temperature rise = 90 °F,

K = specific heat of water in kilowatt-hours per gallon per degree Fahrenheit = 0.0024.

5.4.2 *Dishwashers that operate with a nominal inlet water temperature of 120 °F.* For the normal and truncated normal test cycle, calculate the water energy consumption, W, expressed in kilowatt-hours per cycle and defined as:

$W = V \times T \times K$

Where,

V = water consumption in gallons per cycle, as determined in section 5.3.1 of this Appendix,

T = nominal water heater temperature rise = 70 °F,

K = specific heat of water in kilowatt-hours per gallon per degree Fahrenheit = 0.0024.

5.5 *Water energy consumption per cycle using gas-heated or oil-heated water.*

5.5.1 *Dishwashers that operate with a nominal 140 °F inlet water temperature, only.* For each test cycle, calculate the water energy consumption using gas-heated or oil-heated water, W_g, expressed in Btu's per cycle and defined as:

$W_g = V \times T \times C/e$

Where,

V = reported water consumption in gallons per cycle, as determined in section 5.3.2 of this Appendix,

T = nominal water heater temperature rise = 90 °F,

C = specific heat of water in Btu's per gallon per degree Fahrenheit = 8.2,

e = nominal gas or oil water heater recovery efficiency = 0.75.

5.5.2 *Dishwashers that operate with a nominal inlet water temperature of 120 °F.* For each test cycle, calculate the water energy consumption using gas heated or oil heated water, W_g, expressed in Btu's per cycle and defined as:

$Wg = V \times T \times C/e$

Where,

V = reported water consumption in gallons per cycle, as determined in section 5.3.2 of this Appendix,

T = nominal water heater temperature rise = 70 °F,

C = specific heat of water in Btu's per gallon per degree Fahrenheit = 8.2,

e = nominal gas or oil water heater recovery efficiency = 0.75.

5.6 *Annual standby energy consumption.* Calculate the estimated annual standby energy consumption. First determine the number of standby hours per year, H_s, defined as:

$H_s = H - (N \times L)$.

Where,

H = the total number of hours per year = 8766 hours per year,

N = the representative average dishwasher use of 215 cycles per year,

L = the average of the duration of the normal cycle and truncated normal cycle, for non-soil-sensing dishwashers with a truncated normal cycle; the duration of the normal cycle, for non-soil-sensing dishwashers without a truncated normal cycle; the average duration of the sensor light response, truncated sensor light response, sensor medium response, truncated sensor medium response, sensor heavy response, and truncated sensor heavy response, for soil-sensing dishwashers with a truncated cycle option; the average duration of the sensor light response, sensor medium response, and sensor heavy response, for soil-sensing dishwashers without a truncated cycle option.

Then calculate the estimated annual standby power use, S, expressed in kilowatt-hours per year and defined as:

$S = S_m \times ((H_s)/1000)$

Where,

S_m = the average standby power in watts as determined in section 4.4 of this Appendix.

■ 5. Section 430.32 of subpart C is amended by revising paragraph (f) to read as follows:

§ 430.32 Energy and water conservation standards and effective dates.

* * * * *

(f) *Dishwashers.* The energy factor of dishwashers manufactured on or after May 14, 1994, must not be less than:

Product class	Energy factor (cycles/kWh)
(1) Compact Dishwasher (capacity less than eight place settings plus six serving pieces as specified in ANSI/AHAM DW–1 [Incorporated by reference, see § 430.22] using the test load specified in section 2.7 of Appendix C in subpart B)	0.62
(2) Standard Dishwasher (capacity equal to or greater than eight place settings plus six serving pieces as specified in ANSI/AHAM DW–1 [Incorporated by Reference, see § 430.22] using the test load specified in section 2.7 of Appendix C in subpart B)	0.46

* * * * *

■ 6. Section 430.62 is amended in subpart F by revising paragraph (a)(4)(vi) to read as follows:

§ 430.62 Submission of data.

(a) * * *

(4) * * *

(vi) Dishwashers, the energy factor expressed in cycles per kilowatt-hour.

* * * * *

[FR Doc. 03–22120 Filed 8–28–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

19 CFR Part 12

[CBP Dec. 03–25]

RIN 1515–AD38

Extension of Emergency Import Restrictions Imposed on Ethnological Material From Cyprus

AGENCY: Customs and Border Protection, Department of Homeland Security.

ACTION: Final rule.

SUMMARY: In T.D. 99–35, the Customs Regulations were amended to reflect the imposition of emergency import restrictions on certain ethnological material from Cyprus. These restrictions were imposed pursuant to a determination by the United States Information Agency issued under the terms of the Convention on Cultural Property Implementation Act in accordance with the 1970 United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. Recently, the United States Department of State determined that conditions continue to warrant the imposition of these emergency import restrictions for a period not to exceed 3 years. Thus, this document amends the Customs regulations to reflect that the emergency import restrictions currently in place continue, without interruption, for 3 years from September 4, 2003. T.D. 99–35 contains the Designated List describing the Byzantine ecclesiastical and ritual ethnological material from Cyprus to which the restrictions apply.

EFFECTIVE DATE: This regulation and the extension of emergency import restrictions reflected in this regulation become effective on September 4, 2003.

FOR FURTHER INFORMATION CONTACT: (Regulatory Aspects) Joseph Howard,

Intellectual Property Rights Branch (202) 572–8701; (Operational Aspects) Michael Craig, Office of Field Operations (202) 927–0370.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to the provisions of the 1970 UNESCO Convention, codified into U.S. law as the Convention on Cultural Property Implementation Act (Pub. L. 97–446, 19 U.S.C. 2601, *et seq.*) (the Act), the United States, after a request was made by the Government of Cyprus on September 4, 1998, imposed emergency import restrictions on Byzantine ecclesiastical and ritual ethnological material from Cyprus for a period of 5 years from the date of the request. These restrictions and the list of materials covered by them were published in the **Federal Register** (64 FR 17529, April 12, 1999) by the U.S. Customs Service in Treasury Decision (T.D.) 99–35. The T.D. amended § 12.104g(b) of the Customs Regulations which lists emergency import restrictions on cultural property imposed under the Act. The restrictions became effective on April 12, 1999.

Under 19 U.S.C. 2603(c)(3), emergency restrictions may be extended for a period of 3 years upon a determination by the United States that the emergency condition continues to apply with respect to the articles covered by the restrictions. On August 25, 2003, the Acting Assistant Secretary for Educational and Cultural Affairs, Department of State, issued the determination that the emergency condition continues to apply to the articles covered in T.D. 99–35. Accordingly, Customs and Border Protection is amending § 12.104g(b) to reflect the extension of the emergency import restrictions for a 3-year period; this extension of restrictions commences on September 4, 2003. The list of ethnological materials contained in T.D. 99–35 and an accompanying image database may also be found at the following Internet website address: *http://exchanges.state.gov/culprop.*

Based on the foregoing, importation of these materials continues to be restricted unless the conditions set forth in 19 U.S.C. 2606 and 19 CFR 12.104c are met. For example, these materials may be permitted entry if accompanied by appropriate export certification issued by the Government of Cyprus or by documentation showing that exportation from Cyprus occurred before April 12, 1999.

The document also amends 19 CFR 12.104g(a) and 104g(b), in the third column heading of the lists set forth in those sections, by removing the words ''T.D. No.'' and replacing them with the words ''Decision No.'' This change is made in recognition of the fact that import restrictions are now published by CBP Decisions as opposed to Treasury Decisions. A conforming change is also made to the text of 19 CFR 12.104g(b).

This amendment to the regulations is being issued in accordance with § 0.2(a) of the Customs Regulations (19 CFR 0.2(a)) pertaining to the authority of the Secretary of Homeland Security (or his/her delegate) to prescribe regulations not involving customs revenue functions in accordance with the delegation of such authority by the Secretary of the Treasury.

Inapplicability of Notice and Delayed Effective Date

Because the amendment to the Customs Regulations contained in this document extends emergency import restrictions already imposed on the referenced cultural property of Cyprus under the terms of the Convention on Cultural Property Implementation Act (Pub. L. 97–446, 19 U.S.C. 2601 *et seq.*), in accordance with the 1970 UNESCO Convention and in furtherance of a foreign affairs function of the United States, pursuant to the Administrative Procedure Act (5 U.S.C. 553(a)(1)), no notice of proposed rulemaking or public procedure is necessary and a delayed effective date is not required.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. Accordingly, this final rule is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Executive Order 12866

This amendment does not meet the criteria of a ''significant regulatory action'' as described in E.O. 12866.

Drafting Information

The principal author of this document was Bill Conrad, Regulations Branch, Office of Regulations and Rulings, Bureau of Customs and Border Protection.

List of Subjects in 19 CFR Part 12

Customs duties and inspections, Imports, Cultural property.

Amendment to the Regulations

■ Accordingly, Part 12 of the Customs Regulations (19 CFR Part 12) is amended, as set forth below:

PART 12—[AMENDED]

■ 1. The general authority and specific authority citations for Part 12, in part, continue to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States (HTSUS)), 1624;

* * * * *

Sections 12.104 through 12.104i also issued under 19 U.S.C. 2612;

* * * * *

§ 12.104g [Amended]

■ 2. Section 12.104g is amended as follows:

■ a. In paragraph (a), in the heading of column three of the chart, by removing the words ''T.D. No.'' and adding in their place the words ''Decision No.'';

■ b. In paragraph (b), in the second sentence, by removing the words ''Treasury Decision'' and adding in their place the word ''decision'';

■ c. In paragraph (b), in the heading of column three of the chart, by removing the words ''T.D. No.'' and adding in their place the words ''Decision No.''; and

■ d. In paragraph (b), in the third column of the chart relative to the entry for Cyprus, by removing the citation ''99–35'' and adding in its place ''T.D. 99–35 extended by CBP Dec. 03–25''.

Dated: August 26, 2003.

Robert C. Bonner,

Commissioner, Customs and Border Protection.

[FR Doc. 03–22137 Filed 8–28–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Lufenuron Tablets; Milbemycin Oxime and Lufenuron Tablets; Nitenpyram Tablets

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of two original new animal drug applications (NADAs) and three supplemental NADAs filed by Novartis Animal Health US, Inc. The original NADAs provide for the concurrent oral use in dogs of approved milbemycin oxime and lufenuron flavor tablets with nitenpyram tablets to kill adult fleas and

prevent flea eggs from hatching and for the concurrent oral use in dogs and cats of approved lufenuron flavor tablets with nitenpyram tablets to kill adult fleas and prevent flea eggs from hatching. The supplemental NADAs provide appropriate labeling for the concurrent uses of the individual products and, for lufenuron flavor tablets, use in puppies and kittens as young as 4 weeks of age.

DATES: This rule is effective August 29, 2003.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center for Veterinary Medicine (HFV–110), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7540; e-mail: *mberson@cvm.fda.gov*.

SUPPLEMENTARY INFORMATION: Novartis Animal Health US, Inc., 3200 Northline Ave., suite 300, Greensboro, NC 27408, filed NADA 141–204 for the concurrent use in dogs of their SENTINEL (milbemycin oxime and lufenuron) FLAVOR TABS, approved under NADA 141–084, with their CAPSTAR (nitenpyram) Tablets, approved under NADA 141–175, to kill adult fleas and prevent flea eggs from hatching. Novartis Animal Health US also filed NADA 141–205 for the concurrent use in dogs and cats of their PROGRAM (lufenuron) FLAVOR TABS, approved under NADA 141–035, with CAPSTAR Tablets to kill adult fleas and prevent flea eggs from hatching. Supplemental NADAs were also filed to NADA 141–035, NADA 141–084, and NADA 141–175 to provide appropriate labeling for the concurrent uses of these products under NADA 141–204 and NADA 141–205, and to NADA 141–035 for use of lufenuron flavor tablets in puppies and kittens as young as four weeks of age. The NADAs and supplemental NADAs are approved as of, June 11, 2003, and the regulations are amended in 21 CFR 520.1288, 520.1446, and 520.1510 to reflect the approval. The basis of approval is discussed in the freedom of information summaries.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), summaries of safety and effectiveness data and information submitted to support approval of these applications may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

Under sections 512(c)(2)(F)(ii) or (iii) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360b(c)(2)(F)(ii) or (iii)), these NADAs and supplemental NADAs qualify for 3 years of marketing exclusivity beginning Jue 11, 2003.

The agency has determined under 21 CFR 25.33(d)(1) that these actions are of a type that do not individually or cumulatively have a significant effect on the human environment. Therefore, neither environmental assessments nor environmental impact statements are required.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801 808.

List of Subjects in 21 CFR Part 520

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 2. Section 520.1288 is revised to read as follows:

§ 520.1288 Lufenuron tablets.

(a) *Specifications*—(1) Tablets containing 45, 90, 204.9, or 409.8 milligrams (mg) lufenuron for use as in paragraphs (c)(1)(i), (c)(1)(ii)(A), (c)(1)(iii), (c)(2)(i), (c)(2)(ii)(A), and (c)(2)(iii) of this section.

(2) Flavored tablets containing 45, 90, 204.9, or 409.8 milligrams (mg) lufenuron for use as in paragraphs (c)(1)(i), (c)(1)(ii)(A) or (c)(1)(ii)(B), and (c)(1)(iii) of this section.

(3) Flavored tablets containing 90 or 204.9 mg lufenuron for use as in paragraphs (c)(2)(i), (c)(2)(ii)(A) or (c)(2)(ii)(B), and (c)(2)(iii) of this section.

(4) Flavored tablets containing 135 or 270 mg lufenuron for use as in paragraphs (c)(2)(i), (c)(2)(ii)(A), and (c)(2)(iii) of this section.

(b) *Sponsor*. See No. 058198 in § 510.600(c) of this chapter.

(c) *Conditions of use*—(1) *Dogs*—(i) *Amount*. Minimum of 10 mg lufenuron per kilogram (4.5 mg per pound (lb)) of body weight, once a month.

(ii) *Indications for use*—(A) For the prevention and control of flea populations.

(B) The concurrent use of flavored lufenuron tablets described in paragraph (a)(2) of this section as in paragraph (c)(1)(ii)(A) of this section with nitenpyram tablets as in § 520.1510(d)(1) of this chapter is indicated to kill adult fleas and prevent flea eggs from hatching.

(iii) *Limitations*. For use in dogs and puppies 4 weeks of age and older.

(2) *Cats*—(i) *Amount*. Minimum of 30 mg lufenuron per kilogram (13.6 mg/lb) of body weight, once a month.

(ii) *Indications for use*—(A) For the control of flea populations.

(B) The concurrent use of flavored lufenuron tablets described in paragraph (a)(3) of this section as in paragraph (c)(2)(ii)(A) of this section with nitenpyram tablets as in § 520.1510(d)(2) of this chapter is indicated to kill adult fleas and prevent flea eggs from hatching.

(iii) *Limitations*. For use in cats and kittens 4 weeks of age and older.

■ 3. Section 520.1446 is amended by revising the section heading, paragraphs (a), (d)(1)(i), (d)(1)(ii), and (d)(1)(iii) to read as follows:

§ 520.1446 Milbemycin oxime and lufenuron tablets.

(a) *Specifications*—(1) Tablets containing: 2.3 milligrams (mg) milbemycin oxime and 46 mg lufenuron, 5.75 mg milbemycin oxime and 115 mg lufenuron, 11.5 mg milbemycin oxime and 230 mg lufenuron, or 23 mg milbemycin oxime and 460 mg lufenuron.

(2) Flavored tablets containing: 2.3 mg milbemycin oxime and 46 mg lufenuron, 5.75 mg milbemycin oxime and 115 mg lufenuron, 11.5 mg milbemycin oxime and 230 mg lufenuron, or 23 mg milbemycin oxime and 460 mg lufenuron.

* * * * *

(d) * * *

(1) * * *

(i) *Amount*. 0.5 mg milbemycin oxime and 10 mg lufenuron per kilogram of body weight, once a month.

(ii) *Indications for use*—(A) For use in dogs and puppies for the prevention of heartworm disease caused by *Dirofilaria immitis*, for prevention and control of flea populations, for control of adult *Ancylostoma caninum* (hookworm), and for removal and control of adult *Toxocara canis*, *Toxascaris leonina* (roundworm), and *Trichuris vulpis* (whipworm) infections.

(B) The concurrent use of flavored milbemycin oxime and lufenuron tablets described in paragraph (a)(2) of this section as in paragraph (d)(1)(ii)(A) of this section with nitenpyram tablets as in § 520.1510(d)(1) of this chapter is indicated to kill adult fleas and prevent flea eggs from hatching.

(iii) *Limitations*. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

* * * * *

■ 4. Section 520.1510 is revised to read as follows:

§ 520.1510 Nitenpyram tablets.

(a) *Specifications*. Each tablet contains 11.4 or 57 milligrams (mg) nitenpyram.

(b) *Sponsor*. See No. 058198 in § 510.600(c) of this chapter.

(c) *Special considerations*. The concurrent use of nitenpyram tablets and flavored milbemycin/lufenuron tablets as in paragraph (d)(1)(ii)(B) of this section shall be by or on the order of a licensed veterinarian.

(d) *Conditions of use*—(1) *Dogs*—(i) *Amount*—(A) One 11.4-mg tablet for dogs weighing less than 25 pounds (lb) or one 57-mg tablet for dogs weighing more than 25 lb, as needed, for use as in paragraph (d)(1)(ii)(A) of this section.

(B) One 11.4-mg tablet for dogs weighing less than 25 lb or one 57 mg tablet for dogs weighing more than 25 lbs, once or twice weekly, for use as in paragraph (d)(1)(ii)(B) of this section.

(ii) *Indications for use*—(A) For the treatment of flea infestations on dogs and puppies 4 weeks of age and older and 2 lbs of body weight or greater.

(B) The concurrent use of nitenpyram tablets as in paragraph (d)(1)(i)(B) of this section with either flavored lufenuron tablets as in § 520.1288(c)(1) of this chapter or flavored milbemycin and lufenuron tablets as in § 520.1446(d)(1) of this chapter is indicated to kill adult fleas and prevent flea eggs from hatching.

(2) *Cats*—(i) *Amount*—(A) One 11.4-mg tablet, as needed, for use as in paragraph (d)(2)(ii)(A) of this section.

(B) One 11.4-mg tablet, once or twice weekly, for use as in paragraph (d)(2)(ii)(B) of this section.

(ii) *Indications for use*—(A) For the treatment of flea infestations on cats and kittens 4 weeks of age and older and 2 lbs of body weight or greater.

(B) The concurrent use of nitenpyram tablets as in paragraph (d)(2)(i)(B) of this section with flavored lufenuron tablets as in § 520.1288(c)(2) of this chapter is indicated to kill adult fleas and prevent flea eggs from hatching.

Dated: August 18, 2003.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 03–22072 Filed 8–28–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD05–03–125]

RIN 1625–AA08

Special Local Regulations for Marine Events; Hampton River, Hampton, VA

AGENCY: Coast Guard, DHS.

ACTION: Notice of implementation of regulation.

SUMMARY: The Coast Guard is implementing the special local regulations at 33 CFR 100.508 during the Hampton Bay Days Festival to be held September 5–7, 2003, on the waters of the Hampton River at Hampton, Virginia. These special local regulations are necessary to control vessel traffic due to the confined nature of the waterway and expected vessel congestion during the festival events. The effect will be to restrict general navigation in the regulated area for the safety of event participants, spectators and vessels transiting the event area.

EFFECTIVE DATES: 33 CFR 100.508 is effective from 12 noon on September 5, 2003 to 6 p.m. on September 7, 2003.

FOR FURTHER INFORMATION CONTACT: Chief Petty Officer J. Saffold, Marine Events Coordinator, Commander, Coast Guard Group Hampton Roads, 4000 Coast Guard Blvd., Portsmouth, VA 23703–2199, (757) 483–8521.

SUPPLEMENTARY INFORMATION: Hampton Bay Days, Inc. will sponsor the Hampton Bay Days Festival on September 5–7, 2003 on the Hampton River, Hampton, Virginia. The festival will include water ski demonstrations, personal watercraft and wake board competitions, paddle boat races, classic boat displays, fireworks displays and a helicopter rescue demonstration. A fleet of spectator vessels is expected to gather nearby to view the festival events. In order to ensure the safety of participants, spectators and transiting vessels, 33 CFR 100.508 will be in effect for the duration of the festival activities. Under provisions of 33 CFR 100.508, vessels may not enter the regulated area without permission from the Coast Guard Patrol Commander. Spectator vessels may enter and anchor in the special spectator anchorage areas if they proceed at slow, no wake speed. The Coast Guard Patrol Commander will allow vessels to transit the regulated area between festival events. Because these restrictions will be in effect for a limited period, they should not result in a significant disruption of maritime traffic.

In addition to this notice, the maritime community will be provided extensive advance notification via the Local Notice to Mariners, marine information broadcasts, and area newspapers, so mariners can adjust their plans accordingly.

Dated: August 20, 2003.

Ben R. Thomason, III,

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

[FR Doc. 03–22136 Filed 8–28–03; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WI–113–3; FRL–7528–7]

Approval and Promulgation of State Implementation Plans; Wisconsin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is approving a revision to Wisconsin's State Implementation Plan (SIP) for the attainment of the one-hour ozone standard for the Milwaukee-Racine area. This SIP revision, submitted to EPA on December 16, 2002, allows emissions averaging for sources subject to the state's rules limiting emissions of nitrogen oxides (NO_X) from large electricity generating units in southeast Wisconsin. In addition, the revision creates a new categorical emissions limit for new integrated gasification combined cycle units. On April 10, 2003, the EPA proposed approval of this SIP revision and published a direct final approval as well. EPA received adverse comments on the proposed rulemaking, and therefore withdrew the direct final rulemaking on June 6, 2003.

DATES: This final rule is effective September 29, 2003.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the following address: U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. We recommend that you telephone Alexis Cain at (312) 886–7018 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Alexis Cain, Environmental Scientist, Regulation Development Section, Air Programs Branch (AR–18J), USEPA,

Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–7018.

SUPPLEMENTARY INFORMATION:

The supplemental information is organized in the following order:

I. What action is EPA taking today?
II. What is EPA's response to comments received on the proposed rulemaking?
III. Statutory and Executive Order Reviews

I. What Action Is EPA Taking Today?

EPA is approving, as part of the Wisconsin ozone SIP, rules that would allow sources to use emissions averaging and an emissions cap as a option for complying with ozone season limits on emissions of NO_X. These limits apply to large electricity generating units in Southeast Wisconsin. EPA approved the rules setting the NO_X emissions limits into Wisconsin's SIP on November 13, 2001 (66 FR 56931). The limits are expressed in mass of allowable emissions per unit of heat input (pounds per million Btu).

Emissions averaging will allow units subject to the NO_X emissions limits of NR 428 of the Wisconsin Administrative Code to create emissions averaging plans in which the compliance of multiple sources would be assessed collectively. Participating sources would need to submit such plans to the Wisconsin Department of Natural Resources (WDNR) at least 90 days prior to the start of the ozone season, and would need to identify the participating units, their owners or operators, applicable emissions limitations, projected heat input and emissions rate, and projected mass emissions for the ozone season. The plan would establish an aggregate ozone season emissions rate limit for participating units through a formula that sums allowable emissions for each unit (based on projected heat input and each source's individual emissions rate), and divides it by the total projected heat input. To provide an environmental benefit from averaging, the formula subtracts 0.01 pounds/mmbtu from each unit's allowable emissions.

As a result, total emissions under an averaging plan would be lower than they would be if each unit demonstrated compliance on an individual basis. However, individual units would be allowed to exceed emissions rates specified in the NO_X reduction rules, while other units would emit less than allowed under the rules. Thus, averaging allows companies to minimize the cost of emissions reductions by allocating reductions at the units that can achieve them most inexpensively.

In addition, units participating in an averaging plan are subject to a mass emission limitation, beginning with the 2008 ozone season. This feature of the program ''caps'' the aggregate ozone season NO_X emissions of participating sources at a level that could not be exceeded regardless of heat input. This level is determined by the participating units' share of actual heat input during the 1995, 1996 and 1997 ozone seasons, multiplied by 15,912 tons, an amount consistent with the state's one-hour ozone attainment demonstration.

Within 60 days of the end of each ozone season, owners or operators of the participating units must submit compliance reports demonstrating compliance with the plan's emission rate and mass emission limit.

II. What Is EPA's Response to Comments Received on the Proposed Rulemaking?

The Midwest Environmental Advocates provided adverse comments on EPA's proposed approval of Wisconsin's averaging program. The Natural Resources Defense Council requested clarification of an issue related to the proposed approval of the new categorical emissions limit for new integrated gasification combined cycled units. In addition, EPA received two positive comments on the proposed rulemaking from citizens. This section responds to the adverse comments and to the request for clarification.

The Midwest Environmental Advocates noted areas where Wisconsin's averaging program may differ from the EPA's guidance on Improving Air Quality with Economic Incentive Programs, EPA–452/R–01–001, January 2001 (EIP Guidance). The comments by Midwest Environmental Advocates are addressed in detail below, and in many cases EPA disagrees that Wisconsin's averaging program is inconsistent with the EIP. In general, EPA notes that the EIP Guidance is neither a law nor a regulation. While it provides important guidance on the development of economic incentive programs, differences between a SIP submittal and the EIP Guidance are not necessarily sufficient reason to disapprove a SIP submittal.

Comment: Wisconsin's NO_X averaging program should not be approved because it would not result in clear environmental benefit, as required under the EIP Guidance.

Response: The averaging program should be considered as an element of Wisconsin's overall NO_X reduction rules. EPA has determined that these rules will achieve the results that the state attributed to them in the one-hour ozone attainment plan (proposed rule, July 2, 2001, 66 FR 34878; final rule November 13, 2001, 66 FR 56931). The averaging portion of the rules provides compliance provisions that make it possible for sources subject to the rules to comply with them in a timely way, which otherwise would not be possible. Therefore, the averaging program is an essential element in an overall package that will lead to actual emissions decreases, and conforms with the EIP Guidance provisions on environmental benefit. Moreover, units that enter into NO_X averaging plans must collectively accept a lower NO_X emissions limit than they would have individually, which will promote further reductions in actual emissions.

Comment: Wisconsin's NO_X averaging program fails to take source compliance margins into account, contrary to the EIP Guidance. The averaging program could lead to the disappearance of the margin between actual and allowable emissions that would occur in the absence of the averaging program, creating the potential for ''an overall increase in actual emissions, despite a theoretical decrease in allowable emissions.''

Response: The EIP Guidance (section 6.5(g)) states that in areas that have a required attainment demonstration, no provisions for considering compliance margins are necessary if the relevant attainment plan ''includes the emissions from compliance margins as actual emissions'' and ''the relevant emissions inventories include emissions from the compliance margins for all sources covered under the EIP.'' Since the Milwaukee-Racine attainment and ROP plan and associated NO_X emissions inventories assume that the NO_X sources covered by the averaging program all emit as much as allowed, the compliance margin is already taken into account, and emissions will be reduced even if sources emit the maximum allowed. See ''Technical Support Document for the Post-1999 Rate-of-Progress Plan Revision to the State Implementation Plan for the Milwaukee-Racine, Wisconsin Area,'' from Jacqueline Nwia to Randall Robinson, June 7, 2001, p. 27 (Docket WI 108–7338).

Comment: The rules require that excess emissions reductions used in an averaging plan be ''beyond those required to meet all State and Federal requirements,'' but they do not require that reductions be in excess of those that would have occurred in the absence of the EIP, for instance due to upgrades, replacement or repair. The use of such reductions in averaging would frustrate

the goal of achieving additional reductions.

Response: Since it is difficult to determine which emissions-reducing upgrades, replacements, and repairs are motivated by an averaging program and which would occur in its absence, it is reasonable for the state to allow all reductions that are not otherwise required to be used in emissions averaging. It is sufficient to show that the overall effect of the program is to create lower emissions than would occur in the program's absence, even if some of the specific reductions used in an averaging plan would have occurred in any case. The EIP guidance requirement that economic incentive programs produce a clear environmental benefit is met because of the role that the averaging program plays in making compliance with the NO_X reduction rules possible, by the reduced emissions rate on sources that participate in averaging, and by the imposition of an emissions cap.

Comment: It is unclear that the imposition of an emissions cap results in ''any appreciable environmental benefit that would not have otherwise been achieved by complying with the state's one-hour ozone attainment plan.''

Response: The one-hour ozone attainment plan is a tool for managing air quality, through projecting the impacts of regulations and economic changes on emissions of ozone precursors and on concentrations of ozone in ambient air. The attainment plan, however, does not impose requirements on sources. While the attainment plan includes projections of future emissions, based on projected activity levels and allowable emissions rates, these future emissions and activity levels are not regulatory requirements on sources. This SIP revision will create a new emissions cap, consistent with the attainment demonstration, for sources that participate in emissions averaging. This emissions cap provides certainty, which would not otherwise exist, that emissions from participating sources will be capped despite the potential for activity level increases beyond those projected.

Comment: The emissions cap does not apply until 2008, by which time it is likely that other factors will reduce NO_X emissions in the Milwaukee-Racine area.

Response: It may be true that other programs or events will reduce future emissions beyond what is required under Wisconsin's current NO_X rules. However, for the purpose of this rulemaking, EPA cannot assume the implementation of these future programs prior to 2008, and therefore counts the 2008 emissions cap as an environmental benefit.

Comment: The program ''fails to account for the relationship between NO_X averaging plans and Title V permits.'' A unit operating under a Title V permit might use emissions averaging to increase its emissions, violating the facility's Title V permit and constituting a major modification necessitating new source review.

Response: Any unit that increases emissions sufficiently to violate its permit would be subject to enforcement, and any unit that increases emissions sufficiently to constitute a major modification would be subject to new source review, notwithstanding averaging for the purpose of compliance with the NO_X emissions limits contained in NR 428.04(2) and NR 428.05(3). The averaging program cannot be used for compliance with any other requirement, and it cannot be used to avoid any requirement. Proper use of the averaging program for compliance with the NR 428 NO_X emissions limits will be consistent the Title V permit, because when these limits are included in the permits of sources eligible for averaging, the permits will specify that averaging is a compliance option.

Comment: ''The proposed SIP revision does not explicitly require units participating in averaging plans to modify their Title V permit accordingly.'' Unless the public can determine from a facility's Title V permit whether a unit is part of an averaging plan, which other units are included in the plan, and how to determine the applicable emissions limits among and between those units, public participation in the Title V permit process will be undermined.'' Moreover, ''the public is charged with obtaining a copy of an averaging plan from the participating parties,'' potentially inhibiting the public's ability to assess a source's compliance status.

Response: While NR 428 does not itself contain a requirement that units participating in averaging plans modify their Title V permits, NR 407, which is part of Wisconsin's SIP, does require that new requirements and compliance options be incorporated into permits as they are issued. Therefore, permits issued for sources that may use averaging must authorize the use of the averaging program as a compliance option. The Clean Air Act does not require that the details of averaging plans be included in Title V permits, but rather that the Title V permit identify whether a unit may use emissions averaging as a compliance option. EPA agrees with the commenter that the public should have access to the averaging plan when viewing a company's Title V permit, and the public should not have to obtain the averaging plan from the source. The WDNR has clarified, in a letter dated May 28, 2003, that it will keep any prospective averaging plan, DNR comments on the plan, the final plan, and all compliance reports, in the Title V permit file for each participating source. It should also be noted that participants in an emissions averaging plan must provide public notice of the plan in a local newspaper at least 60 days prior to the start of the ozone season.

Comment: The proposed SIP revision fails to include provisions preventing a unit receiving excess emissions credits from increasing emissions sufficient to constitute a major modification without undergoing PSD or NSR review.

Response: The PSD and NSR programs require sources to undergo review when increasing emissions sufficient to constitute a major modification. Nothing in Wisconsin's averaging program changes this requirement.

Comment: EPA's ''justifications for failing to apply agency guidance [on averaging among sources not under common ownership] are insufficient because they fail to address the purported purpose behind the unified owner requirement.'' The unified owner requirement ''is meant to ensure enforcement and compliance.'' A cap, whatever its environmental benefits, cannot substitute for lack of enforceability.

Response: A cap provides assurances that if enforcement of average emission rates proves difficult, the state and EPA can nonetheless protect the environment by enforcing against any violation of the cap.

Comment: Saying that WDNR staff will be able to review averaging plants is irrelevant because the guidance prohibits emissions averaging between facilities owned by different companies to ensure enforcement and compliance. Given the difficulty of predicting activity levels, ''merely making sure that projected activity levels are reasonable does not ensure that day to day averaging is achieved.''

Response: The commenter is correct that projecting reasonable activity levels does not ensure that day to day averaging is achieved. In looking at the question of whether Wisconsin will be able to check the reasonableness of projected activity levels, EPA is seeking to ensure that averaging plan participants will not be able to

deliberately ''game'' the system by projecting excessive activity by a unit with a reduced emissions rate. In the situation where non-compliance occurs because a unit has a lower-than-projected activity level, emissions will be lower than projected. This situation is of less concern if the activity levels projected are reasonable and similar to those of previous years, than if intentionally-erroneous significant growth in activity levels were projected. In the latter situation, emissions could increase even if activity levels are lower than the inflated projections of the averaging plan. It is important to note that it is a violation of the NO_X averaging rules to exceed the allowable aggregate emissions rate, regardless of whether total emissions are greater or less than projected.

Comment: ''Wisconsin's air management program is already under-staffed and under-funded,'' is late in issuing permits, and is having difficulty ensuring compliance with the Title V program. ''Even if DNR staff review of averaging plans could adequately address the concerns in EPA guidance, air management staff are not in a position to adequately complete this task.''

Response: The staff time required to verify that a small number of averaging plans contain reasonable projections of activity levels is minimal. EPA is confident that Wisconsin staff can perform this function, regardless of staffing and funding problems that may affect the Title V program.

Comment: A company operating a high-emissions unit cannot ensure that sufficient reductions exist unless it controls the low emission unit creating those credits. The fact that eligible facilities operate close to capacity is irrelevant, since activity levels can change.

Response: The commenter is correct that in averaging plans involving multiple owners, the ability to comply of all participants in the averaging plan can be compromised if the owner of the unit with a reduced emission rate does not maintain sufficient activity level. Averaging plan participants must take the risk of failing to comply with the averaging plan as a result of unexpected reductions in activity level by sources with reduced emissions rates. EPA could bring enforcement actions for such non-compliance, even though non-compliance with the emissions rate would be accompanied by lower actual emissions than projected.

Comment: The proposed SIP fails to indicate that all units participating in an averaging plan are in violation each and every day within the plan's averaging period if the aggregate NO_X emissions exceed the averaging plan's emission limits, multiplied by the number of participating units, as required under the EIP guidance.

Response: NR 428(j) states that ''all emissions units participating in an ozone season NO_X emissions averaging program may be considered out of compliance'' if the averaging plan aggregate emissions rate or emissions cap is exceeded. Furthermore, ''each emissions unit is considered out of compliance for each day of non-compliance until corrective action is taken to reduce emissions and achieve compliance.'' In the case of a violation of the averaging plan's aggregate emission rate or emissions cap, these provisions would give Wisconsin the ability to bring enforcement actions for violations for each participating unit, for each day during the ozone season up to the point when corrective action was taken. These provisions provide significant deterrence, are consistent with the requirements of the Clean Air Act and Title V regulations, and are substantially consistent with the EIP guidance. While the EIP guidance might be interpreted to indicate that a source may be in violations for each day of the ozone season even after corrective action is taken, EPA is willing to be flexible on this point.

Comment: The proposed rules do not indicate that source shutdowns and production activity curtailments are not eligible as emission reductions, nor that a source's emissions reductions must be ''permanent,'' as required under the EIP.

Response: Given the structure of Wisconsin's averaging program, such provisions against counting source shutdowns and curtailments are unnecessary, and not required under the EIP. In Wisconsin's averaging program, compliance depends on emissions rates, not total emissions. Therefore, shutdowns and curtailments intrinsically do not generate reductions that can be used in averaging programs. Regarding the permanence of emissions reductions, the EIP states that ''permanent'' means that a source ''commits to actions or achieves reductions for a future period of time as defined in the EIP'' (EIP Guidance, Section 4.2(a)). In Wisconsin's program, sources must commit to making reductions during the period defined by the NO_X reduction rules—the ozone season. Thus, averaging plans in Wisconsin must use reductions that meet the EIP's general definition of permanent. The EIP also provides an additional definition of permanent specifically for averaging. In addition to the general definition, in an averaging program ''the source's emission reduction must last throughout the life of the program defined in the SIP'' (EIP Guidance, Table 4.3(b)). If ''the life of the program'' is defined as the period of time during which the program will be in operation, then Wisconsin's program, which has an indefinite life, would not seem to meet this requirement. However, EPA believes that a more reasonable interpretation is that the reduction must last through a time period defined by the program—the ozone season. In this case, Wisconsin's program does require permanent reductions.

Comment: The proposed SIP revision would allow geographic shifting of emissions without protecting communities of concern from emissions increases, as required under the EIP. In addition, EPA should determine whether the proposed SIP revision satisfies the environmental justice requirements in Executive Order 12898.

Response: The EIP does not require special protections for communities of concern in trading or averaging programs that involve emissions of NO_X, because NO_X, unlike volatile organic compounds, is not a pollutant that raises significant concerns about localized impacts. NO_X emissions impact regional concentrations of ozone, but do not cause elevated ozone concentrations on a local level. NO_X emissions are also associated with emissions of nitrogen oxides (NO_2), a criteria pollutant for which the Clean Air Act provides a variety of protections for local communities. Wisconsin has no NO_2 nonattainment areas, and any significant increases in NO_2 emissions at sources subject to the averaging plan would be subject to New Source Review. Since the averaging program creates no adverse local impacts, there is no potential to create ''disproportionately high and adverse human health or environmental effects * * * on minority populations and low-income populations,'' as addressed in Executive Order 12898.

Comment: Wisconsin's NO_X averaging rule ''may frustrate the state's new 8-hour attainment needs''. EPA should disapprove this SIP revision until Wisconsin submits an 8-hour attainment demonstration plan.

Response: The NO_X averaging rule is a necessary component of Wisconsin's NO_X control rules, which will reduce NO_X emissions and contribute to reductions in ambient ozone concentrations. The rule contributes to Wisconsin's efforts to meet the 8-hour attainment standard; it does not frustrate them.

Comment: ''The proposed SIP revision appears to be promulgated for one company,'' raising ''issues of the appropriateness and legality of regulation created and implemented for individual companies.''

Response: Several companies are eligible to use the NO_X averaging program, and EPA anticipates that more than one company will be involved in emissions averaging. In any case, as long as the program is protective of the environment, it would not be a cause for concern if only one company chose to use the program.

Comment: ''The direct final rule approves inclusion of a new categorical emission limit for new integrated gasification combined cycle (IGCC) units in the Wisconsin SIP. We call upon EPA to clarify that this emissions limit does not and cannot, pre-ordain, or substitute for, BACT or LAER analysis required under the NSR and PSD requirements of the Clean Air Act.''

Response: None of the emissions limits in Wisconsin's NO_X rules, including the categorical emission limit for new integrated gasification combined cycle (IGCC) units, do or can predetermine or substitute for BACT or LAER analysis required under the NSR and PSD requirements of the Clean Air Act.

III. Statutory and Executive Order Reviews

Executive Order 12866: Regulatory Planning and Review

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.

Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

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).

Regulatory Flexibility Act

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.*).

Unfunded Mandates Reform Act

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).

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

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).

Executive Order 13132: Federalism

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.

Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

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.

National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTA), 15 U.S.C. 272 note, requires Federal agencies to use technical standards that are developed or adopted by voluntary consensus to carry out policy objectives, so long as such standards are not inconsistent with applicable law or otherwise impracticable. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Absent a prior existing requirement for the state to use voluntary consensus standards, EPA has no authority to disapprove a SIP submission for failure to use such standards, and it would thus be inconsistent with applicable law for EPA to use voluntary consensus standards in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Therefore, the requirements of section 12(d) of the NTTA do not apply.

Paperwork Reduction Act

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.*).

Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. 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 28, 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, Oxides of Nitrogen.

Dated: June 30, 2003.

William E. Muno,

Acting Regional Administrator, Region 5.

■ For the reasons stated in the preamble, 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 YY—Wisconsin

■ 2. Section 52.2570 is amended by adding paragraph (c)(108) to read as follows:

§ 52.2570 Identification of plan.

* * * * *

(c) * * *

(108) On December 16, 2002, Lloyd L. Eagan, Director, Wisconsin Department of Natural Resources, submitted revised rules to allow use of NO_X emissions averaging for sources subject to NO_X emission limits in the Milwaukee-Racine area. The revised rules also establish a NO_X emissions cap for sources that participate in emissions averaging, consistent with the emissions modeled in Wisconsin's approved one-hour ozone attainment demonstration for the Milwaukee-Racine area. The rule revision also creates a new categorical emissions limit for new integrated gasification combined cycle units.

(i) Incorporation by reference.

(A) NR 428.02(6m) as published in the (Wisconsin) Register, November 2002, No. 563 and effective December 2, 2002.

(B) NR 428.04(2)(g)(3) as published in the (Wisconsin) Register, November 2002, No. 563 and effective December 2, 2002.

(C) NR 428.06 as published in the (Wisconsin) Register, November 2002, No. 563 and effective December 2, 2002.

[FR Doc. 03–22050 Filed 8–28–03; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

41 CFR Chapter 301

[FTR Case 2003–306; FTR Amendment 2003–05]

RIN 3090–AH87

Federal Travel Regulation (FTR); Per Diem (Incidental Expense Increase)

AGENCY: Office of Governmentwide Policy, General Services Administration (GSA).

ACTION: Final rule.

SUMMARY: This final rule amends the Federal Travel Regulation (FTR) by increasing the incidental expense allowance under the per diem expenses from $2.00 to $3.00 for all per diem localities.

DATES: *Effective Date:* October 1, 2003.

FOR FURTHER INFORMATON CONTACT: The Regulatory Secretariat, Room 4035, GSA Building, Washington, DC 20405, (202) 208–7312, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Umeki G. Thorne, Program Analyst, Office of Governmentwide Policy, Travel Management Policy at (202) 208–7636. Please cite FTR case 2003–306.

SUPPLEMENTARY INFORMATION:

A. Background

An analysis of lodging and meal cost survey data reveals that the listing of maximum per diem rates for locations within the continental United States (CONUS) should be updated to provide for the reimbursement of Federal employees' expenses covered by per diem. As a result of this analysis, the incidental expense under the per diem expenses will be increased from $2 to $3 for all per diem localities.

B. Executive Order 12866

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

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 the changes to the FTR do not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

E. Small Business Regulatory Enforcement Fairness Act

This final rule is also 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 Part 301–11

Government employees, Travel and transportation expenses.

Dated: August 22, 2003.

Stephen A. Perry,

Administrator of General Services.

■ For the reasons set forth in the preamble, under 5 U.S.C. 5701–5709, GSA amends 41 CFR chapter 301 as set forth below:

CHAPTER 301—TEMPORARY DUTY (TDY) TRAVEL ALLOWANCES

PART 301–11—PER DIEM EXPENSES

■ 1. The authority citation for 41 CFR part 301–11 continues to read as follows:

Authority: 5 U.S.C. 5707.

§ 301–11.18 [Amended]

■ 2. Amend § 301–11.18 by revising the table to read as follows:

* * * * *

M&IE	$31	$35	$39	$43	$47	$51
Breakfast	6	7	8	9	9	10
Lunch	6	7	8	9	11	12
Dinner	16	18	20	22	24	26
Incidentals	3	3	3	3	3	3

[FR Doc. 03–22108 Filed 8–28–03; 8:45 am]
BILLING CODE 6820–14–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 447

[CMS–2175–FC]

RIN 0938–AM20

Medicaid Program; Time Limitation on Price Recalculations and Recordkeeping Requirements Under the Drug Rebate Program

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule with comment period.

SUMMARY: On September 19, 1995, we published a proposed rule in the **Federal Register** that introduced requirements for States and manufacturers pertaining to the Medicaid drug rebate program. We received several comments from States and manufacturers regarding recordkeeping requirements and drug price recalculations. This final rule with comment period finalizes separately, in an accelerated timeframe, two specific provisions of the September 1995 proposed rule. It establishes new recordkeeping requirements for drug manufacturers under the Medicaid drug rebate program. It also sets forth a 3-year time limitation during which manufacturers must report changes to average manufacturer price and best price for purposes of reporting data to us. In addition, it announces the pressing need for codification of fundamental recordkeeping requirements. Furthermore, it announces our intention to continue to work on finalizing the complete drug rebate regulation for the Medicaid drug rebate program.

DATES: *Effective Date:* October 1, 2003.

Comment Date: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on October 28, 2003.

ADDRESSES: In commenting, please refer to file code CMS–2175–FC. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission or e-mail. Mail written comments (one original and three copies) to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–2175–FC, PO Box 8016, Baltimore, MD 21244–8016.

Please allow sufficient time for mailed comments to be timely received in the event of delivery delays.

If you prefer, you may deliver (by hand or courier) your written comments (one original and three copies) to one of the following addresses:

Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or

Room C5–14–03, 7500 Security Boulevard, Baltimore, MD 21244–1850.

(Because access to the interior of the HHH Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for commenters wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and could be considered late.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Marge Watchorn, (410) 786–4361.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, call telephone number: (410) 786–7195.

To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, PO Box 371954, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512–1800 or by faxing to (202) 512–2250. The cost for each copy is $10. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

This **Federal Register** document is also available from the **Federal Register** online database through GPO access, a service of the U.S. Government Printing Office. The Web site address is *http://www.access.gpo.gov/nara/index.html*.

I. Background

A. Overview

We are publishing this final rule with comment period to address the issues of manufacturer recordkeeping requirements and price recalculations under the Medicaid drug rebate program. We decided to issue a final rule with comment period rather than a final rule to give interested parties an additional opportunity to provide comments on these provisions. We believe the additional comment period is appropriate given the time that has elapsed between the publication of the September 19, 1995 proposed rule (60 FR 48442) and the publication of this rule.

We are publishing this rule to address concerns regarding the administration of the Medicaid drug rebate program for manufacturers and States. In the absence of a regulatory recordkeeping requirement, manufacturers are in effect required to retain pricing data for an indefinite period. The 3-year recordkeeping requirement will enable manufacturers to close their books within a reasonable timeframe. This recordkeeping requirement will mirror the 3-year timeframe established for States to retain records at 42 CFR 433.32.

We believe establishing a timeframe for manufacturers to submit revised pricing data to us also streamlines the administration of the Medicaid drug rebate program. Due to recalculations involving hundreds of millions of State and Federal Medicaid dollars and over 10 years of paperwork, we believe it is essential that a standard timeframe be established within which manufacturers and CMS, or States, are permitted to submit revised drug prices. This timeframe will also assist States that would otherwise be required to retain their drug utilization data indefinitely to verify changes in rebate amounts resulting from retroactive manufacturer recalculations. Therefore, as of the effective date of this rule, manufacturers will have 12 quarters from the quarter in which the data were originally due to submit revised pricing data to us. This timeframe is described in further detail in section IV of the preamble, ''Provisions of the Final Rule.''

In this rule, we intend the terms ''manufacturer,'' ''average manufacturer price (AMP),'' and ''best price (BP)'' to have the same meaning as described and set forth in the national drug rebate agreements signed by manufacturers and the Secretary (on behalf of States). We also have used these terms in guidance documents that we have issued over the years pertaining to the Medicaid drug rebate program. We do not intend to alter these definitions in this rule. Rather, the primary purpose of this rule is to establish procedural requirements pertaining to manufacturer recordkeeping and pricing changes. We will set forth regulatory definitions of these terms in a subsequent document we will publish in the **Federal Register**.

B. 1995 Proposed Rule

On September 19, 1995, we published a proposed rule (60 FR 48442) in the **Federal Register** that specified requirements for State Medicaid agencies and conditions under which Federal payments would be made under the Medicaid program for covered outpatient drugs. The rule also specified the conditions for approval and renewal of rebate agreements with drug manufacturers participating in the Medicaid program.

In the September 1995 proposed rule, we also discussed prior period adjustments and pricing changes. A prior period adjustment is a change in the unit rebate amount based on a manufacturer's revised AMP or BP data for a prior rebate period after that rebate period's pricing data have been submitted to us. The prior period adjustments generally consist of a manufacturer's changes to pricing data resulting from sales data not being available before pricing submissions to us or changes in the methodology used to establish AMP or BP. We use the manufacturer's pricing data to generate the unit rebate amount for each 9-digit national drug code, which States use to calculate rebate amounts due from manufacturers. Any changes to a manufacturer's AMP or BP result in changes to the unit rebate amount and rebates due from the manufacturer. Thus, the prior period adjustments are necessary to correct rebate amounts that are owed by manufacturers or credits due to manufacturers.

Since the publication of the September 1995 proposed rule, States have expressed concerns regarding pricing changes and recalculations under the Medicaid drug rebate program. We have received requests for pricing recalculations for drug prices submitted as far back as 1991. The statute does not specifically provide for such recalculations; however, we have permitted the recalculations where revisions were made to conform to the statute or rebate agreement. Unfortunately, there is a significant burden on States and manufacturers to maintain pricing data and supporting documentation for timeframes dating back to 1991. We have seen a recent increase in the number of these requests and the dollar value of the recalculations. In addition, manufacturers have expressed concerns regarding recordkeeping burdens. In response to these concerns, we are finalizing the recordkeeping requirements and the time limit on pricing recalculations proposed in the September 1995 rule. We will address the remaining provisions of the September 1995 rule in a subsequent rule we will publish in the **Federal Register**.

C. Legislative History

Section 1927 of the Social Security Act (the Act) authorizes the Medicaid drug rebate program. Section 1927 of the Act was amended by section 4401 of the Omnibus Budget Reconciliation Act of 1990 (OBRA '90) and section 13602 of the Omnibus Budget Reconciliation Act of 1993 (OBRA '93). Under section 1927 of the Act, manufacturers that have entered into a national rebate agreement must provide each State Medicaid program with rebate period payments (or other periodic rebate payments, as determined by the Secretary).

D. Requirements for Manufacturer's Data

Section 1927(b) of the Act gives the Secretary the authority to publish regulations that establish manufacturer recordkeeping requirements and the time limit for manufacturer pricing changes. To implement these provisions, we will require that a manufacturer must retain pricing data for 3 years from the date the manufacturer reports that period's data to us. Although the statute sets forth requirements on data reported to us by manufacturers, it does not provide recordkeeping requirements for manufacturer data. In the national drug rebate agreement, we did not establish a timeframe during which records must be maintained. The 3-year time period comports with the requirements for the maintenance of records on State Medicaid expenditures imposed on States. Section 433.32 requires that States retain records for 3 years from the date of submission of a final expenditure report for Federal financial participation.

E. Manufacturer's Pricing Data

Section 1927(b)(3)(A)(i) requires that manufacturers submit pricing information no later than 30 days after the end of each quarter. However, it does not establish a time limitation regarding pricing changes. While we recognize the need to permit manufacturers to submit revised prices within a timeframe, States and manufacturers should be protected from potential liabilities resulting from no time limit. We will require that manufacturers submit changes to AMP or BP within 3 years from the date that period's data are due. The timeframe for pricing changes set forth in this final rule is more fully described in section IV of the preamble, ''Provisions of the Final Rule.''

II. Provisions of the Proposed Rule

In the September 19, 1995 proposed rule, we solicited comments on proposed requirements for State Medicaid agencies, the conditions under which Federal payments would be made under the Medicaid program for covered outpatient drugs, and the conditions for approval and renewal of rebate agreements with drug manufacturers. In this final rule with comment period, we are finalizing two of the provisions of the September 1995 proposed rule. We will address the remaining provisions of the September 1995 proposed rule and will publish a subsequent rule in the **Federal Register**.

In the September 1995 proposed rule, we proposed to add to part 447 a new subpart I entitled ''Payment for Outpatient Prescription Drugs Under Drug Rebate Agreements.'' Within that subpart, we proposed a new § 447.534(g) to establish a 3-year recordkeeping requirement for manufacturer data pertaining to AMP and BP calculations. We also proposed a new § 447.534(h) to establish a 3-year time limit for manufacturers to report revised AMP or BP to us.

III. Analysis of and Response to Public Comments on the September 19, 1995 Proposed Rule

We received 19 timely comments in response to the September 19, 1995 proposed rule. We received comments from State government officials and representatives of the pharmaceutical industry including manufacturers, pharmacists, attorneys, and consultants. Although we received comments on a variety of topics pertaining to the proposed rule, we are addressing only the comments that pertain to the manufacturer recordkeeping requirements and the 3-year limitation

on price recalculations set forth in this final rule with comment period. These comments and our responses are summarized below:

A. Manufacturer Recordkeeping Requirements

Comment: One commenter noted that the 3-year records retention standard will provide a useful records management timeframe.

Response: We agree; therefore, we are issuing this final rule with comment period to establish the 3-year recordkeeping requirements for manufacturers.

B. Time Limitation on Manufacturer Price Recalculations

Comment: One commenter expressed the opinion that the burden for calculating the amount of rebate adjustments should rest with the manufacturer when the adjustment results from changes to AMP or BP, rather than the State.

Response: The State has never been responsible for calculating the amount of rebate adjustments. The manufacturer is responsible for recalculating the amount of rebate adjustments.

Comment: One commenter noted the need to clarify the 3-year timeframe as it applies to prior period adjustments.

Response: We concur with the need to provide clarification. We define the 3-year limitation as equivalent to 12 quarters because the Medicaid drug rebate program operates on a quarterly basis. Pricing information is exchanged and processed on a quarterly basis and rebates are due and paid on a quarterly basis. Therefore, wherever we refer in this document to a 3-year timeframe for recalculations and pricing changes, we interpret it as 12 quarters from the quarter in which the data were due.

Comment: One commenter noted that 3 years is too long a timeframe for applying retroactive prior period adjustments and recommended that the allowed retroactive period not exceed 24 months.

Response: We recognize the potential burden for States and manufacturers to apply prior period adjustments during a 3-year retroactive timeframe, as opposed to a 24-month timeframe. Nevertheless, as we discussed earlier in the ''Background'' section of this preamble, we continue to believe that a 3-year timeframe is reasonable because it comports with requirements for maintenance of records on State Medicaid expenditures. Furthermore, it is consistent with the manufacturer's recordkeeping requirements set forth in this document.

Comment: One commenter noted that the 3-year prior period adjustment standard will provide a useful records management timeframe. Other commenters expressed appreciation for the 3-year time limitation, saying that it is essential to enable a manufacturer to close its books for a fiscal year.

Response: As discussed earlier in the ''Background'' section of this preamble, we agree.

IV. Provisions of the Final Rule

This final rule with comment period incorporates two of the provisions in the proposed rule issued on September 19, 1995. We will address the remaining provisions of the September 1995 proposed rule in a subsequent document we will publish in the **Federal Register**. This rule adopts the following provisions in the September 1995 proposed rule:

Under part 447, ''Payments for Services,'' we are adding a new subpart I, entitled ''Payment for Outpatient Prescription Drugs Under Drug Rebate Agreements.'' We are reserving § 447.500 through § 447.532 and § 447.536 through § 447.550.

Under § 447.534, ''Manufacturer reporting requirements,'' we are reserving paragraphs (a) through (f). We are redesignating paragraph (g) in the September 1995 proposed rule as paragraph (h) and are reserving the newly redesignated paragraph (g). We are also redesignating paragraph (h) as paragraph (i). We are revising newly redesignated paragraphs (h) and (i).

Under § 447.534(h), we are establishing a requirement that manufacturers must retain for 3 years from the date the manufacturer reports that rebate period's data to us, all records (written or electronic) of these data, and any other materials from which the calculations of the AMP and BP were derived. A manufacturer must retain records beyond the 3-year period if one or more of the following circumstances exist:

- The records are the subject of an audit or of a government investigation of which the manufacturer is aware related to average manufacturer price or best price.
- The audit findings or investigation related to the AMP and BP have not been resolved.

If the audit findings or investigation have been resolved, manufacturers are not required to retain historical pricing data that fall outside the 3-year recordkeeping requirement. We want to clarify that § 447.534(h) was not designed to address recordkeeping requirements when a manufacturer is the subject of an audit or government investigation by the Office of Inspector General (OIG) or any other government entity. In the September 1995 proposed rule, we proposed requiring manufacturers to retain data beyond the 3-year timeframe if the records are the subject of an audit. Because we did not specifically address OIG investigations in the September 1995 proposed rule, we want to clarify this point in this final rule. Therefore, we are revising § 447.534(h) from the language in the September 1995 proposed rule to specify that manufacturers must retain data beyond 3 years if the records are the subject of an audit or a government investigation.

Under § 447.534(i), we are establishing a 3-year time limitation for a manufacturer to submit drug pricing changes. We define the 3-year period as 12 quarters. Therefore, we require that the manufacturer report to us changes to AMP or BP for a period not to exceed 12 quarters from the quarter in which the data were due.

The terms of the Medicaid Drug Rebate Agreement require manufacturers to submit pricing data for each calendar quarter no later than 30 days after the end of that quarter. For example, for data pertaining to the second quarter of 2003 (April 1, 2003 through June 30, 2003), the due date for submitting pricing data is July 30, 2003, which falls during the third quarter of 2003.

For purposes of implementing the 3-year timeframe for reporting pricing changes to us, we define 3 years as 12 quarters from the quarter in which the data were due. For example, data from the second quarter of the year 2000 (April 1, 2000 through June 30, 2000) were due July 30, 2000 (the third quarter of 2000). Twelve quarters from the third quarter of 2000 (the quarter in which the data were due) is the third quarter of 2003. Based on the due date for submitting pricing data, data submitted during the third quarter of 2003 were due on July 30, 2003. Therefore, pricing changes pertaining to data from the second quarter of 2000 were due to us no later than July 30, 2003.

As with all pricing data submitted under the Medicaid drug rebate program, if CMS, the Office of Inspector General, or another authorized government agency reviews a manufacturer's pricing data and determines that adjustments or revisions are necessary, irrespective of the quarter, the manufacturer is bound under the Medicaid Drug Rebate Agreement to comply with that determination.

V. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the ''DATES'' section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

VI. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

Under paragraph (h) of § 447.534, there are two recordkeeping requirements:

(1) A manufacturer must retain records (written or electronic) for 3 years from the date the manufacturer reports that rebate period's data to CMS. The records must include these data and any other materials from which the calculations of the average manufacturer price and best price are derived, including a record of any assumptions made in the calculations.

(2) A manufacturer must retain records beyond the 3-year period if one or more of the following circumstances exist: (A) The records are the subject of an audit or of a government investigation of which the manufacturer is aware related to average manufacturer price or best price, and (B) The audit findings or investigation related to the average manufacturer price and best price have not been resolved.

Under paragraph (i), there is a reporting requirement: A manufacturer must report to CMS changes to average manufacturer price or best price for a period not to exceed 12 quarters from the quarter in which the data were due.

These information collection requirements already exist. The recordkeeping requirements are in the contract between the drug manufacturer and CMS and are in any event usual and customary business practices. The regulation specifies timeframes; however, under the contract, we did not establish a timeframe.

The reporting requirement is currently approved under OMB number 0938–0578. The regulation merely adds a time limit in which the manufacturer must report changes; currently, there is none.

If you comment on these information collection and recordkeeping requirements, please mail copies directly to the following:

Centers for Medicare & Medicaid Services, Office of Strategic Operations and Regulatory Affairs, Regulations Development and Issuances Groups, Attn.: Julie Brown, CMS–2175–FC, Room C5–14–03, 7500 Security Boulevard, Baltimore, MD 21244–1850; and

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn.: Brenda Aguilar, CMS Desk Officer.

VII. Regulatory Impact Analysis

A. Overall Impact

We have examined the impacts of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 16, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132.

Executive Order 12866 (as amended by Executive Order 13258, which merely assigns responsibility of duties) directs agencies to assess all costs and benefits of available regulatory alternatives and, if 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 major rules with economically significant effects ($100 million or more in any 1 year). We believe this rule will have an economically significant effect. We believe the rule will save $90 million annually over the next 5 years ($50 million Federal savings and $40 million State savings as shown in the table below). This figure represents 0.4 percent of total Medicaid drug expenditures in Federal fiscal year 2002. We consider this rule to be a major rule.

STATE AND FEDERAL SAVINGS OVER 5 YEARS

FY	2004	2005	2006	2007	2008
State	*$40,000	$40,000	$40,000	$40,000	$40,000
Federal	$50,000	$50,000	$50,000	$50,000	$50,000

*Note: Figures are in thousands.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $6 million to $29 million or less in any 1 year. For purposes of the RFA, pharmaceutical manufacturers with 750 or fewer employees are considered small businesses according to the Small Business Administration's size standards matched to North American Industry Classification System, effective October 1, 2002, *http://www.sba.gov/size/sizetable2002.html).* Use of the Small Business Administration's size standards matched to North American Industry Classification System is in compliance with the Small Business Administration's regulation that set forth size standards for health care industries at 65 FR 69432. Individuals and States are not included in the definition of a small entity. This rule will not have a significant impact on small businesses.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a

significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. This rule will not have a significant impact on small rural hospitals because the provisions contained herein do not pertain to hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. We anticipate this rule will impact State governments through increased Medicaid savings, in the aggregate, of $40 million per year. We anticipate this rule will impact the private sector, in the aggregate, by less than $110 million. We anticipate this rule will cost drug manufacturers, in the aggregate, $90 million per year.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. We do not anticipate this rule will impose direct requirement costs on State governments.

B. Anticipated Effects

1. Effects on Drug Manufacturers

We anticipate the rule will cost drug manufacturers $90 million in the aggregate. To derive this estimate, we examined the rebate adjustment data from several States for the four quarters from the third quarter of 2001 through the second quarter of 2002. We separated the data from adjustments for each quarter into two parts:

- Adjustments over the previous 12 quarters; and
- Adjustments beyond the previous 12 quarters. From those data, we estimated the percentage of total rebate adjustments within 12 quarters nationally. We then projected what percentage of total adjustments would not occur given the 12-quarter limit. Then we estimated the national rebate adjustments by quarter by calculating the adjustments as a percentage of total rebates by State and multiplying that by the total national rebates. We then multiplied the projected total national rebate adjustments by the projected percentage of rebates that would not occur within 12 quarters to estimate the total impact of the proposal. Over the four quarters of data (third quarter of 2001 through the second quarter of 2002), we found that that resulted in approximately $90 million.

The estimated number of drug manufacturers currently participating in the Medicaid Drug Rebate Program is approximately 550. As previously indicated, businesses with 750 employees or fewer are considered small businesses. At this time, we are unable to determine how many of the 550 drug manufacturers have 750 or fewer employees. No single manufacturer will be affected significantly by this rule. As a group, the participating drug manufacturers will probably have a mixed reaction to this rule. We anticipate that some drug manufacturers will likely object to a narrowing of their window of opportunity to submit pricing changes to us. We are unable to quantitatively address the burden to manufacturers with respect to recordkeeping. Absent this rule, manufacturers are in effect required to retain their pricing and sales records indefinitely. Therefore, some of the manufacturers may be relieved that we are setting forth clear guidelines for records retention that closely mirror the industry standard for records retention.

We do not anticipate that this rule will adversely affect a drug manufacturer's participation in the Medicaid Drug Rebate program nor impact the current level of access and availability of prescription drugs for Medicaid beneficiaries. There is no impact to contractors or providers.

2. Effects on the Medicaid Program

We anticipate the rule will result in $50 million in Federal Medicaid savings and save State Medicaid programs $40 million in the aggregate. This rule will have a positive effect on the State Medicaid agencies. State Medicaid agencies are having difficulty fully funding their Medicaid programs. They will likely be relieved that we are setting forth a rule that will limit their fiscal vulnerability for manufacturers implementing retroactive pricing changes that result in greatly increased costs to their programs.

We are unable to quantitatively address the burden to States with respect to recordkeeping. Absent this rule, States are in effect required to retain drug utilization data indefinitely in order to verify the revised or reduced rebates from manufacturers attributable to retroactive pricing changes. Therefore, we expect that a majority of the States will be relieved that we are setting forth clear guidelines for manufacturer records retention.

This rule will not adversely affect a State's ability to obtain manufacturers rebates nor impact the current level of access and availability of prescription drugs for Medicaid beneficiaries. There is no impact to Medicaid providers or contractors.

C. Alternatives Considered

Delay Publication of This Final Rule

We considered not publishing this final rule. However, we believe this rule is necessary to address the burden to States and manufacturers with respect to recordkeeping in the Medicaid drug rebate program. We chose to issue this rule given the concerns repeatedly expressed by manufacturers and States regarding the recordkeeping requirements and the time limit on pricing changes.

Establish a Different Time Limitation

Another alternative would be to establish a longer or a shorter time limitation for recordkeeping and pricing changes. We did not choose a longer recordkeeping timeframe because it would not relieve a reasonable amount of the burden to manufacturers. In addition, a longer time limit on pricing changes would not sufficiently alleviate States' fiscal vulnerability with regard to retroactive pricing changes. We did not choose a shorter recordkeeping timeframe because it would create a disparity among Federal recordkeeping requirements. The 3-year timeframe set forth for both requirements mirrors existing records retention requirements for States. Furthermore, because the recordkeeping and pricing change provisions are interrelated, we believe the timeframes should be the same for these provisions.

D. Conclusion

For these reasons, we are not preparing analyses for either the RFA or section 1102(b) of the Act because we have determined, and we certify, that this rule will not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects in 42 CFR Part 447

Accounting, Administrative practice and procedure, Drugs, Grant programs-health, Health facilities, Health professions, Medicaid, Reporting and

recordkeeping requirements, Rural areas.

■ For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR chapter IV part 447 as set forth below:

PART 447—PAYMENTS FOR SERVICES

■ 1. The authority citation for part 447 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

■ 2. A new subpart I, consisting of § 447.500 through § 447.550, is added to read as follows:

Subpart I—Payment for Outpatient Prescription Drugs Under Drug Rebate Agreements

Sec.
447.500–447.532 [Reserved]
447.534 Manufacturer reporting requirements.
447.536–447.550 [Reserved]

Subpart I—Payment for Outpatient Prescription Drugs Under Drug Rebate Agreements

§§ 447.500–447.532 [Reserved]

§ 447.534 Manufacturer reporting requirements.

(a)–(g) [Reserved]

(h) *Recordkeeping requirements.* (1)(i) A manufacturer must retain records (written or electronic) for 3 years from the date the manufacturer reports that rebate period's data to CMS. The records must include these data and any other materials from which the calculations of the average manufacturer price and best price are derived, including a record of any assumptions made in the calculations.

(ii) A manufacturer must retain records beyond the 3-year period if one or more of the following circumstances exist:

(A) The records are the subject of an audit or of a government investigation of which the manufacturer is aware related to average manufacturer price or best price.

(B) The audit findings or investigation related to the average manufacturer price and best price have not been resolved.

(2) [Reserved]

(i) *Timeframe for reporting revised average manufacturer price or best price.* A manufacturer must report to CMS revisions to average manufacturer price or best price for a period not to exceed 12 quarters from the quarter in which the data were due.

(ii) [Reserved]

§§ 447.536–447.550 [Reserved]

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

Dated: January 16, 2003.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Approved: April 29, 2003.

Tommy G. Thompson,

Secretary.

Editorial Note: This document was received in the Office of the Federal Register on August 19, 2003.

[FR Doc. 03–21548 Filed 8–28–03; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket No. FEMA–7815]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATES: The effective date of each community's suspension is the third date (''Susp.'') listed in the third column of the following tables.

ADDRESSES: If you wish to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

FOR FURTHER INFORMATION CONTACT: Mike Grimm, Mitigation Division, 500 C Street, SW.; Room 412, Washington, DC 20472, (202) 646–2878.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the National Flood Insurance Program, 42 U.S.C. 4001 *et seq.*; unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59 *et seq.* Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification

addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless they take remedial action.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp.; p. 252.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp.; p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

■ Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

■ 1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

§ 64.6 [Amended]

■ 2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date authorizataion/cancellation of sale or flood insuranc ein community	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Region				
Pennsylvania:				
Bedminster, Township of, Bucks County.	421049	February 5, 1976, Emerg.; December 1, 1983. Reg.; September 3, 2003, Susp.	Sept. 3, 2003	Sept. 3, 2003.
Plumstead, Township of, Bucks County	420199	February 25, 1973, Emerg.; September 29, 1978, Reg.; September 3, 2003, Susp.	.....do	Do.
Region VII				
Missouri: Denver, Village of, Worth County	290453	January 25, 1977, Emerg.; September 4, 1985, Reg.; September 3, 2003, Susp.	.....do	Do.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Dated: August 22, 2003.

Anthony S. Lowe,

Mitigation Division Director, Emergency Preparedness and Response Directorate.

[FR Doc. 03–22071 Filed 8–28–03; 8:45 am]

BILLING CODE 6718–05–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–2709, MB Docket No. 03–110, RM–10700]

Digital Television Broadcast Service; Conway, SC

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of the South Carolina Educational Television Commission, substitutes DTV channel *9 for DTV channel *58 at Conway, South Carolina. *See* 68 FR 28806, May 27, 2003. DTV channel *9 can be allotted to Conway, South Carolina, in compliance with the principal community coverage requirements of Section 73.625(a) at reference coordinates 33–56–58 N. and 79–06–31 W. with a power of 20, HAAT of 250.2 meters and with a DTV service population of 619 thousand. With this action, this proceeding is terminated.

DATES: Effective October 14, 2003.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 03–110, adopted August 20, 2003, and released August 27, 2003. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

■ Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

■ 1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.622 [Amended]

■ 2. Section 73.622(b), the Table of Digital Television Allotments under South Carolina, is amended by removing

DTV channel *58 and adding DTV channel *9 at Conway.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 03–22170 Filed 8–28–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Part 1137

[STB Ex Parte No. 637 (Sub-No. 1)]

Removal of Divisions of Revenue Regulations

AGENCY: Surface Transportation Board, DOT.

ACTION: Final rule.

SUMMARY: The Surface Transportation Board (Board) is removing its regulations concerning divisions of revenue proceedings because of changes in the statute and the infrequency of divisions of revenue complaints.

EFFECTIVE DATE: This rule is effective on September 28, 2003.

FOR FURTHER INFORMATION CONTACT: John Sado, (202) 565–1661. [Federal Information Relay Service for the hearing impaired: 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: On May 6, 2003, at 68 FR 23947–48,[1] the Board published a notice of proposed rulemaking (NPR) in this proceeding seeking comments on the Board's proposal to remove the regulations at 49 CFR 1137.1 concerning divisions of revenue cases between carriers participating in a joint rate. The NPR indicated that the regulations were issued in response to the enactment of the Railroad Revitalization and Regulatory Reform Act of 1976 (4R Act). The 4R Act amended former section 15(6) of the Interstate Commerce Act by adding provisions that would expedite the handling of divisions of revenue cases. In response, the Interstate Commerce Commission (ICC) issued the original divisions of revenue rules in *Expeditious Handling of Divisions of Revenue Cases,* 353 I.C.C. 349 (1976).[2] As noted in the notice of proposed rulemaking, section 15(6) was recodified at former 49 U.S.C. 10705, which was later modified by the Staggers Rail Act of 1980. Former section 10705 in general required that evidentiary proceedings in cases brought by complaint be completed in 9 months and a final decision be issued within 180 days after the close of the record.[3]

The NPR noted that, under the ICC Termination Act of 1995, Pub. L. 104–88, 109 Stat. 803 (1995), section 10705 had been modified. Although the Board retains jurisdiction over divisions of joint rates, the provision for the filing of a notice of intent and the deadlines for gathering evidence and issuing a final decision have been removed.

In proposing to remove the rules at section 1137.1, the Board stated that agency records indicated that there had not been a divisions of revenue complaint in over 20 years,[4] and, accordingly, retaining the regulations appeared to be administratively inefficient. Furthermore, the rules contained the notice of intent and deadline provisions that no longer had a statutory basis. The Board noted that the general rules for filing complaints at 49 CFR part 1111 appeared adequate for divisions complaints. Comments were sought on whether the rules should be retained, updated, or eliminated.

In response to the notice, the Board received one comment, from the Association of American Railroads (AAR). The AAR supports the proposal for the reasons expressed in the NPR. It submits that the Board's current general complaint rules are sufficient for any potential divisions complaint.

The regulations at 49 CFR 1137.1 concerning divisions of revenue cases will be removed. It would be administratively inefficient to retain rules that are outdated and have not been used in over 20 years where general complaint rules are in place. The only party responding to the NPR supports the elimination of the rules. Finally, parties in a prospective complaint can propose on a case-by-case basis to use any evidence they consider relevant, including the evidence referenced in the former guidelines.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

List of Subjects in 49 CFR Part 1137

Administrative practice and procedure, Railroads.

Decided: August 25, 2003.

By the Board, Chairman Nober.

Vernon A. Williams,

Secretary.

■ For the reasons set forth in the preamble, the Surface Transportation Board amends title 49, chapter X, of the Code of Federal Regulations as follows:

PART 1137—[REMOVED]

■ 1. Part 1137 consisting of § 1137.1 is removed.

[FR Doc. 03–22130 Filed 8–28–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AI93

Migratory Bird Hunting; Migratory Bird Hunting Regulations on Certain Federal Indian Reservations and Ceded Lands for the 2003–04 Early Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule prescribes special early season migratory bird hunting regulations for certain tribes on Federal Indian reservations, off-reservation trust lands, and ceded lands. This responds to tribal requests for U.S. Fish and Wildlife Service (hereinafter Service or we) recognition of their authority to regulate hunting under established guidelines. This rule allows the establishment of season bag limits and, thus, harvest at levels compatible with populations and habitat conditions.

DATES: This rule takes effect on September 1, 2003.

ADDRESSES: You may inspect comments received on the proposed special hunting regulations and tribal proposals during normal business hours in room 4107, Arlington Square Building, 4501 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Tina Chouinard, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, (318/201–0400), or Ron W. Kokel, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, (703/358–1967).

SUPPLEMENTARY INFORMATION: The Migratory Bird Treaty Act (MBTA) of July 3, 1918 (40 Stat. 755; 16 U.S.C. 703 *et seq.*), authorizes and directs the Secretary of the Department of the Interior, having due regard for the zones

[1] A corrected notice was served on May 8, 2003, and published in the **Federal Register** on May 14, 2003 (68 FR 25859).

[2] The regulations were originally issued at 49 CFR 1109.5. They were later redesignated at 49 CFR 1137.1 in *Revision of the Rules of Practice,* Ex Parte No. 55 (Sub-No. 55), 47 FR 49534 (Nov. 1, 1982).

[3] The ICC subsequently modified the regulations in section 1137.1 in *Revised Procedures for Divisions of Revenue Cases,* 367 I.C.C. 353 (1983).

[4] *Increases in Freight Rates and Charges*—1973, 365 I.C.C. 193 (1981).

of temperature and for the distribution, abundance, economic value, breeding habits, and times and lines of flight of migratory game birds, to determine when, to what extent, and by what means such birds or any part, nest, or egg thereof may be taken, hunted, captured, killed, possessed, sold, purchased, shipped, carried, exported, or transported.

In the August 8, 2003, **Federal Register** (68 FR 47424), we proposed special migratory bird hunting regulations for the 2003–04 hunting season for certain Indian tribes, under the guidelines described in the June 4, 1985, **Federal Register** (50 FR 23467). The guidelines respond to tribal requests for Service recognition of their reserved hunting rights, and for some tribes, recognition of their authority to regulate hunting by both tribal members and nonmembers on their reservations. The guidelines include possibilities for:

(1) On-reservation hunting by both tribal members and nonmembers, with hunting by non-tribal members on some reservations to take place within Federal frameworks but on dates different from those selected by the surrounding State(s);

(2) On-reservation hunting by tribal members only, outside of usual Federal frameworks for season dates and length, and for daily bag and possession limits; and

(3) Off-reservation hunting by tribal members on ceded lands, outside of usual framework dates and season length, with some added flexibility in daily bag and possession limits.

In all cases, the regulations established under the guidelines must be consistent with the March 10–September 1 closed season mandated by the 1916 Migratory Bird Treaty with Canada.

In the May 6, 2003, **Federal Register** (68 FR 24324), we requested that tribes desiring special hunting regulations in the 2003–04 hunting season submit a proposal including details on:

(a) Harvest anticipated under the requested regulations;

(b) Methods that would be employed to measure or monitor harvest (such as bag checks, mail questionnaires, etc.);

(c) Steps that would be taken to limit level of harvest, where it could be shown that failure to limit such harvest would adversely impact the migratory bird resource; and

(d) Tribal capabilities to establish and enforce migratory bird hunting regulations.

No action is required if a tribe wishes to observe the hunting regulations established by the State(s) in which an Indian reservation is located. We have successfully used the guidelines since the 1985–86 hunting season. We finalized the guidelines beginning with the 1988–89 hunting season (August 18, 1988, **Federal Register** [53 FR 31612]).

Although the proposed rule included generalized regulations for both early- and late-season hunting, this rulemaking addresses only the early-season proposals. Late-season hunting will be addressed in late-September. As a general rule, early seasons begin during September each year and have a primary emphasis on such species as mourning and white-winged dove. Late seasons begin about October 1 or later each year and have a primary emphasis on waterfowl.

Population Status and Harvest

The following paragraphs provide a brief summary of information on the status and harvest of waterfowl excerpted from various reports. For more detailed information on methodologies and results, you may obtain complete copies of the various reports at the address indicated under **ADDRESSES** or from our Web site at *http://migratorybirds.fws.gov.*

Status of Ducks

Federal, provincial, and State agencies conduct surveys each spring to estimate the size of breeding populations and to evaluate the conditions of the habitats. These surveys are conducted using fixed-wing aircraft and encompass principal breeding areas of North America, and cover over 2.0 million square miles. The Traditional survey area is comprised of Alaska, Canada, and the northcentral United States, and includes approximately 1.3 million square miles. The Eastern survey area includes parts of Ontario, Quebec, Labrador, Newfoundland, Nova Scotia, Prince Edward Island, New Brunswick, New York, and Maine, an area of approximately 0.7 million square miles.

Breeding Ground Conditions

Habitat conditions for breeding waterfowl have greatly improved over last year in most of the prairie survey areas. These improved conditions are reflected in the numbers of ponds counted this year. The estimate of May ponds (U.S. Prairies and Prairie and parkland Canada combined) of 5.2 ± 0.2 [SE] million is 91% higher than last year ($P < 0.001$) and 7% above the long-term average ($P = 0.034$). Numbers of ponds in Canada (3.5 ± 0.2 million) and the United States (1.7 ± 0.1 million) were above 2002 estimates (+145% in Canada and +30% in the U.S.; $P < 0.001$). Canadian ponds were similar to the 1974–2002 average ($P = 0.297$), while ponds in the United States were 10% above the 1974–2002 average ($P = 0.037$).

Most prairie areas had warm temperatures and abundant rain this spring. Two areas of dramatic improvement over the past several years were south-central Alberta and southern Saskatchewan, where conditions went from poor to good after much-needed precipitation relieved several years of drought. Other areas in the prairies also improved compared with 2002, but to a lesser extent. However, years of dry conditions in parts of the United States and Canadian prairies, combined with agricultural practices, have reduced the quality and quantity of residual nesting cover and overwater nest sites in many regions. This could potentially limit production for both dabbling and diving ducks, if the warm spring temperatures and good moisture of 2003 do not result in rapid growth of new cover. Eastern South Dakota was the one area of the prairies where wetland habitat conditions were generally worse than last year, mostly due to low soil moisture, little winter precipitation, and no significant rains in April. This region received several inches of rain in May, but most birds had probably flown to other regions with more favorable wetland conditions.

In the northern part of the traditional survey area, habitat was in generally good condition and most areas had normal water levels. The exception was northern Manitoba, where low water levels in small streams and beaver ponds resulted in overall breeding habitat conditions that were only fair. Warm spring temperatures arrived much earlier this year than the exceptionally late spring last year. However, a cold snap in early May may have hurt early nesting species such as mallards and pintails, particularly in the northern Northwest Territories.

This spring, habitat conditions in the eastern survey area ranged from excellent to fair. In the southern and western part of this survey area, water and nesting cover were plentiful and temperatures were mild. Habitat quality decreased to the north, especially in northern and western Quebec, where many shallow marshes and bogs were either completely dry or reduced to mudflats. Beaver pond habitat was also noticeably less common than normal. To the east in Maine and most of the Maritime provinces, conditions were excellent, with adequate water and vegetation, and warm spring temperatures.

Weather and habitat conditions during the summer months can

influence waterfowl production. Good wetland conditions increase renesting and brood survival. July wetland conditions were rated fair to good over most of Prairie Canada, the Dakotas, and eastern Montana, but poor conditions prevailed in eastern South Dakota, south-central Manitoba, central Saskatchewan, and north-central Montana.

However, uniformly good conditions were found in the northern portions of the prairie provinces, and spring and summer rains made for good-to-excellent conditions along the border of Saskatchewan and eastern Montana. Results of the July Production Survey indicate that the number of ponds in Prairie Canada and the north-central United States combined was 2.5 ± 0.1 million ponds. This was 35 percent above last year's estimate of 1.8 ± 0.1 million ponds, but still 8 percent below the long-term average. July ponds in Prairie Canada were estimated to be 1.5 ± 0.1 million. This was 47 percent above last year's estimate of 1.0 ± 0.1 million but 16 percent below the long-term average. July ponds in the north-central United States were estimated at 1.0 ± 0.1 million. This was 21 percent above last year's estimate of 0.8± 0.1 million, but similar to the long-term average.

Breeding Population Status

In the traditional survey area, the total duck population estimate was 36.2 ± 0.7 million birds, 16 percent above ($P < 0.001$) last year's estimate of 31.2 ± 0.5 million birds, and 9 percent above ($P < 0.001$) the 1955–2002 long-term average. Mallard abundance was 7.9 ± 0.3 million birds, which was similar to last year's estimate of 7.5 ± 0.2 million birds ($P = 0.220$) and the long-term average ($P = 0.100$). Blue-winged teal abundance was estimated to be 5.5 ± 0.3 million birds. This value was 31 percent above last year's estimate of 4.2 ± 0.2 million birds ($P<0.001$) and 23 percent above the long-term average ($P = 0.001$). Estimates of shovelers (3.6 ± 0.2 million; +56%) and pintails (2.6 ± 0.2 million; +43%) were above 2002 estimates ($P < 0.001$), while estimates of gadwall (2.5 ± 0.2 million), wigeon (2.6 ± 0.2 million), green-winged teal (2.7 ± 0.2 million), redheads (0.6 ± 0.1 million), canvasbacks (0.6 ± 0.1 million), and scaup (3.7 ± 0.2 million) were unchanged from 2002 estimates ($P \geq 0.149$). Gadwall (+55%) and shovelers (+72%) were above their 1955–2002 averages ($P < 0.001$), as were green-winged teal (+46%; $P < 0.001$), which were at their second highest level since 1955. Pintails (-39%) and scaup (-29%) remained well below their long-term averages ($P < 0.001$). Wigeon, redheads, and canvasbacks were unchanged from their long-term averages ($P \geq 0.582$).

The eastern survey area comprises strata 51–56 and 62–69. The 2003 total duck population estimate for this area was 3.6 ± 0.3 million birds. This estimate is 17 percent lower than that of last year (4.4 ± 0.3 million birds, $P = 0.065$), but is similar to the 1996–2002 average ($P = 0.266$). Numbers of the individual species were similar to those of last year and the 1996–2002 average, with the exception of mergansers (0.6 ± 0.1 million), which decreased 30 percent from the 2002 estimate ($P = 0.035$).

Breeding Activity and Production

The number of broods in the north-central United States and Prairie Canada combined was 434,900, 23 percent higher than last year, and 7 percent below the long-term average. The number of broods in Prairie Canada and the north-central United States were 142 percent and 18 percent above last year's estimates, respectively. Brood indices in Prairie Canada were 24 percent below the long-term average, while brood counts were 31 percent above the long-term average in the north-central United States. Reflecting the lower concentration of ducks in the Canadian boreal forest this year compared to 2002, the brood index in this region was 72 percent lower than last year, and 76 percent below the long-term average. The late-nesting index, that is, the number of pairs and lone drakes without broods seen during July surveys, was 17 percent higher than last year, and 51 percent lower than the long-term average, for all areas combined. The late-nesting index was down 43 percent and 30 percent relative to last year in boreal Canada and Prairie Canada, respectively, but up 67 percent in the north-central United States. Late nesting indices were below the long-term average by 74 percent in boreal Canada, by 43 percent in the north-central United States, and by 46 percent in Prairie Canada.

Fall Flight Estimate

The size of the mid-continent mallard population, which comprises mallards from the traditional survey area, plus Michigan, Minnesota, and Wisconsin, was 8.8 million birds. This is similar to that of 2002 (8.6 million). The 2003 mid-continent mallard fall-flight estimate is 10.3 million birds, statistically similar to the 2002 estimate of 9.1 million birds. These estimates were based on revised mid-continent mallard population models and, therefore, differ from those previously published.

For further discussion on the implications of this information for this year's selection of the appropriate hunting regulations in the United States, see the August 19, 2003, **Federal Register** (68 FR 50016).

Status of Geese and Swans

We provide information on the population status and productivity of North American Canada geese (*Branta canadensis*), brant (*B. bernicla*), snow geese (*Chen caerulescens*), Ross's geese (*C. rossii*), emperor geese (*C. canagicus*), white-fronted geese (*Anser albifrons*) and tundra swans (*Cygnus columbianus*). The timing of snowmelt and goose nesting activities in most areas of the Arctic and subarctic was near average in 2003. Only Alaska's North Slope, Banks and adjacent Arctic Islands, and Akimiski Island reported substantially delayed nesting phenology this year. Although Alaska's Yukon-Kuskokwim Delta experienced an early spring snowmelt, we observed poor production of young by brant, cackling Canada geese, and emperor geese, likely due to low wetland levels and high fox predation. Conditions in 2003 were especially favorable for greater snow geese. Of the 25 populations for which current primary population indices were available, 8 populations (Atlantic Population, Aleutian, Dusky, and 3 temperate-nesting populations of Canada geese; Pacific Population White-fronted Geese; and Eastern Population Tundra Swans) displayed significant positive trends, and only Short Grass Prairie Population Canada geese displayed a significant negative trend over the most recent 10-year period. Forecasts for production of geese and swans in North America in 2003 varied regionally, but generally will be similar to or higher than in 2002.

Comments and Issues Concerning Tribal Proposals

For the 2003–04 migratory bird hunting season, we proposed regulations for 28 tribes and/or Indian groups that followed the 1985 guidelines and were considered appropriate for final rulemaking. Some of the proposals submitted by the tribes had both early- and late-season elements. However, as noted earlier, only those with early-season proposals are included in this final rulemaking; 19 tribes have proposals with early seasons. Comments and revised proposals received to date are addressed in the following section. The comment period for the proposed rule, published on August 8, 2003, closed on August 18, 2003. Because of the necessary brief comment period, we will respond to any

comments received on the proposed rule and/or these late-season regulations not responded to herein in the September late-season final rule.

We received two comments regarding the notice of intent published on May 6, 2003, which announced rulemaking on regulations for migratory bird hunting by American Indian tribal members. The Wisconsin Department of Natural Resources endorsed the 2003 seasons proposed by the Great Lakes Indian Fish and Wildlife Commission. The Michigan Department of Natural Resources commented on the establishment of tribal regulations on 1836 Treaty areas. Michigan believed it was premature of the Service to establish waterfowl regulations in areas covered by the 1836 Treaty until such time as the issue of 1836 Treaty hunting rights are affirmed by a court of competent jurisdiction.

Service Response: We have addressed this issue several times in the last few years. Our position is that the Federal Government does recognize the Treaty of 1836 as reserving to the affected tribes or bands hunting rights in the ceded territory. Further, the Federal courts have already confirmed the retention of reserved fishing rights in the territory ceded by the Treaty of 1836 in *United States* v. *Michigan,* 471 F.Supp. 192 (W.D. Mich. 1979), *remanded,* 623 F.2d 448 (6th Cir. 1980), *order modified,* 653 F.2d 277 (6th Cir. 1981), *cert. denied,* 454 U.S. 1124 (1981). That case and cases dealing with other treaty cessions, such as *Lac Courte Oreilles* v. *Wisconsin* (*i.e.*, both the 1837 and the 1842 Treaties), provide persuasive precedent for the belief that hunting as well as fishing rights were reserved by the tribes in the Treaty of 1836. We have not altered our position on this matter.

NEPA Consideration

NEPA considerations are covered by the programmatic document, ''Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88–14),'' filed with the Environmental Protection Agency on June 9, 1988. We published a Notice of Availability in the **Federal Register** on June 16, 1988 (53 FR 22582) and our Record of Decision on August 18, 1988 (53 FR 31341). Copies are available from the address indicated under **ADDRESSES**. In addition, an August 1985 Environmental Assessment titled ''Guidelines for Migratory Bird Hunting Regulations on Federal Indian Reservations and Ceded Lands'' is available under **ADDRESSES**.

Endangered Species Act Considerations

Section 7 of the Endangered Species Act, as amended (16 U.S.C. 1531–1543; 87 Stat. 884), provides that, ''The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act'' (and) shall ''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 * * *'' Consequently, we conducted consultations to ensure that actions resulting from these regulations would not likely jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitat. Findings from these consultations are included in a biological opinion and may have caused modification of some regulatory measures previously proposed. The final frameworks reflect any modifications. Our biological opinions resulting from this Section 7 consultation are public documents available for public inspection at the address indicated under **ADDRESSES**.

Executive Order 12866

Collectively, the rules covering the overall frameworks for migratory bird hunting are economically significant and have been reviewed by the Office of Management and Budget (OMB) under Executive Order 12866. This rule is a small portion of the overall migratory bird hunting frameworks and was not individually submitted and reviewed by OMB under Executive Order 12866. As such, a cost/benefit analysis was initially prepared in 1981. This analysis was subsequently revised annually from 1990–96, and then updated in 1998. We will update again in 2004. It is further discussed below under the heading Regulatory Flexibility Act. Results from the 1998 analysis indicate that the expected welfare benefit of the annual migratory bird hunting frameworks is on the order of $50 to $192 million. Copies of the cost/benefit analysis are available upon request from the address indicated under **ADDRESSES**.

Regulatory Flexibility Act

These regulations have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). We analyzed the economic impacts of the annual hunting regulations on small business entities in detail as part of the 1981 cost-benefit analysis discussed under Executive Order 12866. This analysis was revised annually from 1990–95. In 1995, the Service issued a Small Entity Flexibility Analysis (Analysis). The Analysis was subsequently updated in 1996 and 1998 and will be updated again in 2004. The primary source of information about hunter expenditures for migratory game bird hunting is the National Hunting and Fishing Survey, which is conducted at 5-year intervals. The 1998 Analysis was based on the 1996 National Hunting and Fishing Survey and the U.S. Department of Commerce's County Business Patterns, from which it was estimated that migratory bird hunters would spend between $429 million and $1.084 billion at small businesses in 2003. Copies of the Analysis are available upon request from the address indicated under **ADDRESSES**.

Small Business Regulatory Enforcement Fairness Act

This rule is a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. For the reasons outlined above, this rule has an annual effect on the economy of $100 million or more. However, because this rule establishes hunting seasons, we do not plan to defer the effective date under the exemption contained in 5 U.S.C. 808 (1) and this rule will be effective immediately.

Energy Effects—Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. While this rule is a significant regulatory action under Executive Order 12866, it is not expected to adversely affect energy supplies, distribution, or use. Therefore, it is not a significant energy action and no Statement of Energy Effects is required.

Paperwork Reduction Act

We examined these regulations under the Paperwork Reduction Act of 1995. We utilize the various recordkeeping and reporting requirements imposed under regulations established in 50 CFR part 20, Subpart K, in the formulation of migratory game bird hunting regulations. Specifically, OMB has approved the information collection requirements of the Migratory Bird Harvest Information Program and assigned clearance number 1018–0015 (expires 10/31/2004). This information is used to provide a sampling frame for voluntary national surveys to improve

our harvest estimates for all migratory game birds in order to better manage these populations. OMB has also approved the information collection requirements of the Sandhill Crane Harvest Questionnaire and assigned control number 1018–0023 (expires 10/31/2004). The information from this survey is used to estimate the magnitude and the geographical and temporal distribution of harvest, and the portion it constitutes of the total population. A Federal agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Unfunded Mandates Reform Act

We have determined and certify, in compliance with the requirements of the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not ''significantly or uniquely'' affect small governments, and will not produce a Federal mandate of $100 million or more in any given year on local or State government or private entities. Therefore, this proposed rule is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

Civil Justice Reform—Executive Order 12988

The Department, in promulgating this proposed rule, has determined that this rule will not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.

Takings Implication Assessment

In accordance with Executive Order 12630, these rules, authorized by the MBTA, do not have significant takings implications and do not affect any constitutionally protected property rights. These rules will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, these rules allow hunters to exercise privileges that would be otherwise unavailable; and, therefore, reduce restrictions on the use of private and public property.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the MBTA. Annually, we prescribe frameworks from which the States make selections and employ guidelines to establish special regulations on Federal Indian reservations and ceded lands. We develop the frameworks in a cooperative process with the States and the Flyway Councils. This process allows States to participate in the development of frameworks from which they will ultimately make season selections, thereby having an influence on their own regulations. This process preserves the ability of the States and Tribes to determine which seasons meet their individual needs. Further, any State or Tribe may be more restrictive than the Federal frameworks at any time. These rules do 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. Therefore, in accordance with Executive Order 13132, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Government-to-Government Relationship With Tribes

Due to the migratory nature of certain species of birds, the Federal government has been given responsibility over these species by the MBTA. Thus, 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, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects on Indian trust resources. However, by virtue of the tribal proposals received in response to the May 6, 2003, request for proposals and the August 8, 2003, proposed rule, we have consulted with all the tribes affected by this rule.

Regulations Promulgation

The rulemaking process for migratory game bird hunting must, by its nature, operate under severe time constraints. However, we intend that the public be given the greatest possible opportunity to comment on the regulations. Thus, when the preliminary proposed rulemaking was published, we established what we believed were the longest periods possible for public comment. In doing this, we recognized that when the comment period closed, time would be of the essence. That is, if there were a delay in the effective date of these regulations after this final rulemaking, the tribes would have insufficient time to communicate these seasons to their member and non-tribal hunters and to establish and publicize the necessary regulations and procedures to implement their decisions. We, therefore, find that ''good cause'' exists, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act, and these regulations will take effect immediately upon publication.

Therefore, under the authority of the Migratory Bird Treaty Act of July 3, 1918, as amended (40 Stat. 755; 16 U.S.C. 703 *et seq.*), we prescribe final hunting regulations for certain tribes on Federal Indian reservations (including off-reservation trust lands), and ceded lands. The regulations specify the species to be hunted and establish season dates, bag and possession limits, season length, and shooting hours for migratory game birds.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

■ Accordingly, part 20, subchapter B, chapter I of Title 50 of the Code of Federal Regulations is amended as follows:

PART 20—[AMENDED]

■ 1. The authority citation for part 20 continues to read as follows:

Authority: 16 U.S.C. 703–712 and 16 U.S.C. 742 a–j, Pub L. 106–108.

(**Note:** The following hunting regulations provided for by 50 CFR 20.110 will not appear in the Code of Federal Regulations because of their seasonal nature).

■ 2. Section 20.110 is revised to read as follows:

§ 20.110 Seasons, limits and other regulations for certain Federal Indian reservations, Indian Territory, and ceded lands.

(a) Colorado River Indian Tribes, Parker, Arizona (Tribal Members and Nontribal Hunters)

Doves

Season Dates: Open September 1, close September 15, 2003; then open November 15, 2003, close December 29, 2003.

Daily Bag and Possession Limits: For the early season, daily bag limit is 10 mourning or 10 white-winged doves, singly, or in the aggregate. For the late season, the daily bag limit is 10 mourning doves. Possession limits are twice the daily bag limits.

General Conditions: A valid Colorado River Indian Reservation hunting permit is required and must be in possession of all persons 14 years and older before taking any wildlife on tribal lands. Any person transporting game birds off the Colorado River Indian Reservation must have a valid transport declaration form. Other tribal regulations apply, and may

be obtained at the Fish and Game Office in Parker, Arizona.

(b) Crow Creek Sioux Tribe, Crow Creek Indian Reservation, Fort Thompson, South Dakota (Tribal Members and Nontribal Hunters)

Sandhill Cranes

Season Dates: Open September 13, close October 19, 2003.

Daily Bag Limit: Three sandhill cranes.

Permits: Each person participating in the sandhill crane season must have a valid Federal sandhill crane hunting permit in their possession while hunting.

Doves

Season Dates: Open September 1, close October 30, 2003.

Daily Bag Limit: 15 mourning doves.

General Conditions: The possession limit is twice the daily bag limit. Tribal and nontribal hunters must comply with basic Federal migratory bird hunting regulations in 50 CFR part 20 regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or over must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the stamp face. Special regulations established by the Crow Creek Sioux Tribe also apply on the reservation.

(c) Fond du Lac Band of Lake Superior Chippewa Indians, Cloquet, Minnesota (Tribal Members Only)

All seasons in Minnesota, 1854 and 1837 Treaty Zones:

Ducks and Mergansers

Season Dates: Open September 20, close December 1 2003.

Daily Bag Limit for Ducks: 18 ducks, including no more than 12 mallards (only 6 of which may be hens), 3 black ducks, 9 scaup, 6 wood ducks; 6 redheads, 3 pintails and 3 canvasbacks. Daily Bag Limit for Mergansers: 15 mergansers, including no more than 3 hooded mergansers.

Geese (All species)

Season Dates: Open September 2, close December 1, 2003.

Daily Bag Limit: 12 geese.

Coots and Common Moorhens (Gallinule)

Season Dates: Open September 20, close December 1, 2003.

Daily Bag Limit: 20 coots and common moorhens, singly or in the aggregate.

Sora and Virginia Rails

Season Dates: Open September 20, close December 1, 2003.

Daily Bag Limit: 25 sora and Virginia rails, singly or in the aggregate. There is no possession limit.

Common Snipe and Woodcock

Season Dates: Open September 2, close December 1, 2003.

Daily Bag Limit: Eight snipe and three woodcock.

General Conditions:

1. While hunting waterfowl, a tribal member must carry on his/her person a valid tribal waterfowl hunting permit.

2. Except as otherwise noted, tribal members will be required to comply with tribal codes that will be no less restrictive than the provisions of Chapter 10 of the Model Off-Reservation Code. Except as modified by the Service rules adopted in response to this proposal, these amended regulations parallel Federal requirements in 50 CFR part 20 as to hunting methods, transportation, sale, exportation, and other conditions generally applicable to migratory bird hunting.

3. Band members in each zone will comply with State regulations providing for closed and restricted waterfowl hunting areas.

4. There are no possession limits on any species, unless otherwise noted above. For purposes of enforcing bag and possession limits, all migratory birds in the possession or custody of band members on ceded lands will be considered to have been taken on those lands unless tagged by a tribal or State conservation warden as having been taken on-reservation. All migratory birds that fall on reservation lands will not count as part of any off-reservation bag or possession limit.

(d) Grand Traverse Band of Ottawa and Chippewa Indians, Suttons Bay, Michigan (Tribal Members Only)

All seasons in Michigan, 1836 Treaty Zone:

Ducks

Season Dates: Open September 15, 2003, close January 15, 2004.

Daily Bag Limit: 12 ducks, which may include no more than 2 pintail, 2 canvasback, 3 black ducks, 1 hooded merganser, 3 wood ducks, 3 redheads, and 6 mallards (only 3 of which may be hens).

Canada Geese

Season Dates: Open September 1, close November 30, 2003, and open January 1, 2004, close February 8, 2004.

Daily Bag Limit: Five geese.

Other Geese (white-fronted geese, snow geese, and brant)

Season Dates: Open September 20, close November 30, 2003.

Daily Bag Limit: Five geese.

Sora Rails, Common Snipe, and Woodcock

Season Dates: Open September 1, close November 14, 2003.

Daily Bag Limit: Ten rails, ten snipe, and five woodcock.

Mourning Doves

Season Dates: Open September 1, close November 14, 2003.

Daily Bag Limit: Ten mourning doves.

General Conditions: A valid Grand Traverse Band Tribal license is required and must be in possession before taking any wildlife. All other basic regulations contained in 50 CFR part 20 are valid. Other tribal regulations apply, and may be obtained at the tribal office in Suttons Bay, Michigan.

(e) Great Lakes Indian Fish and Wildlife Commission, Odanah, Wisconsin (Tribal Members Only)

Ducks

A. Wisconsin and Minnesota 1837 and 1842 Zones

Season Dates: Begin September 15 and end December 1, 2003.

Daily Bag Limit: 20 ducks, including no more than 10 mallards (only 5 of which may be hens), 4 black ducks, 4 redheads, 4 pintails, and 2 canvasbacks.

B. Michigan 1836 and 1842 Treaty Zones

Season Dates: Begin September 15 and end December 1, 2003.

Daily Bag Limit: 10 ducks, including no more than 5 mallards (only 2 of which may be hens), 2 black ducks, 2 redheads, 2 pintails, and 1 canvasback.

Mergansers: All Ceded Areas.

Season Dates: Begin September 15 and end December 1, 2003.

Daily Bag Limit: Five mergansers.

Geese: All Ceded Areas.

Season Dates: Begin September 1 and end December 1, 2003. In addition, any portion of the ceded territory which is open to State-licensed hunters for goose hunting after December 1 shall also be open concurrently for tribal members.

Daily Bag Limit: 10 geese in aggregate.

Other Migratory Birds: All Ceded Areas except where noted below.

A. Coots and Common Moorhens (Common Gallinules)

Season Dates: Begin September 15 and end December 1, 2003.

Daily Bag Limit: 20 coots and common moorhens (common gallinules), singly or in the aggregate.

B. Sora and Virginia Rails

Season Dates: Begin September 15 and end December 1, 2003.

Daily Bag Limit: 25 sora and Virginia rails singly, or in the aggregate.

Possession Limit: 25.

C. Common Snipe

Season Dates: Begin September 15 and end December 1, 2003.

Daily Bag Limit: Eight common snipe.

D. Woodcock

Season Dates: Begin September 2 and end December 1, 2003.

Daily Bag Limit: Five woodcock.

E. Mourning Doves: 1837 and 1842 Ceded Territories

Season Dates: Begin September 2 and end October 30, 2003.

Daily Bag Limit: Fifteen mourning doves.

General Conditions

A. All tribal members will be required to obtain a valid tribal waterfowl hunting permit.

B. Except as otherwise noted, tribal members will be required to comply with tribal codes that will be no less restrictive than the model ceded territory conservation codes approved by federal courts in the *Lac Courte Oreilles* v. *State of Wisconsin (Voigt)* and *Mille Lacs Band* v. *State of Minnesota cases.* The respective Chapters 10 of these model codes regulate ceded territory migratory bird hunting. They parallel federal requirements as to hunting methods, transportation, sale, exportation and other conditions generally applicable to migratory bird hunting. They also automatically incorporate by reference the federal migratory bird regulations adopted in response to this proposal.

C. Particular regulations of note include:

1. Nontoxic shot will be required for all off-reservation waterfowl hunting by tribal members.

2. Tribal members in each zone will comply with tribal regulations providing for closed and restricted waterfowl hunting areas. These regulations generally incorporate the same restrictions contained in parallel State regulations.

3. Possession limits for each species are double the daily bag limit, except on the opening day of the season, when the possession limit equals the daily bag limit, unless otherwise noted above. Possession limits are applicable only to transportation and do not include birds which are cleaned, dressed, and at a member's primary residence. For purposes of enforcing bag and possession limits, all migratory birds in the possession and custody of tribal members on ceded lands will be considered to have been taken on those lands unless tagged by a tribal or State conservation warden as taken on reservation lands. All migratory birds which fall on reservation lands will not count as part of any off-reservation bag or possession limit.

4. The baiting restrictions can be obtained at the Tribal office in the model ceded territory conservation codes. These codes will be amended to include language which parallels that in place for nontribal members as published in 64 FR 29804, June 3, 1999.

5. The shell limit restrictions of the model ceded territory conservation codes will be removed.

D. Michigan—Duck Blinds and Decoys. Tribal members hunting in Michigan will comply with tribal codes that contain provisions parallel to Michigan law regarding duck blinds and decoys.

(f) Kalispel Tribe, Kalispel Reservation, Usk, Washington (Tribal Members and Nontribal Hunters)

Nontribal Hunters on Reservation

Geese

Season Dates: Open September 1, 2003, close September 15, 2003.

Daily Bag Limits: 5 and 10, respectively.

Tribal Hunters Within Kalispel Ceded Lands

Ducks

Season Dates: Open September 15, 2003, close January 26, 2004.

Daily Bag Limit: 7 ducks, including no more than 2 female mallards, 1 canvasback, 1 pintail, 4 scaup, and 2 redheads.

Geese

Season Dates: Open September 1, 2003, close January 31, 2004.

Daily Bag Limit: 3 light geese and 4 dark geese. The daily bag limit is 2 brant and is in addition to dark goose limits.

General: Tribal members must possess a validated Migratory Bird Hunting and Conservation Stamp and a tribal ceded lands permit.

(g) Leech Lake Band of Ojibwe, Cass Lake, Minnesota (Tribal Members Only)

Ducks

Season Dates: Open September 13, close December 31, 2003.

Daily Bag Limits: 10 birds.

Geese

Season Dates: Open September 1, close December 31, 2003.

Daily Bag Limits: 10 geese.

General: Possession limits are twice the daily bag limits. Shooting hours are one-half hour before sunrise to one-half hour after sunset. Nontoxic shot is required. Use of live decoys, bait, and commercial use of migratory birds are prohibited. Waterfowl may not be pursued or taken while using motorized craft.

(h) Little River Band of Ottawa Indians, Manistee, Michigan (Tribal Members Only)

Canada Geese, White-fronted Geese, Snow Geese, Ross Geese, and Brant

Season Dates: Open September 1, close November 30, 2003, for all species, and open for Canada geese only, January 1, close February 7, 2004.

Daily Bag and Possession Limits: 5 Canada geese and a combination of 10 of all other species. The possession limit is twice the daily bag limit.

Rails, Snipe, and Woodcock

Season Dates: Open September 1, close November 14, 2003.

Daily Bag and Possession Limits: 10 rails, 10 snipe, and 5 woodcock. The possession limit is twice the daily bag limit.

Mourning Doves

Season Dates: Open September 15, close November 14, 2003.

Daily Bag and Possession Limits: 10 and 20 doves, respectively.

General:

A. All tribal members are required to obtain a valid tribal resource card and 2003–04 hunting license.

B. Except as modified by the Service rules adopted in response to this proposal, these amended regulations parallel all Federal regulations contained in 50 CFR part 20.

C. Particular regulations of note include:

(1) Nontoxic shot will be required for all waterfowl hunting by tribal members.

(2) Tribal members in each zone will comply with tribal regulations providing for closed and restricted waterfowl hunting areas. These regulations generally incorporate the same restrictions contained in parallel State regulations.

(3) Possession limits for each species are double the daily bag limit, except on the opening day of the season, when the possession limit equals the daily bag limit, unless otherwise noted above.

D. Tribal members hunting in Michigan will comply with tribal codes that contain provisions parallel to Michigan law regarding duck blinds and decoys.

(i) The Little Traverse Bay Bands of Odawa Indians, Petoskey, Michigan (Tribal Members Only)

Ducks

Season Dates: Open September 15, 2003, close January 20, 2004.

Daily Bag Limits: 12 ducks, including no more than 6 mallards (only 3 of which may be hens), 3 black ducks, 3 redheads, 3 wood ducks, 2 pintail, 1 hooded merganser, and 2 canvasback.

Canada Geese

Season Dates: Open September 1, 2003, close November 30, 2003, and open January 1, 2004, close February 7, 2004.

Daily Bag Limit: Five geese.

White-fronted Geese, Snow Geese, and Brant

Season Dates: Open September 1, close November 30, 2003.

Daily Bag Limit: 10 of each species.

Sora Rails, Snipe, and Mourning Doves

Season Dates: Open September 1, close November 14, 2003.

Daily Bag Limit: 10 of each species.

Woodcock

Season Dates: Open September 1, close November 14, 2003.

Daily Bag Limit: Five woodcock.

General: Possession limits are twice the daily bag limits.

(j) Makah Indian Tribe, Neah Bay, Washington (Tribal Members)

Band-Tailed Pigeons

Season Dates: Open September 1, 2003, close October 31, 2003.

Daily Bag Limit: Two band-tailed pigeons.

Ducks and Coots

Season Dates: Open September 15, 2003, close January 13, 2004.

Daily Bag Limit: Seven ducks including no more than one redhead and one canvasback. The seasons on wood duck and harlequin are closed.

Geese

Season Dates: Open September 15, 2003, close January 13, 2004.

Daily Bag Limit: Four. The seasons on Aleutian and dusky Canada geese are closed.

General

All other Federal regulations contained in 50 CFR part 20 would apply. The following restrictions are also proposed by the Tribe: (1) As per Makah Ordinance 44, only shotguns may be used to hunt any species of waterfowl. Additionally, shotguns must not be discharged within 0.25 miles of an occupied area; (2) Hunters must be eligible, enrolled Makah tribal members and must carry their Indian Treaty Fishing and Hunting Identification Card while hunting. No tags or permits are required to hunt waterfowl; (3) The Cape Flattery area is open to waterfowl hunting, except in designated wilderness areas, or within 1 mile of Cape Flattery Trail, or in any area that is closed to hunting by another ordinance or regulation; (4) The use of live decoys and/or baiting to pursue any species of waterfowl is prohibited; (5) Steel or bismuth shot only for waterfowl is allowed; the use of lead shot is prohibited; (6) The use of dogs is permitted to hunt waterfowl.

(k) Navajo Indian Reservation, Window Rock, Arizona (Tribal Members and Nonmembers).

Band-Tailed Pigeons

Season Dates: Open September 1, close September 30, 2003.

Daily Bag and Possession Limits: 5 and 10 pigeons, respectively.

Mourning Doves

Season Dates: Open September 1, close September 30, 2003.

Daily Bag and Possession Limits: 10 and 20 doves, respectively.

General Conditions: Tribal and nontribal hunters will comply with all basic Federal migratory bird hunting regulations in 50 CFR Part 20, regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or over must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the face. Special regulations established by the Navajo Nation also apply on the reservation.

(l) Oneida Tribe of Indians of Wisconsin, Oneida, Wisconsin (Tribal Members Only)

Geese

Season Dates: Open September 1, close November 22, 2003, and open December 1, close December 31, 2003.

Daily Bag and Possession Limits: Three and Six Canada geese, respectively. Hunters will be issued three tribal tags for geese in order to monitor goose harvest. An additional three tags will be issued each time birds are registered. A season quota of 150 birds is adopted. If the quota is reached before the season concludes, the season will be closed at that time.

Woodcock

Season Dates: Open September 13, close November 16, 2003.

Daily Bag and Possession Limits: 5 and 10 woodcock, respectively.

General Conditions: Tribal member shooting hours be one-half hour before sunrise to one-half hour after sunset. Nontribal members hunting on the Reservation or on lands under the jurisdiction of the Tribe must comply with all State of Wisconsin regulations, including season dates, shooting hours, and bag limits which differ from tribal member seasons. Tribal members and nontribal members hunting on the Reservation or on lands under the jurisdiction of the Tribe will observe all basic Federal migratory bird hunting regulations found in 50 CFR part 20, with the following exceptions: Tribal members are exempt from the purchase of the Migratory Waterfowl Hunting and Conservation Stamp (Duck Stamp); and shotgun capacity is not limited to three shells.

(m) Point No Point Treaty Tribes, Kingston, Washington (Tribal Members Only)

Ducks and Mergansers

Season Dates: Open September 15, 2003, close March 10, 2004.

Daily Bag and Possession Limits: Seven ducks, including no more than two hen mallards, one pintail, one canvasback, one harlequin, and two redheads. Possession limit is twice the daily bag limit.

Geese

Season Dates: Open September 15, 2003, close March 10, 2004.

Daily Bag and Possession Limits: Four geese, and may include no more than three light geese. The season on Aleutian Canada geese is closed. Possession limit is twice the daily bag limit.

Brant

Season Dates: Open November 1, 2003, close March 10, 2004.

Daily Bag and Possession Limits: Two brant. Possession limit is twice the daily bag limit.

Coots

Season Dates: Open September 15, 2003, close March 10, 2004.

Daily Bag Limits: 25 coots.

Mourning Doves

Season Dates: Open September 1, 2003, close March 10, 2004.

Daily Bag and Possession Limits: 10 and 20 doves, respectively.

Snipe

Season Dates: Open September 15, 2003, close March 10, 2004.

Daily Bag and Possession Limits: 10 and 20 snipe, respectively.

Band-Tailed Pigeon

Season Dates: Open September 1, 2003, close March 10, 2004.

Daily Bag and Possession Limits: 2 and 4, respectively.

General Conditions: All hunters authorized to hunt migratory birds on the reservation must obtain a tribal hunting permit from the respective tribe. Hunters are also required to adhere to a number of special regulations available at the tribal office.

(n) Squaxin Island Tribe, Squaxin Island Reservation, Shelton, Washington (Tribal Members Only)

Ducks

Season Dates: Open September 15, 2003, close January 15, 2004.

Daily Bag and Possession Limits: Five ducks, which may include only one canvasback. The season on harlequin ducks is closed. Possession limit is twice the daily bag limit.

Geese

Season Dates: Open September 15, 2003, close January 15, 2004.

Daily Bag and Possession Limits: Four geese, and may include no more than two snow geese. The season on Aleutian and Cackling Canada geese is closed. Possession limit is twice the daily bag limit.

Brant

Season Dates: Open September 15, close December 31, 2004.

Daily Bag and Possession Limits: Two and four brant, respectively.

Coots

Season Dates: Open September 15, 2003, close January 15, 2004.

Daily Bag Limits: 25 coots.

Snipe

Season Dates: Open September 15, 2003, and close January 15, 2004.

Daily Bag and Possession Limits: 8 and 16 snipe, respectively.

Band-Tailed Pigeons

Season Dates: Open September 1, close December 31, 2003.

Daily Bag and Possession Limits: 5 and 10 pigeons, respectively.

General Conditions: All tribal hunters must obtain a Tribal Hunting Tag and Permit from the Tribe's Natural Resources Department and must have the permit, along with the member's treaty enrollment card, on his or her person while hunting. Shooting hours are one-half hour before sunrise to one-half hour after sunset and steel shot is required for all migratory bird hunting. Other special regulations are available at the tribal office in Shelton, Washington.

(o) Tulalip Tribes of Washington, Tulalip Indian Reservation, Marysville, Washington (Tribal Members and Nontribal Hunters)

Tribal Members

Ducks (Including Coots and Mergansers)

Season Dates: Open September 15, 2003, and close February 29, 2004.

Daily Bag and Possession Limits: 7 and 14 ducks, respectively, except that bag and possession limits may include no more than 2 female mallards, 1 pintail, 4 scaup, and 2 redheads.

Geese

Season Dates: Open September 15, 2003, and close February 29, 2004.

Daily Bag and Possession Limits: 7 and 14 geese, respectively; except that the bag limits may not include more than 2 brant and 1 cackling Canada goose. The Tribes also set a maximum annual bag limit on ducks and geese for those tribal members who engage in subsistence hunting of 365 ducks and 365 geese.

Snipe

Season Dates: Open September 15, 2003, through February 29, 2004.

Daily Bag and Possession Limits: 8 and 16, respectively.

General Conditions: All hunters on Tulalip Tribal lands are required to adhere to shooting hour regulations set at one-half hour before sunrise to sunset, special tribal permit requirements, and a number of other tribal regulations enforced by the Tribe. Nontribal hunters 16 years of age and older, hunting pursuant to Tulalip Tribes' Ordinance No. 67, must possess a valid Federal Migratory Bird Hunting and Conservation Stamp and a valid State of Washington Migratory Waterfowl Stamp. Both stamps must be validated by signing across the face of the stamp. Other tribal regulations apply, and may be obtained at the tribal office in Marysville, Washington.

(p) Upper Skagit Indian Tribe, Sedro Woolley, Washington (Tribal Members Only)

Mourning Dove

Season Dates: Open September 1, end December 31, 2003.

Daily Bag and Possession Limits: 12 and 20 mourning doves, respectively.

Tribal members must have the tribal identification and harvest report card on their person to hunt. Tribal members hunting on the Reservation will observe all basic Federal migratory bird hunting regulations found in 50 CFR, except shooting hours would be one-half hour before official sunrise to one-half hour after official sunset.

(q) Wampanoag Tribe of Gay Head, Aquinnah, Massachusetts (Tribal Members Only)

Geese

Season Dates: Open September 13, 2003, and close September 27, 2003, and open November 1, 2003, close February 28, 2004.

Daily Bag Limits: 5 Canada geese during the first period, 3 during the second, and 15 snow geese.

General Conditions: Shooting hours are one-half hour before sunrise to sunset. Nontoxic shot is required. All basic Federal migratory bird hunting regulations contained in 50 CFR will be observed.

(r) White Earth Band of Ojibwe, White Earth, Minnesota (Tribal Members Only)

Ducks and Mergansers

Season Dates: Open September 13, close December 14, 2003.

Daily Bag Limit for Ducks: 10 ducks, including no more than 2 mallards and 2 canvasback.

Daily Bag Limit for Mergansers: Five mergansers, including no more than two hooded mergansers.

Geese

Season Dates: Open September 1, close December 14, 2003.

Daily Bag Limit: Five geese.

Coots

Season Dates: Open September 7, close December 31, 2003.

Daily Bag Limit: 20 coots.

Sora and Virginia Rails

Season Dates: Open September 7, close December 31, 2003.

Daily Bag Limit: 25 sora and Virginia rails, singly or in the aggregate.

Common Snipe and Woodcock

Season Dates: Open September 7, close December 31, 2003.

Daily Bag Limit: 10 snipe and 10 woodcock.

Mourning Dove

Season Dates: Open September 7, close December 31, 2003.

Daily Bag Limit: 25 doves.

General Conditions: Shooting hours are one-half hour before sunrise to one-

half hour after sunset. Nontoxic shot is required.

(s) White Mountain Apache Tribe, Fort Apache Indian Reservation, Whiteriver, Arizona (Tribal Members and Nontribal Hunters

Band-tailed Pigeons (Wildlife Management Unit 10 and areas south of Y–70 in Wildlife Management Unit 7, only)

Season Dates: Open September 3, close September 17, 2003.

Daily Bag and Possession Limits: Three and six pigeons, respectively.

Mourning Doves (Wildlife Management Unit 10 and areas south of Y–70 in Wildlife Management Unit 7, only)

Season Dates: Open September 3, close September 17, 2003.

Daily Bag and Possession Limits: 10 and 20 doves, respectively.

General Conditions: All nontribal hunters hunting band-tailed pigeons and mourning doves on Reservation lands shall have in their possession a valid White Mountain Apache Daily or Yearly Small Game Permit. In addition to a small game permit, all nontribal hunters hunting band-tailed pigeons must have in their possession a White Mountain Special Band-tailed Pigeon Permit. Other special regulations established by the White Mountain Apache Tribe apply on the reservation. Tribal and nontribal hunters will comply with all basic Federal migratory bird hunting regulations in 50 CFR Part 20 regarding shooting hours and manner of taking.

Dated: August 22, 2003.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 03–22119 Filed 8–28–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 021212307–3037–02; I.D. 081503B]

Fisheries of the Exclusive Economic Zone off Alaska; Reallocation of Pollock in the Bering Sea Subarea

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

ACTION: Reallocation.

SUMMARY: NMFS is reallocating projected unused amounts of Bering Sea subarea (BS) pollock from the incidental catch account to the directed fisheries. This action is necessary to allow the 2003 total allowable catch (TAC) of pollock to be harvested.

DATES: Effective August 26, 2003, until 2400 hrs, A.l.t., December 31, 2003.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

In accordance with § 679.20(a)(5)(i)(A)(*1*) and the American Fisheries Act (AFA) (Public Law 105–277, Division C, Title II), NMFS specified a pollock incidental catch allowance equal to 3.5 percent of the pollock total allowable catch after subtraction of the ten percent Community Development Quota reserve in the final 2003 harvest specifications for groundfish in the BSAI (68 FR 9907, March 3, 2003).

As of August 6, 2003, the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that approximately 21,887 metric tons (mt) of pollock remain in the incidental catch account. Based on projected harvest rates of other groundfish species and the expected incidental catch of pollock in those fisheries, the Regional Administrator has determined that 6,500 mt of pollock specified in the incidental catch account will not be necessary as incidental catch. Therefore, NMFS is apportioning the projected unused amount, 6,500 mt, of pollock from the incidental catch account to the directed fishing allowances established pursuant to § 679.20(a)(5)(i)(A). Pursuant to the pollock allocation requirements set forth in § 679.20(a)(5)(i), this transfer will increase the allocation to catcher vessels harvesting pollock for processing by the inshore component by 3,250 mt, to catcher/processors and catcher vessels harvesting pollock for processing by catcher processors in the offshore component by 2,600 mt and to catcher vessels harvesting pollock for processing by motherships in the offshore component by 650 mt. Pursuant to § 679.20(a)(5)(i)(A)(*4*), no less than 8.5 percent of the 2,600 mt allocated to catcher processors in the offshore component, 221 mt, will be available for harvest only by eligible catcher vessels delivering to listed catcher processors. Pursuant to § 679.20(a)(5)(i)(A)(*4*)(*iii*), an additional 13 mt or 0.5 percent of the catcher/processor sector allocation of pollock will be available to unlisted AFA catcher/processors.

Pursuant to § 679.20(a)(5)(i)(A)(*3*), Table 1 revises the final 2003 BS subarea allocations for the seven inshore catcher vessel pollock cooperatives that have been approved and permitted by NMFS and the open access AFA vessels for the 2003 fishing year consistent with this reallocation.

TABLE 1.—2003 BERING SEA SUBAREA INSHORE COOPERATIVE ALLOCATIONS

Cooperative name and member vessels	Sum of member vessel's official catch histories[1](mt)	Percentage of inshore sector allocation	Annual co-op allocation (mt)
Akutan Catcher Vessel Association ALDEBARAN, ARCTIC EXPLORER, ARCTURUS, BLUE FOX, CAPE KIWANDA, COLUMBIA,DOMINATOR, EXODUS, FLYING CLOUD, GOLDEN DAWN, GOLDEN PISCES, HAZEL LORRAINE, INTREPID EXPLORER, LESLIE LEE, LISA MELINDA, MAJESTY, MARCY J, MARGARET LYN, NORDIC EXPLORER, NORTHERN PATRIOT, NORTHWEST EXPLORER, PACIFIC RAM,	245,527	28.085%	182,845

TABLE 1.—2003 BERING SEA SUBAREA INSHORE COOPERATIVE ALLOCATIONS—Continued

Cooperative name and member vessels	Sum of member vessel's official catch histories[1](mt)	Percentage of inshore sector allocation	Annual co-op allocation (mt)
PACIFIC VIKING, PEGASUS, PEGGY JO, PERSEVERANCE, PREDATOR, RAVEN, ROYAL AMERICAN, SEEKER, SOVEREIGNTY, TRAVELER, VIKING EXPLORER			
Arctic Enterprise Association	36,807	4.210%	27,410
BRISTOL EXPLORER, OCEAN EXPLORER, PACIFIC EXPLORER			
Northern Victor Fleet Cooperative	73,656	8.425%	54,852
ANITA J, COLLIER BROTHERS, COMMODORE, EXCALIBUR II, GOLDRUSH, HALF MOON BAY, MISS BERDIE, NORDIC FURY, PACIFIC FURY, POSEIDON, ROYAL ATLANTIC, SUNSET BAY, STORM PETREL			
Peter Pan Fleet Cooperative	18,693	2.138%	13,921
AMBER DAWN, AMERICAN BEAUTY, ELIZABETH F, MORNING STAR, OCEAN LEADER, OCEANIC, PROVIDIAN, TOPAZ, WALTER N			
Unalaska Cooperative	106,737	12.209%	79,488
ALASKA ROSE, BERING ROSE, DESTINATION, GREAT PACIFIC, MESSIAH, MORNING STAR, MS AMY, PROGRESS, SEA WOLF, VANGUARD, WESTERN DAWN			
UniSea Fleet Cooperative	201,566	23.056%	150,107
ALSEA, AMERICAN EAGLE, ARGOSY, AURIGA, AURORA, DEFENDER, GUN-MAR, NORDIC STAR, PACIFIC MONARCH, SEADAWN, STARFISH, STARLITE			
Westward Fleet Cooperative	189,942	21.727%	141,451
A.J., ALASKAN COMMAND, ALYESKA, ARCTIC WIND, CAITLIN ANN, CHELSEA K, DONA MARTITA, FIERCE ALLEGIANCE, HICKORY WIND, OCEAN HOPE 3, PACIFIC CHALLENGER, PACIFIC KNIGHT, PACIFIC PRINCE, STARWARD, VIKING, WESTWARD I			
Open access AFA vessels	1,309	0.150%	975
Total inshore allocation	874,238	100%	651,047

[1] According to regulations at § 679.62 the individual catch history for each vessel is equal to the vessel's best 2 of 3 years inshore pollock landings from 1995 through 1997 and includes landings to catcher/processors for vessels that made 500 or more mt of landings to catcher/processors from 1995 through 1997.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is contrary to the public interest. This requirement is contrary to the public interest as it would delay the implementation of these measures in a timely fashion in order to allow full utilization of the pollock TAC, and therefore reduce the public's ability to use and enjoy the fishery resource.

The AA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is taken under 50 CFR 679.20, and is exempt from review under Executive Order 12866.

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

Dated: August 25, 2003.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–22181 Filed 8–26–03; 3:01 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 021212307–3037–02; I.D. 081403C]

Fisheries of the Exclusive Economic Zone Off Alaska; Atka Mackerel in the Bering Sea and Aleutian Islands

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

ACTION: Inseason adjustment; request for comments; openings and closures.

SUMMARY: NMFS issues an inseason adjustment opening the B season for Atka mackerel with gears other than jig in the Eastern Aleutian District (area 541) and the Bering Sea subarea of the Bering Sea and Aleutian Islands management area (BSAI) for 12 hours, from 2400 hrs, Alaska local time (A.l.t.), September 1, 2003, until 1200 hrs, A.l.t., September 2, 2003. This action is necessary to prevent exceeding the 2003 total allowable catch (TAC) of Atka mackerel in these areas and to allow the harvest limit area (HLA) fisheries in the Central (area 542) and Western (area 543) Aleutian Districts, which are by regulation scheduled to open 48 hours after the closure of the Eastern Aleutian District and Bering Sea subarea fishery, to begin at 1200 hrs. NMFS is also announcing the opening and closure dates of the first and second directed fisheries within the HLA in areas 542 and 543. These actions are necessary to prevent exceeding the B season HLA limits established for area 542 and area 543.

DATES: Opening of directed fishing for Atka mackerel with gears other than jig in the Eastern Aleutian District and the Bering Sea subarea: Effective 2400 hrs, A.l.t., September 1, 2003, until 1200 hrs, A.l.t., September 2, 2003. The first directed fisheries in the HLA in area 542 and area 543 open effective 1200 hrs, A.l.t., September 4, 2003. The first HLA fishery in area 542 and area 543 will remain open until 1200 hrs, A.l.t., September 10, 2003. The second directed fisheries in the HLA in area 542 and area 543 open effective 1200 hrs, A.l.t., September 12, 2003. The second HLA fishery in area 542 and area 543 will remain open until 1200 hrs, A.l.t., September 18, 2003. Comments must be received at the following address no later than 4:30 p.m., A.l.t., September 12, 2003.

ADDRESSES: Comments may be mailed to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Durall. Hand delivery or courier delivery of comments may be sent to NMFS at the Federal Building, 709 West 9th Street, Room 453, Juneau, AK 99801. Comments also may be sent via facsimile (fax) to (907) 586–7557. Comments will not be accepted if submitted via e-mail or Internet.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, (907) 586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2003 TAC of Atka mackerel for gears other than jig in the Eastern Aleutian District and the Bering Sea subarea is 9,753 metric tons (mt) as established by the final 2003 harvest specifications for Groundfish of the BSAI (68 FR 9907, March 3, 2003).

As of August 7, 2003, 2,100 mt remain in the 2003 Eastern Aleutian District and Bering Sea subarea TAC of Atka mackerel for gears other than jig. Current information shows the catching capacity of vessels expected to fish Atka mackerel in Statistical Area 541 of the BSAI is about 2,500 mt per day. Regulations at § 679.23(b) specifies that the time of all openings and closures of fishing seasons, other than the beginning and end of the calendar fishing year, is 1200 hrs, A.l.t. However, the Administrator, Alaska Region, NMFS, has determined that the B season allowance of the Atka mackerel TAC could be exceeded if a 24–hour fishery were allowed to occur. NMFS intends that the seasonal allowance not be exceeded and, therefore, cannot allow a 24–hour directed fishery.

NMFS, in accordance with § 679.25(a)(1)(i) and § 679.25(a)(2)(i)(A), is adjusting the B season for Atka mackerel in the Eastern Aleutian District and Bering Sea subarea by opening the fishery at 2400 hrs, A.l.t., September 1, 2003, and closing the fishery at 1200 hrs, A.l.t., September 2, 2003, at which time directed fishing for Atka mackerel will be prohibited. This action has the effect of opening the fishery for 12 hours.

Regulations at § 679.20(a)(8)(iii)(C) require the HLA fisheries in areas 542 and 543 open 48 hours after the seasonal closure of area 541. To provide for openings in the subsequent HLA fisheries at 1200 hrs, A.l.t., the fishery in the Eastern Aleutian District and Bering Sea subarea is being opened at 2400 hrs, A.l.t., September 1, 2003, and closed at 1200 hrs, A.l.t., September 2, 2003.

In accordance with § 679.25(a)(2)(iii), NMFS has determined that prohibiting directed fishing at 1200 hrs, A.l.t., September 2, 2003, after a 12–hour opening is the least restrictive management adjustment to achieve the 2003 Atka mackerel TAC in Eastern Aleutian District and Bering Sea subarea and will allow other fisheries to continue in noncritical areas and time periods. Pursuant to § 679.25(b)(2), NMFS has considered data regarding catch per unit of effort and rate of harvest in making this adjustment.

In accordance with § 679.20(a)(8)(iii)(C), the Regional Administrator is opening the first directed fisheries for Atka mackerel within the HLA in areas 542 and 543. These regulations require the opening to occur 48 hours after the closure of the area 541 Atka mackerel directed fishery. The Regional Administrator has established the opening date for the second HLA directed fisheries in areas 542 and 543 as 48 hours after the closure of the first HLA fisheries. NMFS is opening directed fishing for Atka mackerel in the HLA of areas 542 and 543 in accordance with the periods listed under the DATES section of this notice and as justified below.

In accordance with § 679.20(a)(8)(iii), vessels using trawl gear for directed fishing for Atka mackerel have previously registered with NMFS to fish in the HLA fisheries in areas 542 and/or 543. NMFS has randomly assigned each vessel to the directed fishery or fisheries for which they have registered. NMFS has notified each vessel as to which fishery each vessel has been assigned by NMFS. A notification of vessel assignments was published elsewhere in this issue.

In accordance with § 679.20(a)(8)(ii)(C)(1), the B season harvest limit of the seasonal TAC in areas 542 and 543 are 8,147 mt and 5,547 mt, respectively. Based on those seasonal apportionments and the proportion of the number of vessels in each platoon compared to the total number of vessels participating in the HLA directed fishery for area 542 or 543 during the B season, the harvest limit for each HLA directed fishery for areas 542 and 543 are as follows: For the first directed fishery in area 542, 4,074 mt; for the first directed fishery in area 543, 2,774 mt; for the second directed fishery in area 542, 4,074 mt; for the second directed fishery in area 543, 2,774 mt.

In accordance with § 679.20(a)(8)(iii)(E), the Regional Administrator has established the closure dates of the Atka mackerel directed fisheries in the HLA for areas 542 and 543 based on the amount of the harvest limit and the estimated fishing capacity of the vessels assigned to the respective fisheries. Consequently, NMFS is prohibiting directed fishing for Atka mackerel in the HLA of areas 542 and 543 in accordance with the periods listed under the DATES section of this notice.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is contrary to the public interest. This requirement is contrary to the public interest as it would delay the closure of these fisheries, lead to exceeding the TAC, and therefore reduce the public's ability to use and enjoy the fishery resource.

The AA for Fisheries, NOAA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

Without this inseason adjustment, NMFS could not allow the Atka mackerel TAC in the Eastern Aleutian District and Bering Sea subarea of the BSAI to be harvested in an expedient manner and in accordance with the regulatory schedule. Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until September 12, 2003.

This action is required by §§ 679.20 and 679.25 and is exempt from review under Executive Order 12866.

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

Dated: August 25, 2003.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–22191 Filed 8–28–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 021212307–3037–02; I.D. 081403D]

Fisheries of the Exclusive Economic Zone Off Alaska; Atka Mackerel Harvest Limit Area Fisheries in Areas 542 and 543

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

ACTION: Notification of Atka mackerel assignments.

SUMMARY: NMFS is notifying registered vessels of their assignments for the 2003 B season Atka mackerel fishery in harvest limit areas (HLA) 542 and/or 543 of the Aleutian Islands subarea of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to allow the harvest of the B season HLA limits established for area 542 and area 543.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), August 28, 2003, until 1200 hrs, A.l.t., November 1, 2003.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, (907) 586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

In accordance with § 679.20(a)(8)(iii)(A), 10 vessels using trawl gear for directed fishing for Atka mackerel have registered with NMFS to fish in the 2003 B season HLA fisheries in areas 542 and/or 543. In accordance with § 679.20(a)(8)(iii)(B) the Administrator, Alaska Region, has randomly assigned each vessel to the HLA directed fishery for Atka mackerel for which they have registered and is now notifying each vessel of its assignment.

Vessels assigned to participate in the first HLA directed fishery in area 542 and/or the second HLA directed fishery in area 543 in accordance with the vessel's registration under § 679.20(a)(8)(iii)(A) are as follows: Federal Fishery Permit number (FFP) 3423 Alaska Warrior, FFP 3819 Alaska Spirit, FFP 2134 Ocean Peace, FFP 3835 Seafisher, and FFP 2800 U.S. Intrepid.

Vessels assigned to participate in the first HLA directed fishery in area 543 and/or the second HLA directed fishery in area 542 in accordance with the vessel's registration under § 679.20(a)(8)(iii)(A) are as follows: FFP 2443 Alaska Juris, FFP 2733 Seafreeze Alaska, FFP 4093 Alaska Victory, FFP 3400 Alaska Ranger, and FFP 1879 American No. 1.

Classification

This action responds to the best available information. The Assistant Administrator for Fisheries, NOAA, finds that the need to immediately implement this action that notifies each vessel of their fishery assignment to allow the harvest of the B season HLA limits established for area 542 and area 543 constitutes good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) and 50 CFR 679.20(a)(8)(iii), as such procedures would be unnecessary and contrary to the public interest. Similarly, the need to implement these measures in a timely fashion that notifies each vessel of their fishery assignment to allow the harvest of the B season HLA limits established for area 542 and area 543 constitutes good cause to find that the effective date of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: August 25, 2003.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–22192 Filed 2–28–03; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register

Vol. 68, No. 168

Friday, August 29, 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

Food and Nutrition Service

7 CFR Part 273

RIN 0584–AD13

Food Stamp Program: Vehicle and Maximum Excess Shelter Expense Deduction Provisions of Public Law 106–387

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Department proposes to amend its regulations to implement Sections 846 and 847 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies—Appropriations Act 2001 (Agriculture Appropriations Act of 2001). This rule would increase the maximum amount of the food stamp excess shelter expense deduction and index it to the Consumer Price Index, and allow State agencies the option to use their Temporary Assistance for Needy Families (TANF) Program vehicle allowance rules rather than the vehicle rules used in the Food Stamp Program (FSP) where doing so will result in a lower attribution of resources to food stamp households. The proposed rule would increase benefits for some participants, make additional households eligible for food stamps, and provide greater flexibility for States in determining the value of vehicles.

DATES: Send your comments to reach us by October 28, 2003.

ADDRESSES: You may mail comments to Food Stamp Program, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia, 22302, attention Program Design Branch. You may fax comments to us at (703) 305–2486, attention Program Design Branch. You may also hand-deliver comments to us on the 8th floor at the above address. For information about filing electronically, see the **SUPPLEMENTARY INFORMATION** section under Electronic Access and Filing Address.

FOR FURTHER INFORMATION CONTACT: John Knaus, Chief, Program Design Branch, Program Development Division, Food Stamp Program, FNS, at (703) 305–2098. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 800–877–8339 between 8 a.m. and 4 p.m. Eastern time, Monday through Friday, excluding Federal holidays.

SUPPLEMENTARY INFORMATION:

Public Comment Procedures

Electronic Access and Filing Address

You may view and download an electronic version of this proposed rule at *http://www.fns.usda.gov/fsp/rules/Regulations/default.htm.* You may also send comments to PRGDEV.WEB at the same Internet address after clicking ''Email Us'' in the yellow bar near the top of the screen. Please include ''Attention RIN 0584–AD13'' and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your message, please contact us directly at (703) 305–2098.

Written Comments

Please make your written comments on the proposed rule specific, confine them to issues pertinent to the proposed rule, and explain the reason for any change you recommend. Where possible, you should cite the specific section or paragraph of the proposed rule you are addressing. We may not consider or include in the Administrative Record for the final rule comments that we receive after the close of the comment period or comments delivered to an address other than those listed above. We will make all comments, including names, street addresses, and other contact information of respondents, available for public inspection on the 8th floor, 3101 Park Center Drive, Alexandria, Virginia 22302 between 8:30 a.m. and 5 p.m. Eastern time, Monday through Friday, excluding Federal holidays. Individual respondents may request confidentiality. If you wish to request that we consider withholding your name, street address, or other contact information from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comment. We will honor requests for confidentiality on a case-by-case basis to the extent allowed by law. We will make available for inspection in their entirety all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses.

Background

Section 846: Recognizing that many low-income households have extremely high shelter expenses, Section 5(e)(7) of the Food Stamp Act of 1977 (FSA), 7 U.S.C. 2014(e)(7), provides a deduction from income for households whose shelter expenses exceed 50 percent of their income, after other applicable deductions are made. Because families with comparable amounts of income may have substantially different shelter expenses, affecting their ability to purchase food, the deduction is a means of targeting benefits to those in need. Households without elderly or disabled members are subject to a limit on the amount of shelter expenses that can be deducted. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) set limits that reached a maximum of $300 in fiscal year (FY) 2001. Those limits are set forth in Section 5(e)(7)(B) of the FSA. In FY 2000, the year prior to implementation of this provision, about three in five households participating in the Food Stamp Program received an excess shelter expense deduction. In FY 2000, 5.3 percent of all households (about 384,000 households) were at the shelter limit and could have received larger benefits if the limit were increased. Almost all of these households contained children. The excess shelter deduction limits in effect at the start of FY 2001 were: $300, $521, $429, $364, and $221 respectively, for the 48 contiguous States and the District of Columbia, Alaska, Hawaii, Guam, and the United States Virgin Islands. Households with elderly or disabled members are not subject to the limits.

Section 847: Since 1964, food stamp legislation has limited the value of resources households may own while remaining eligible for food stamps. The FSA specifically addresses the valuation of vehicles as resources that count toward the resource limit of $2,000 per

household, or $3,000 for households with one or more members who are disabled, or aged 60 years or over. In 1977, the FSA designated the fair market value (FMV) of vehicles in excess of $4,500 as a countable resource. Subsequent laws and regulations have raised the FMV exclusion to $4,650, excluded the value of vehicles used for various purposes from household resources, and designated vehicles whose sale would net no more than $1,500, after payment of liens, as inaccessible resources.

Discussion of the Proposed Rule

Section 846: Section 846 of the Agriculture Appropriations Act of 2001 amends § 5(e)(7)(B) of the FSA to set new limits on the excess shelter expense deduction and to provide for annual fiscal year adjustments based on the Consumer Price Index. The Act set the fiscal year 2001 maximum excess shelter expense deductions at the levels specified in § 846: $340, $543, $458, $399, and $268 per month for, respectively, the contiguous 48 States and the District of Columbia, Alaska, Hawaii, Guam, and the Virgin Islands effective March, 2001. Section 846 also amends § 5(e)(7)(B) of the FSA to set the maximum excess shelter expense deductions for fiscal year 2002 and beyond. For this reason, the Department proposes to amend 7 CFR 273.9(d)(6)(ii) to state its obligation to compute and announce maximum excess shelter expense deductions for FY 2002 and other future years by adjusting the previous year's maximums to changes in the Consumer Price Index for All Urban Consumers for each 12-month period ending the preceding November 30. The Department proposes to use the Shelter and the Fuels and Utilities Components of the Consumer Price Index rather than the Consumer Price Index for All Items because doing so provides a more accurate measure of changes in shelter and utility expenses.

The Department posts the updated maximum excess shelter expense deductions annually at *http://www.fns.usda.gov/fsp/government/FY03_Allot_Deduct.htm.*

Section 847: 7 CFR 273.8 excludes from household resources the value of vehicles that produce income, are used as a home, transport a physically disabled household member, are used for long distance travel other than daily commuting, carry most of a household's heating fuel or drinking water, or are considered inaccessible resources because their sale would net $1,500 or less after any loans are repaid. The FMV (in excess of $4,650) of one licensed vehicle per adult household member is counted as a household resource, as is the FMV (in excess of $4,650) of any other licensed vehicles that teenagers in the household drive to work, job training, or job hunting. The value of any remaining licensed vehicles is included as a household resource, using the greater of the vehicle's FMV (in excess of $4,650) or its equity value. Unlicensed vehicles are counted at their equity value.

Section 847 of the Agriculture Appropriations Act of 2001 amends § 5(g)(2)(B)(iv) of the FSA to allow States to substitute their TANF vehicle rules for the food stamp vehicle rules when doing so would result in a lower attribution of resources to households. Implementation of § 847 will streamline the process of determining eligibility, make more households eligible for food stamps, reduce errors, and facilitate conformance of TANF and food stamp vehicle policies. This proposed rule would amend 7 CFR 273.8(f)(4) to implement the vehicle provisions set forth in § 847. Below, we answer questions we believe are likely to arise in connection with the proposed rule.

Which TANF Programs Qualify as Sources of Substitute Vehicle Rules?

In lieu of the food stamp vehicle rules at 7 CFR 273.8(f), the Department proposes that a State may substitute the vehicle rules from a program in that State that uses TANF funds, or State or local funds to meet TANF maintenance-of-effort (MOE) requirements, *and* meets the definition of ''assistance'' according to TANF regulations at 45 CFR 260.31.

This definition includes cash payments, vouchers, and other forms of benefits designed to meet a household's ongoing basic needs, including benefits provided in the form of payments by a TANF agency, or other agency on its behalf, to individual recipients and conditioned on participation in work experience, community service, or any other work activity under TANF regulations. It also includes supportive services such as transportation and child-care provided to families without employment.

How May State Agencies Apply § 847?

The Department proposes that State agencies electing to use § 847 must apply either the TANF or food stamp rules, whichever produces the lower attribution of resources to the household, on a vehicle-by-vehicle basis, using any exclusions allowed by either set of rules. The statute does not permit a blanket substitution of TANF rules for food stamp rules unless, of course, a State's TANF rules invariably result in a lower attribution of resources, as in States whose TANF policies exclude all vehicles from household assets. Although § 847 mentions only the food stamp FMV test, the rule proposes to apply it equally to the food stamp equity test because the intent of the law is to permit TANF policy to substitute for food stamp policy. Under the proposed rule, State agencies electing to apply § 847 must, therefore, apply their TANF rules to any vehicles that would previously have been subject to the food stamp equity test, where doing so would result in a lower attribution of resources. States whose TANF rules exclude one vehicle must apply the exclusion to the vehicle with the highest value unless prohibited by their rules. States whose TANF vehicle rules exclude all vehicles completely, or contain no resource provisions at all, would exclude any vehicle owned by any household in the State from resources when determining eligibility for food stamps. For example, suppose a State agency is evaluating a vehicle with a FMV of $5,000 and an unpaid loan balance of $2,400. The State's TANF vehicle rules exclude equity under $3,000, while food stamp rules exclude FMV under $4,650. In this case, the TANF rules result in the lower attribution of resources because they exclude the vehicle's entire equity value of $2,600, while the food stamp rules would count $350 excess FMV ($5,000–$4,650) toward household resources. Consequently, the State agency would use the TANF rules.

What Happens When a Household Owns Multiple Vehicles?

Where a household has more than one vehicle, the rule proposes that a State must exclude any vehicles it can under either TANF or food stamp rules, and evaluate each remaining vehicle separately under whichever rules will result in the lower attribution of resources to the household. For example, a State could exclude a vehicle used to transport a disabled household member (under food stamp rules), exclude one vehicle per licensed driver (under its TANF rules) and value a remaining vehicle at the greater of its equity value or its FMV in excess of $4,650 (under food stamp rules, assuming its TANF rules offered no option more favorable to the household).

Can a State Agency Mix Provisions of the TANF Vehicle Rules With Provisions of the Food Stamp Vehicle Rules When Evaluating the Same Vehicle?

No. The rule proposes that a State has the option to apply its TANF vehicle rules in lieu of food stamp vehicle rules,

not to combine them or parts of them to evaluate any given vehicle or category of vehicles. To illustrate how the TANF and FSP rules might interact, suppose that a State's TANF vehicle rules exclude equity under $3,000, while food stamp vehicle rules exclude FMV under $4,650. This State would improperly mix TANF and food stamp vehicle rules if it excludes equity under $4,650, thus combining the type of exclusion (equity) from its TANF rules and the exclusion limit ($4,650) from food stamp rules.

IV. Procedural Matters

Executive Order 12866

This proposed rule has been determined to be economically significant and was reviewed by the Office of Management and Budget in conformance with Executive Order 12866.

Executive Order 12372

The Food Stamp Program (Program) is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule in 7 CFR 3015, Subpart V and related Notice (48 FR 29115), this Program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the ''Effective Date'' paragraph of the final rule preamble. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted.

Federalism Summary Impact Statement

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implication, agencies are directed to provide a statement for inclusion in the preamble to the regulation describing the agency's considerations in terms of the three categories called for under section (6)(b)(2)(B) of Executive Order 13132.

Prior Consultation With State Officials

Prior to drafting this proposed rule, we consulted with State and local agencies at various times. Because the Food Stamp Program (FSP) is a State administered, Federally funded program, our regional offices have formal and informal discussions with State and local officials on an ongoing basis regarding program implementation and policy issues.

This arrangement allows State and local agencies to provide comments that form the basis for many discretionary decisions in this and other FSP rules. We have also had numerous written requests for policy guidance on the implications of Public Law 106–387 from the State agencies that deliver food stamp services. These questions have helped us make the rule responsive to concerns presented by State agencies.

Nature of Concerns and the Need To Issue This Rule

State agencies generally want greater flexibility in their implementation of FSP asset policy, especially with regard to vehicle ownership. The proposed rule provides much greater flexibility in this area and also addresses another major State concern, the need to conform FSP rules to the rules of other means-tested Federal programs. Specific policy questions submitted by State agencies after enactment of Public Law 106–387, but prior to the promulgation of regulations, helped us identify issues that needed to be clarified in the proposed rule.

Extent To Which We Meet Those Concerns

The Department has considered the impact of the proposed rule on State and local agencies. This rule makes changes required by law, and made effective in 2001. The effects on State agencies are minimal. While the vehicle provision of the rule will require eligibility workers to make additional computations in some cases, the ability to substitute TANF vehicle rules for FSP vehicle rules, when doing so results in a lower attribution of resources, allows a growing number of States to exclude some or all vehicles from household assets. The maximum excess shelter expense deduction provision simply increases the amount of the deduction and indexes it to the Consumer Price Index, resulting in no additional requirements for State agencies. In the proposed rule, we have addressed every question submitted by State agencies regarding both of these provisions. The Department is not aware of any case where the discretionary provisions of the rule would preempt State law. In addition, the Department is willing to approve a waiver of any discretionary provision in this rule where (1) a State agency can demonstrate that its own procedures would be more effective and efficient; (2) such a waiver would not result in a material impairment of any statutory or regulatory rights of participants or potential participants; and (3) such a waiver would otherwise be consistent with the waiver authority set out at 7 CFR 272.39(c).

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612). Eric M. Bost, Under Secretary for Food, Nutrition, and Consumer Services, has certified that this rule will not have a significant economic impact on a substantial number of small entities. This rule does not regulate the activities of small businesses or other small entities; instead it regulates the administration of the Food Stamp Program, which is administered only by State or county social service agencies.

Paperwork Reduction Act

Burden associated with the food stamp certification process is approved under OMB control number 0584–0064. Burden estimates in that submission are based on the only recent data available, data from the actual operation of the Food Stamp Program in Mississippi. The data provided by Mississippi indicate that the burden associated with completing a new food stamp application or a re-certification application is 19 minutes for each applicant and 36 minutes per applicant for each State agency. These burden estimates are based on total time required for certification (or re-certification) processing and are not broken down into sub-categories for gathering data on such variables as household income, resources, or deductions.

The maximum excess shelter expense deduction provisions of this proposed rule would result in no change in the burden for either applicants or State agencies. For applicants and State agencies, the effect of this provision is simply to substitute new maximum deductions for the previous ones.

The vehicle provisions of this rule do not change the burden on applicants. Applicants will need to supply the same information as under current regulations, except in States that elect to use TANF vehicle rules that exclude the value of all vehicles from household resources. The vehicle provisions are exercised at State option and may be selected by many States or by few States. States that elect to substitute their TANF vehicle rules for their food

stamp vehicle rules will experience minor increases or decreases in burden associated with the complexity or simplicity of each case. States that elect to retain the food stamp vehicle rules will experience no change in burden. The Department has concluded that burden will vary from case to case and State to State but not enough to affect the average total processing time data upon which all burden estimates for food stamp certification (and re-certification) are based.

Unfunded Mandate Reform Act of 1995 (UMRA)

Title II of UMRA establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under § 202 of the UMRA, the Department generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, § 205 of the UMRA generally requires the Department to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule. This notice contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector of $100 million or more in any one year. This rule is, therefore, not subject to the requirements of § 202 and § 205 of the UMRA.

Civil Rights Impact Analysis

The Department has reviewed this proposed rule in accordance with the Department Regulation 4300–4, ''Civil Rights Impact Analysis'' to identify and address any major civil rights impacts the proposed rule might have on minorities, women, and persons with disabilities. After a careful review of the rule's intent and provisions, and the characteristics of food stamp households and individuals participants, the Department has determined that there is no adverse effect on any of the protected classes. The Department has minimal discretion in implementing many of these changes. The changes required by law have been implemented. All data available to the Department indicate that protected individuals have the same opportunity to participate in the Food Stamp Program as non-protected individuals. The Department specifically prohibits the State and local government agencies that administer the program from engaging in actions that discriminate based on race, color, national origin, gender, age, disability, marital or family status. Regulations at 7 CFR 272.6 specifically state that ''State agencies shall not discriminate against any applicant or participant in any aspect of program administration, including, but not limited to, the certification of households, the issuance of coupons, the conduct of fair hearings, or the conduct of any other program service for reasons of age, race, color, sex, handicap, religious creed, national origin, or political beliefs. Discrimination in any aspect of program administration is prohibited by these regulations, the FSA, the Age Discrimination Act of 1975 (Pub. L. 94–135), the Rehabilitation Act of 1973 (Pub. L. 93–112, § 504), and title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d). Enforcement action may be brought under any applicable Federal law. Title VI complaints shall be processed in accord with 7 CFR part 15.'' Where State agencies have options, and they choose to implement a certain provision, they must implement it in such a way that it complies with the regulations at 7 CFR 272.6.

Regulatory Impact Analysis

Need for Action

This action is needed to implement § 846 and § 847 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act 2001, Public Law 106–387. The proposed rule would increase the amounts of the maximum excess shelter expense deductions, and for future years, index them to the Consumer Price Index. It would also allow States the option of substituting their TANF vehicle rules for their food stamp vehicle rules when doing so would result in a lower attribution of resources to a household.

Benefits

Section 846, maximum excess shelter expense deduction provision: the proposed rule would allow a larger income deduction for shelter expenses to low-income families whose shelter expenses exceed 50 percent of their monthly income, after all other applicable deductions have been made. The Department does not expect raising the excess shelter deduction limit to significantly increase food stamp participation. Instead, we estimate that the change will raise benefits for 7.6 percent of current participants. Applying this percentage to the participation projections for the President's FY 2004 budget baseline, we estimate that 1.65 million persons will each receive an average of $6.02 more per month in food stamp benefits in FY 2004. These impacts are already incorporated into the President's FY 2004 budget baseline.

Section 847, vehicle provision: the proposed rule will allow food stamp applicants to benefit when State agencies elect to use more expansive vehicle policy rules that will allow them to own a reliable vehicle and still be eligible for food stamps. The Department estimates that this provision will increase average participation in the FSP by 243,000 persons in FY 2004 and that their average monthly food stamp benefit will be $74.11. These impacts are already incorporated into the President's FY 2004 budget baseline. State agencies will benefit from the increased flexibility in program administration afforded by the proposed rule and from an anticipated decrease in payment errors.

Costs

Section 846: the Department estimates that the cost of implementing § 846 will be $119 million in FY 2004 and $705 million over the five years, FY 2004 through FY 2008. These impacts are already incorporated into the President's FY 2004 budget baseline.

Section 847: the Department estimates that the cost of implementing § 847 will be $216 million in FY 2004 and $1.115 billion over the five years, FY 2004 through FY 2008. These impacts are already incorporated into the President's FY 2004 budget baseline.

List of Subjects in 7 CFR Part 273

Administrative practice and procedure, Food stamps, Fraud, Grant programs, Social programs, Resources, Vehicles.

Accordingly, the Department proposes to amend 7 CFR part 273 as follows:

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

1. The authority citation for part 273 continues to read as follows:

Authority: 7 U.S.C. 2011–2036.

2. In § 273.8, add new paragraph (f)(4) to read as follows:

§ 273.8 Resource eligibility standards.

* * * * *

(f) * * *

(4) A State agency may substitute for the vehicle evaluation provisions in

paragraphs (f)(1) through (f)(3) of this section the vehicle evaluation provisions of a program in that State that uses TANF or State or local funds to meet TANF maintenance of effort requirements and provides benefits that meet the definition of ''assistance'' according to TANF regulations at 45 CFR 260.31, where doing so results in a lower attribution of resources to the household. States electing this option must:

(i) Apply the substituted TANF vehicle rules to all food stamp households in the State, whether or not they receive or are eligible to receive TANF assistance of any kind;

(ii) Exclude from household resources any vehicles excluded by either the substituted TANF vehicle rules or the food stamp vehicle rules;

(iii) Apply either the substituted TANF rules or the food stamp vehicle rules to each of a household's vehicles in turn, using whichever set of rules produces the lower attribution of resources to the household;

(iv) Apply any vehicle exclusions allowed by their TANF vehicle rules to the vehicles with the highest values; and

(v) Exclude any vehicle owned by any household in the State if it selects TANF vehicle rules that exclude all vehicles completely or contain no resource provisions at all.

* * * * *

3. In § 273.9, add two sentences after the second sentence of paragraph (d)(6)(ii) to read as follows:

§ 273.9 Income and deductions.

* * * * *

(d) * * *

(6) * * *

(ii) * * * For fiscal year 2001, effective March 1, 2001, the maximum monthly excess shelter expense deduction limits are $340 for the 48 contiguous States and the District of Columbia, $543 for Alaska, $458 for Hawaii, $399 for Guam, and $268 for the Virgin Islands. FNS will set the maximum monthly excess shelter expense deduction limits for fiscal year 2002 and future years by adjusting the previous year's limits to reflect changes in the shelter component and the fuels and utilities component of the Consumer Price Index for All Urban Consumers for the 12 month period ending the previous November 30. * * *

* * * * *

Dated: August 21, 2003.

Eric M. Bost,

Under Secretary, Food, Nutrition, and Consumer Services.

Note: This appendix will not be published in the Code of Federal Regulations.

Appendix: Regulatory Impact Analysis

1. *Title:* Vehicle and maximum excess shelter expense deduction provisions of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act of 2001, Public Law 106–387.

2. *Action:*

(a) Nature: Proposed Rule

(b) Need: This action is required as a result of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act of 2001, Public Law 106–387.

(c) Background: On October 28, 2000, the President signed the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act of 2001 (Agriculture Appropriations Act of 2001). This rule is being proposed to implement sections 846 and 847 of the Agriculture Appropriations Act of 2001. Section 846 increases the maximum amount of the food stamp excess shelter expense deduction for fiscal year 2001 and indexes it for future years to the Consumer Price Index. Section 847 allows State agencies the option to use their Temporary Assistance for Needy Families (TANF) Program vehicle allowance rules rather than the vehicle rules used in the Food Stamp Program (FSP) where doing so will result in a lower attribution of resources to food stamp households.

3. *Justification of Alternatives:* These provisions are statutorily mandated and have already been implemented. In the case of the vehicle provision, FNS could have interpreted the statute to offer a more restrictive definition of TANF-funded programs, which would have limited the number of households gaining eligibility due to the provision. Instead, we propose a comprehensive definition of TANF-funded programs, which maximizes the benefits of the provision and is consistent with both our understanding of Congressional intent and prior policy guidance issued by the Food and Nutrition Service to States.

4. *Effects:* (a) Effects on food stamp recipients, and (b) Program costs: These provisions are expected to increase Food Stamp Program costs by $335 million in FY 2004 and $1.82 billion over the five years FY 2004 to FY 2008. Likewise, these provisions are expected to add 243,000 new participants and increase benefits among 1.65 million current participants in FY 2004. These impacts are already incorporated into the President's FY 2004 budget baseline.

Section 846: Increase the Excess Shelter Deduction Limits

Discussion: Recognizing that shelter expenses reduce the amount of income available to purchase food, the Food Stamp Act of 1977 (FSA) provides a deduction from income for households whose shelter expenses exceed 50 percent of their income, after other applicable deductions are made. Because households with larger shelter expenses relative to their income generally receive a larger excess shelter deduction for food stamp benefit determination, the deduction is a means of targeting benefits to those in need.

The FSA also sets limits on how large the excess shelter deduction can be, often referred to as the ''excess shelter deduction cap.'' Since households with elderly or disabled members are not subject to the shelter deduction cap, most households affected by the cap are households with children. Legislation enacted since 1977 has adjusted the caps to the Consumer Price Index (Omnibus Budget Reconciliation Act of 1981); required that calculations of excess shelter deductions be rounded down to the next lower dollar (Omnibus Budget Reconciliation Act of 1982); removed the caps altogether (Omnibus Budget Reconciliation Act of 1993, Mickey Leland Childhood Hunger Relief Act); and most recently, reset caps and froze them at current levels for households without elderly or disabled members (Personal Responsibility and Work Opportunity Reconciliation Act of 1996). The excess shelter deduction caps in effect for FY 2001 were: $300, $521, $429, $364, and $221 respectively, for the 48 contiguous States and the District of Columbia, Alaska, Hawaii, Guam, and the United States Virgin Islands. Households with elderly or disabled members are not subject to the excess shelter caps.

Since the caps were frozen by the 1996 legislation, many FSP participants, State agencies, and advocacy organizations have sought legislation that would bring the maximum excess shelter expense deduction more closely in line with current housing costs and index it to the cost of living. Section 846 of the Agriculture Appropriations Act of 2001 accomplishes those objectives by: (a) setting the fiscal year 2001 maximum excess shelter expense deductions at $340, $543, $458, $399, and $268 per month for, respectively, the contiguous 48 States and the District of Columbia, Alaska, Hawaii, Guam, and the Virgin Islands, effective March 1, 2001; and (b) setting the maximum excess shelter expense deductions for fiscal year 2002 and beyond by adjusting the previous year's maximums to changes in the Consumer Price Index for All Urban Consumers for each 12-month period ending the preceding November 30.

Effect on Low-Income Families: This provision will affect low-income households without an elderly or disabled member, who certify or re-certify for food stamp benefits on or after March 1, 2001, and who have shelter expenses that are high enough relative to their net income to be eligible for the excess shelter deduction and subject to the current shelter cap. Most households affected by the provision are households with children. It will allow affected households to claim a larger income deduction for shelter expenses and to obtain higher food stamp benefits.

Cost Impact: We estimate that the cost of this provision will be $119 million in FY 2004, and $705 million over the five years,

FY 2004 through FY 2008. These impacts are already incorporated into the President's FY 2004 budget baseline.

Cost estimates were based on food stamp cost projections from the President's FY 2004 budget baseline of December 2002. While we recognize that the President's FY 2004 budget baseline is an imperfect baseline for this analysis because it already incorporates the impacts of this provision and subsequent legislation, it is preferable to the alternatives because it reflects the most recent economic and participation trends. The new values of the shelter cap for FY 2002 and beyond were calculated by inflating the FY 2001 values, using actual and projected values of the Consumer Price Index for All Urban Consumers from the Office of Management and Budget's economic assumptions for the President's FY 2004 budget. The benefit and participation impacts of raising the shelter deduction cap to the new values were modeled using data from the 2001 food stamp quality control sample regarding household characteristics, income and expenses. Using the 2001 quality control mini-model program, we were able to measure expected changes in household benefits resulting from the changes in the shelter cap. The program suggested that raising the cap would increase program benefits by less than one percent nationally. The estimated percentage increase was multiplied by the baseline cost projections to estimate the expected cost increase for each fiscal year. Because this provision became effective on March 1, 2001 for households who are newly certified or re-certified, the provision was considered fully implemented in FY 2004. Cost estimates were rounded to the nearest million dollars.

Participation Impacts: We estimate that raising the shelter deduction cap will raise benefits among those households currently participating and subject to the shelter deduction cap. We do not expect any significant impacts on participation due to nature of the rule change and the small benefit increase per recipient. FY 2001 quality control data indicate that 7.6 percent of food stamp participants will receive higher benefits due to this provision. (These are persons in households that claim the maximum shelter deduction but receive less than the maximum food stamp benefit. Households that already receive the maximum food stamp allotment cannot have their benefits raised as a result of this provision.) Applying this percentage to the participation projections for the President's FY 2004 budget baseline, we estimate that 1.65 million persons will each receive an average of $6.02 more per month in food stamp benefits in FY 2004.

Section 847: State Option To Use TANF Vehicle Rules

Discussion: Since 1964, food stamp legislation has limited the value of resources households may own while remaining eligible for food stamps. The FSA specifically addresses the valuation of vehicles as resources that count toward the resource limit of $2,000 per household, or $3,000 for households with one or more members who are disabled, or aged 60 years or over. In 1977, the FSA designated the fair market value (FMV) of vehicles in excess of $4,500 as a countable resource. Subsequent laws have raised the FMV limit to $4,650, excluded the value of vehicles used for various purposes from household resources, and designated vehicles whose sale would net no more than $1,500, after payment of liens, as inaccessible resources. Current food stamp vehicle rules apply the excess FMV test to one licensed vehicle per adult household member and any other licensed vehicle a teenager drives to work, school, job training, or job hunting. Additional non-exempt licensed vehicles are valued at the higher of excess FMV or equity value (fair market value minus any outstanding loan balance). Unlicensed vehicles are counted at their equity value.

Section 847 of the Agriculture Appropriations Act of 2001 amends section 5(g)(2) of the Food Stamp Act of 1977 to allow States to substitute their TANF vehicle rules for the food stamp vehicle rules when doing so would result in a lower attribution of food stamp resources to households. In lieu of the food stamp vehicle rules at 7 CFR 273.8(f), the Department proposes that States may substitute the vehicle rules from any program that receives TANF or TANF maintenance of effort funds and meets the definition of ''assistance'' according to TANF regulations at 45 CFR 260.31. Implementation of section 847 will streamline the process of determining eligibility, make many more households eligible for food stamps, reduce errors, and facilitate processing of TANF and food stamp joint applications. The effect of section 847 will vary from State to State, according to the TANF vehicle rules developed by each State.

Effect on Low-Income Families: This provision will allow States to adopt more generous vehicle rules from their TANF-funded programs for use in determining food stamp eligibility. By adopting more generous TANF vehicle rules, some income-eligible food stamp households who were previously ineligible because of the value of their vehicle(s), are made eligible to participate. Persons will be affected by the provision to the extent that States adopt this provision and to the extent that States have less restrictive vehicle rules in their relevant TANF-funded programs.

Cost Impact: We estimate that the cost of implementing section 847 will be $216 million in FY 2004 and $1.115 billion over the five years FY 2004 to FY 2008. These impacts are already incorporated into the President's FY 2004 budget baseline.

As of FY 2003, 27 States reported adopting their more generous TANF-cash vehicle rules for the purpose of determining food stamp eligibility. Ten other States reported adopting vehicle rules from their TANF-funded child care and foster care programs for the purpose of determining food stamp eligibility. For the impact analysis, it is assumed that States interested in adopting vehicle rules from any of their TANF-funded programs have done so and that no additional States will switch to TANF vehicle rules in the future.

In order to estimate the impact of this provision on food stamp participation and benefit costs, we used data from the 1997 Survey of Income and Program Participation (SIPP), which contains information about household characteristics, income and assets—including vehicle ownership data. Using this dataset, we created the 1997 MATH SIPP simulation program, which models food stamp eligibility, participation and benefits under regular FSP vehicle rules and allows us to compare them to participation and benefits under alternative vehicle rules. For each State that originally chose to adopt TANF vehicle rules for determining food stamp eligibility, we modeled their specific TANF vehicle rules and used the dataset to determine the cost and participation impacts on the Food Stamp Program. Information on State TANF vehicle rules was from a review of States in FY 2000 and is the most recent data available, as States are not required to regularly report such information to the U.S. Department of Health and Human Services. The cost and participation impacts were then adjusted to reflect the most recent choices States have made in FY 2003 regarding the adoption of TANF vehicle rules for determining food stamp eligibility. The adjustment reflected both the number of food stamp cases in each State and the relative generosity of their TANF vehicle rules.

FY 2003 STATE VEHICLE RULES FOR DETERMINING FSP ELIGIBILITY (AS OF 02/03)

FSP vehicle rules (9 States)	TANF-cash vehicle rules (27 States)	TANF child care or foster care vehicle rules (10 States)	Other: States with expanded categorical eligibility (7 States)
CA, GA, IA, MS, RI, TN, VI, VA, WA.	AL, AK, AZ, AR, CT, DC, FL, GU, HI, IL, KS, KY, LA, MD, MN, MT, NV, NH, NJ, NC, OH, OK, PA, SD, UT, VT, WY.	CO, ID, IN, MA, MO, NE, NM, NY, WV, WI.	DE, ME, MI, ND, OR, SC, TX

The adjusted impact was calculated as a 2.00 percent expected increase in benefits. This impact was multiplied by expected benefits for each fiscal year, based on the President's FY 2004 budget baseline of December 2002. While we recognize that the

President's FY 2004 budget baseline is an imperfect baseline for this analysis because it already incorporates the impacts of this provision and subsequent legislation, it is preferable to the alternatives because it reflects the most recent economic and participation trends. Based on a January 1999 FNS report, *Relaxing the FSP Vehicle Asset Test: Findings from the North Carolina Demonstration,* an additional adjustment was made. The report indicates that the participation effects of this type of policy reform are about half of what our model predicts on the basis of the characteristics of current participants, so the estimates were adjusted by half for all years. Given that this provision was effective on July 1, 2001, we considered it to be fully implemented in FY 2004 and no further adjustments were made. Cost estimates were rounded to the nearest million dollars.

Participation Impacts: We estimate that this provision will increase average participation in the Food Stamp Program by 243,000 persons in FY 2004 and that their average monthly food stamp benefit will be $74.11. These impacts are already incorporated into the President's FY 2004 budget baseline.

Participation impacts were estimated using the same method as the cost impacts. The adjusted participation impact was calculated as a 2.25 percent expected increase in participation. This impact was multiplied by expected participation for each fiscal year, based on the President's FY 2004 budget baseline of December 2002. As with the cost estimate, participation estimates were adjusted by half to reflect the finding in the 1999 FNS vehicle report. Participation estimates were rounded to the nearest thousand persons.

While this regulatory impact analysis details the expected impacts on Food Stamp Program costs and the number of participants likely to be affected by the food stamp provisions of the Agricultural Appropriation Act of 2001, it does not provide an estimate of the overall social costs of the provisions, nor does it include a monetized estimate of the benefits they bring to society. We anticipate that the provisions will improve program operations by providing States with the ability to coordinate food stamp and TANF vehicle rules. In addition, by increasing food stamp benefits to low-income families, we believe that these statutory changes will increase food expenditures, which may strengthen food security.

[FR Doc. 03–22144 Filed 8–28–03; 8:45 am]

BILLING CODE 3410–30–P

FEDERAL RESERVE SYSTEM

12 CFR Part 225

[Regulation Y; Docket No. R–1159]

Bank Holding Companies and Change in Bank Control: Exception to Anti-Tying Restrictions

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule with request for public comment.

SUMMARY: The Board proposes to adopt an exception to the anti-tying restrictions of section 106 of the Bank Holding Company Act Amendments of 1970 in order to equalize the treatment of financial subsidiaries of banks under section 106. The proposed exception provides that a financial subsidiary of a state nonmember bank shall be treated as an affiliate of the bank, and not as a subsidiary of the bank, for purposes of section 106. The anti-tying restrictions of section 106 generally apply to subsidiaries, but not affiliates, of banks. Financial subsidiaries of national and state member banks already are treated as affiliates (and not subsidiaries) of the parent bank for purposes of section 106.

DATES: Comments must be received on or before September 30, 2003.

ADDRESSES: Comments should refer to Docket No. R–1159 and may be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW, Washington, DC 20551. However, because paper mail in the Washington area and at the Board of Governors is subject to delay, please consider submitting your comments by e-mail to *regs.comments@federalreserve.gov* or faxing them to the Office of the Secretary at 202–452–3819 or 202–452–3102. Members of the public may inspect comments in Room MP–500 of the Martin Building between 9 a.m. and 5 p.m. on weekdays pursuant to § 261.12, except as provided in § 261.14, of the Board's Rules Regarding Availability of Information (12 CFR 261.12 and 261.14).

FOR FURTHER INFORMATION CONTACT: Kieran J. Fallon, Senior Counsel (202–452–5270), Mark E. Van Der Weide, Counsel (202–452–2263), or Andrew S. Baer, Counsel (202–452–2246), Legal Division, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW, Washington, DC 20551. For users of Telecommunications Device for the Deaf (TDD) only, contact 202–263–4869.

SUPPLEMENTARY INFORMATION:

Background

Section 106 of the Bank Holding Company Act Amendments of 1970 (section 106) generally prohibits a bank from conditioning the availability or price of one product or service (the ''desired product'') on a requirement that the customer obtain another product or service (the ''tied product'') from the bank or an affiliate of the bank.[1] For example, the statute prohibits a bank from requiring that a prospective borrower purchase homeowners insurance from the bank or an affiliate of the bank in order to obtain a mortgage loan from the bank. Section 106 also contains several exceptions to its general prohibitions and authorizes the Board to grant any additional exception from the statute's prohibitions, by regulation or order, that the Board determines ''will not be contrary to the purposes'' of the statute.[2]

Section 106 applies only to tying arrangements imposed by a bank, and generally does not apply to tying arrangements imposed by a nonbank affiliate of a bank. Because a subsidiary of a bank is considered to be part of the bank for most supervisory and regulatory purposes under the Federal banking laws, the restrictions in section 106 generally apply to tying arrangements imposed by a subsidiary of a bank in the same manner that the statute applies to the parent bank itself. Thus, a subsidiary of a bank generally is prohibited from conditioning the availability or price of a product on the customer's purchase of another product from the subsidiary, its parent bank, or any affiliate of its parent bank.

The Board is publishing elsewhere in today's **Federal Register** a proposed interpretation of section 106 and related supervisory guidance with a request for public comment. The interpretation includes an extensive discussion of the scope and restrictions of section 106, as well as the statutory and regulatory exceptions to the statute's prohibitions.

Proposed Rule

Federal law authorizes national and state member banks that meet certain conditions to own or control a financial subsidiary.[3] A financial subsidiary of a national or state member bank may engage in certain activities—such as underwriting and dealing in corporate debt and equity securities—that the parent bank is not permitted to conduct directly. Unlike other subsidiaries, a financial subsidiary of a national or state member bank is treated as an

[1] 12 U.S.C. 1972(1)(A) and (B). Section 106 also prohibits a bank from conditioning the availability or price of one product on a requirement that the customer (i) *provide* another product to the bank or an affiliate of the bank; or (ii) *not* obtain another product from a competitor of the bank or from a competitor of an affiliate of the bank. 12 U.S.C. 1972(1)(C), (D), and (E).

[2] 12 U.S.C. 1972(1).

[3] *See* 12 U.S.C. 24a, 335. In order to be eligible to own or control a financial subsidiary, the national or state member bank and its depository institution affiliates must satisfy certain capital, managerial, Community Reinvestment Act (12 U.S.C. 2901 *et seq.*), and other requirements.

affiliate of the bank, and not as a subsidiary of the bank, for purposes of section 106.[4] Accordingly, a financial subsidiary of a national or state member bank is not subject to the anti-tying restrictions of section 106. However, tying arrangements imposed by a financial subsidiary of a national or state member bank, like tying arrangements imposed by any other affiliate of a bank, remain subject to the tying restrictions contained in the Federal antitrust laws.[5]

Federal law also authorizes state nonmember banks that meet certain eligibility requirements to own or control a financial subsidiary.[6] The Board proposes to adopt an exception under section 106 that would allow a financial subsidiary of a state nonmember bank to be treated as an affiliate of the parent bank, and not as a subsidiary of the bank, for purposes of section 106. The Board believes that providing equal treatment of all financial subsidiaries of banks under section 106 is appropriate to ensure competitive equality and would not be contrary to the purposes of section 106.[7] The Board invites comment on all aspects of the proposed exception.

Plain Language

Section 722 of the Gramm-Leach-Bliley Act requires the Board to use ''plain language'' in all proposed and final rules published after January 1, 2000.[8] In light of this requirement, the Board has sought to present the proposed rule in a simple and straightforward manner. The Board invites comment on whether the Board could take additional steps to make the proposed rule easier to understand.

Regulatory Flexibility Act

In accordance with section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a)), the Board must publish an initial regulatory flexibility analysis with this proposed rule. The proposed rule, if adopted, would exempt financial subsidiaries of state nonmember banks from the anti-tying restrictions in section 106 of the Bank Holding Company Act Amendments of 1970 (12 U.S.C. 1972). A description of the reasons for the Board's decision to issue the proposed rule and a statement of the objectives of, and legal basis for, the proposed rule are contained in the supplementary information provided above.

The proposed rule would apply to all state nonmember banks regardless of their size. The proposed rule would exempt any financial subsidiary of a state nonmember bank (including a small state nonmember bank) from the restrictions of section 106 and, thus, should reduce the regulatory burden imposed on state nonmember banks with financial subsidiaries. The proposed rule also would equalize the treatment of financial subsidiaries of national and state banks under section 106 and, thus, promotes competitive equality. The Board specifically seeks comment on the likely burden the proposed rule would have on banks, especially small banks.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board has reviewed the proposed rule under authority delegated to the Board by the Office of Management and Budget. The proposed rule contains no collections of information pursuant to the Paperwork Reduction Act.

List of Subjects in 12 CFR Part 225

Administrative practice and procedures, Banks, Banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

Authority and Issuance

For the reasons set forth in the preamble, the Board proposes to amend 12 CFR part 225 as follows:

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

1. The authority citation for part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1828(o), 1831i, 1831p–1, 1843(c)(8), 1843(k), 1844(b), 1972(1), 3106, 3108, 3310, 3331–3351, 3907, and 3909; and 15 U.S.C. 6801 and 6805.

2. Section 225.7 is amended as follows:

a. By revising the introductory sentence of paragraph (b);

b. By redesignating paragraphs (c) through (e) as paragraphs (d) through (f), respectively; and

c. By adding a new paragraph (c).

§ 225.7 Exceptions to tying restrictions.

* * * * *

(b) *Exceptions to statute.* Subject to the limitations of paragraph (d) of this section, a bank may—

* * * * *

(c) *Financial subsidiaries of state banks.* A financial subsidiary of a state member bank held in accordance with section 9 of the Federal Reserve Act (12 U.S.C. 335) and a financial subsidiary of a state nonmember bank held in accordance with section 46 of the Federal Deposit Insurance Act (12 U.S.C. 1831w) shall be deemed to be a subsidiary of a bank holding company of the bank and an affiliate of the bank, and not a subsidiary of the bank, for purposes of section 106 and this section.

* * * * *

By order of the Board of Governors of the Federal Reserve System, August 25, 2003.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 03–22090 Filed 8–28–03; 8:45 am]

BILLING CODE 6210–02–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

15 CFR Part 801

[Docket No. 030815201–3201–01]

RIN 0691–AA50

International Services Surveys: BE–85, Quarterly Survey of Financial Services Transactions Between U.S. Financial Services Providers and Unaffiliated Foreign Persons

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document sets forth a proposed rule to institute a new survey, BE–85, Quarterly Survey of Financial Services Transactions Between U.S. Financial Services Providers and Unaffiliated Foreign Persons, to be conducted by the Bureau of Economic Analysis (BEA), U.S. Department of Commerce.

The proposed survey is mandatory and will be conducted under the International Investment and Trade in Services Survey Act and under Section 5408 of the Omnibus Trade and Competitiveness Act of 1988. The first survey conducted under this proposed rule will cover transactions in the first quarter of 2004. Data from the proposed BE–85 survey are needed to monitor

---

[4] *See* 12 U.S.C. 1971; 12 CFR 208.73(e).

[5] 15 U.S.C. 1 *et seq.* (Sherman Act); 15 U.S.C. 12 *et seq.* (Clayton Act).

[6] *See* 12 U.S.C. 1831w.

[7] As noted above, section 208.73(e) of the Board's Regulation H currently provides that a financial subsidiary of a state member bank is treated as an affiliate (and not a subsidiary) of the bank for purposes of section 106. 12 CFR 208.73(e). In order to consolidate the regulatory provisions relating to the treatment of financial subsidiaries of state banks under section 106, the Board also is proposing to include in section 225.7 of Regulation Y the provision that states that a financial subsidiary of a state member bank is treated as an affiliate of the bank for purposes of section 106.

[8] Pub. L. 106–102, 113 Stat. 1338 (1999), codified at 12 U.S.C. 4809.

trade in financial services, analyze its impact on the U.S. and foreign economies, compile and improve the U.S. economic accounts, support U.S. commercial policy on financial services, conduct trade promotion, improve the ability of U.S. businesses to identify and evaluate market opportunities, and for other Government uses.

The proposed survey will cover the same financial services presently covered by the BE–82, Annual Survey of Financial Service Transactions Between U.S. Financial Services Providers and Unaffiliated Foreign Persons, which the proposed quarterly survey would replace, following a final annual data collection for 2003.

DATES: Comments on this proposed rule will receive consideration if submitted in writing on or before October 28, 2003.

ADDRESSES: Direct all written comments to the Office of the Chief, International Investment Division (BE–50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington DC 20230. Because of slow mail, and to assure that comments are received in a timely manner, please consider using one of the following delivery methods: (1) Fax to (202) 606–5318, (2) deliver by courier to U.S. Department of Commerce, Bureau of Economic Analysis, BE–50, Shipping and Receiving Section M100, 1441 L Street, NW., Washington, DC 20005, or (3) e-mail to *Obie.Whichard@bea.gov*. Comments will be available for public inspection in room 7006, 1441 L Street, NW., between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Obie G. Whichard, Assistant Chief, International Investment Division (BE–50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; or via the Internet at *Obie.Whichard@bea.gov* (Telephone (202) 606–9890).

SUPPLEMENTARY INFORMATION: This proposed rule would amend 15 CFR 801.9 to set forth the reporting requirements for the BE–85, Quarterly Survey of Financial Services Transactions Between Financial Services Providers and Unaffiliated Foreign Persons. The Bureau of Economic Analysis (BEA), U.S. Department of Commerce, will conduct the survey under the International Investment and Trade in Services Survey Act (22 U.S.C. 3101–3108), and under Section 5408 of the Omnibus Trade and Competitiveness Act of 1988 (15 U.S.C. 4908). Section 4(a) of the Act (22 U.S.C. 3103(a)) provides that the President shall, to the extent he deems necessary and feasible, conduct a regular data collection program to secure current information related to international investment and trade in services and publish for the use of the general public and United States Government agencies periodic, regular, and comprehensive statistical information collected pursuant to this subsection. In section 3 of Executive Order 11961, as amended by Executive Order 12518, the President delegated authority granted under the Act as concerns international trade in services to the Secretary of Commerce, who has redelegated that authority to BEA.

The major purposes of the survey are to monitor trade in financial services, analyze its impact on the U.S. and foreign economies, compile and improve the U.S. economic accounts, support U.S. commercial policy on financial services, conduct trade promotion, and improve the ability of U.S. businesses to identify and evaluate market opportunities.

As proposed, BEA will conduct the BE–85 survey on a quarterly basis beginning with the first quarter of 2004. BEA will send the survey to potential respondents in March of 2004, responses will be due by May 15, 2004. The survey will update the data provided on the universe of financial services transactions between U.S. financial services providers and unaffiliated foreign persons. Reporting is required from U.S. financial services providers whose sales of covered services to unaffiliated foreign persons exceeded $20 million for the previous fiscal year or that expect such sales to exceed that amount during the current fiscal year, or whose purchases of covered services from unaffiliated foreign persons exceeded $15 million for the previous fiscal year or that expect such purchases to exceed that amount during the current fiscal year. Financial services providers meeting any of these criteria must supply data on the amount of their sales or purchases for each covered type of service, disaggregated by country. U.S. financial services providers that do not meet the mandatory reporting requirements are requested to provide voluntary estimates of their total sales or purchases of each type of financial service.

Executive Order 12866

This proposed rule is not significant for purposes of E.O. 12866.

Executive Order 13132

This proposed rule does not contain policies with Federalism implications as that term is defined in E.O. 13132.

Paperwork Reduction Act

This proposed rule contains a collection of information requirement subject to the Paperwork Reduction Act (PRA) and has been submitted to the Office of Management and Budget for review under the PRA.

Notwithstanding any other provisions of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection displays a currently valid Office of Management and Budget Control Number.

The BE–85 survey, as proposed, is expected to result in the filing of reports containing mandatory data from about 55 respondents on a quarterly basis, or 220 responses annually. The average burden for completing the BE–85 is estimated to be 10 hours. Thus, the total respondent burden of the survey is estimated at 2,200 hours (220 responses times 10 hours average burden). The actual burden will vary from reporter to reporter, depending upon the number and variety of their financial services transactions and the ease of assembling the data. Thus, for each quarter it may range from 4 hours for a reporter that has a small number and variety of transactions and easily accessible data to 100 hours for a very large reporter that engages in a large number and variety of financial services transactions and has difficulty in locating and assembling the required data. This estimate includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Comments should be addressed to: Director, Bureau of Economic Analysis (BE–1), U.S. Department of Commerce, Washington, DC 20230; or faxed (202–395–7245) or e-mailed (*pbugg@omb.eop.gov*) to the Office of Management and Budget, O.I.R.A., (Attention PRA Desk Officer for BEA).

Regulatory Flexibility Act

The Chief Counsel for Regulation, Department of Commerce, has certified to the Chief Counsel for Advocacy, Small Business Administration, under provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this proposed rulemaking, if adopted, will not have a significant economic impact on a substantial number of small entities. The information collection excludes most small businesses from mandatory reporting. Companies that engage in international financial services transactions tend to be quite large. In addition, the reporting threshold for this survey is set at a level that will exempt most small businesses from reporting. The proposed BE–85 quarterly survey will be required from U.S. financial services providers whose sales of covered services to unaffiliated foreign persons exceeded $20 million for the previous fiscal year or that expect such sales to exceed that amount during the current fiscal year, or whose purchases of covered services from unaffiliated foreign persons exceeded $15 million for the previous fiscal year or that expect such purchases to exceed that amount during the current fiscal year. Thus, the exemption level will exclude most small businesses from mandatory coverage. Of those smaller businesses that must report, most will tend to have specialized operations and activities, so they will likely report only one type of transaction; therefore, the burden on them should be small.

List of Subjects in 15 CFR Part 801

Economic statistics, Foreign trade, International transactions, Penalties, Reporting and recordkeeping requirements.

Rosemary D. Marcuss,

Deputy Director, Bureau of Economic Analysis.

For the reasons set forth in the preamble, BEA proposes to amend 15 CFR Part 801, as follows:

PART 801—SURVEY OF INTERNATIONAL TRADE IN SERVICES BETWEEN U.S. AND FOREIGN PERSONS

1. The authority citation for 15 CFR Part 801 continues to read as follows:

Authority: 5 U.S.C. 301; 15 U.S.C. 4908; 22 U.S.C. 3101–3108; E.O. 11961, 3 CFR, 1977 Comp., p. 86 as amended by E.O. 12013, 3 CFR, 1977 Comp., p. 147, E.O. 12318, 3 CFR, 1981 Comp., p. 173, and E.O. 12518 3 CFR, 1985 Comp., p. 348.

2. Section 801.9 is amended by adding new paragraph (c)(4) to read as follows:

§ 801.9 Reports required.

(c) *Quarterly surveys.* * * *

(4) BE–85, Quarterly Survey of Financial Services Transactions Between U.S. Financial Services Providers and Unaffiliated Foreign Persons:

(i) A BE–85, Quarterly Survey of Financial Services Transactions Between U.S. Financial Services Providers and Unaffiliated Foreign Persons, will be conducted covering the first quarter of the 2004 calendar year and every quarter thereafter.

(A) *Who must report*—(*1*) *Mandatory reporting.* Reports are required from each U.S. person who is a financial services provider or intermediary, or whose consolidated U.S. enterprise includes a separately organized subsidiary or part that is a financial services provider or intermediary, and that had sales of covered services to unaffiliated foreign persons that exceeded $20 million for the previous fiscal year or expects sales to exceed that amount during the current fiscal year, or had purchases of covered services from unaffiliated foreign persons that exceeded $15 million for the previous fiscal year or expects purchases to exceed that amount during the current fiscal year. These thresholds should be applied to financial services transactions with unaffiliated foreign persons by all parts of the consolidated U.S. enterprise combined that are financial services providers or intermediaries. Because the thresholds are applied separately to sales and purchases, the mandatory reporting requirement may apply only to sales, only to purchases, or to both sales and purchases.

(*i*) The determination of whether a U.S. financial services provider or intermediary is subject to this mandatary reporting requirement may be based on the judgement of knowledgeable persons in a company who can identify reportable transactions on a recall basis, with a reasonable degree of certainty, without conducting a detailed manual records search.

(*ii*) Reporters who file pursuant to this mandatory reporting requirement must provide data on total sales and/or purchases of each of the covered types of financial services transactions and must disaggregate the totals by country.

(*2*) *Voluntary reporting.* If a financial services provider or intermediary, or all of a firm's subsidiaries or parts combined that are financial services providers or intermediaries, had covered sales of $20 million or less, or covered purchases of $15 million or less during the previous fiscal year, and if covered sales or purchases are not expected to exceed these amounts in the current fiscal year, a person is requested to provide an estimate of the total for each type of service for the most recent quarter. Provision of this information is voluntary. The estimates may be based on the reasoned judgement of the reporting entity. Because these thresholds apply separately to sales and purchases, voluntary reporting may apply only to sales, only to purchases, or to both.

(B) *BE–85 definition of financial services provider.* The definition of financial services provider used for this survey is identical in coverage to Sector 52—Finance and Insurance—of the North American Industry Classification System, United States, 2002. For example, companies and/or subsidiaries and other separable parts of companies in the following industries are defined as financial services providers: Depository credit intermediation and related activities (including commercial banking, holding companies, savings institutions, check cashing, and debit card issuing); nondepository credit intermediation (including credit card issuing, sales financing, and consumer lending); securities, commodity contracts, and other financial investments and related activities (including security and commodity futures brokers, dealers, exchanges, traders, underwriters, investment bankers, and providers of securities custody services); insurance carriers and related activities (including agents, brokers, and services providers); investment advisors and managers and funds, trusts, and other financial vehicles (including mutual funds, pension funds, real estate investment trusts, investors, stock quotation services, etc.).

(C) *Covered types of services.* The BE–85 survey covers the following types of financial services transactions (purchases and/or sales) between U.S. financial services providers and unaffiliated foreign persons: Brokerage services, including foreign exchange brokerage services; underwriting and private placement services; financial management services; credit-related services, except credit card services; credit card services; financial advisory and custody services; security lending services; electronic funds transfers; and other financial services.

(ii) [Reserved]

* * * * *

[FR Doc. 03–22140 Filed 8–28–03; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

15 CFR Part 806

[Docket No. 030818205–3205–01]

RIN 0691–AA48

Direct Investment Surveys: BE–15, Annual Survey of Foreign Direct Investment in the United States

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule amends regulations that set forth reporting requirements for the BE–15, Annual Survey of Foreign Direct Investment in the United States. The annual survey is comprised of four forms—the BE–15(LF) long form, the BE–15(SF) short form, the BE–15(EZ) form, which is a new form, and the BE–15 Supplement C—Claim for Exemption From Filing a BE–15(LF), BE–15(SF), or BE–15(EZ).

Overall respondent burden for the 2003 annual survey is estimated at 107,900 hours, down 20,100 hours from 128,000 hours estimated for the previous (2001) annual survey. The decrease in the estimated total respondent burden is primarily attributable to the proposed changes to the reporting requirements.

DATES: Comments on this proposed rule will receive consideration if submitted in writing on or before October 28, 2003.

ADDRESSES: Direct all written comments to the Office of the Chief, International Investment Division (BE–50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230. To assure that comments are received in a timely manner, please consider using one of the following delivery methods: (1) Fax to (202) 606–5318, (2) deliver by courier to U.S. Department of Commerce, Bureau of Economic Analysis, BE–49(A), Shipping and Receiving, Section M100, 1441 L Street NW., Washington, DC 20005, or (3) e-mail to *Obie.Whichard@bea.gov.* Comments received will be available for public inspection in Room 7006, 1441 L Street NW., between 8:30 a.m. and 4:30 p.m., eastern time Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Obie G. Whichard, Acting Chief, International Investment Division (BE–50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; phone (202) 606–9800.

SUPPLEMENTARY INFORMATION: This proposed rule amends 15 CFR part 806.15 to set forth reporting requirements for the BE–15, Annual Survey of Foreign Direct Investment in the United States. 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 comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

Description of Revisions

The BE–15, Annual Survey of Foreign Direct Investment in the United States, is mandatory and is conducted annually by the Bureau of Economic Analysis (BEA), U.S. Department of Commerce, under the International Investment and Trade in Services Survey Act (22 U.S.C. 3101–3108)—hereinafter, ''the Act.'' BEA will send the survey to potential respondents in March of each year; responses will be due by May 31.

BEA proposes to introduce a sampling procedure to help reduce respondent burden for some U.S. businesses. The procedure will utilize the new BE–15(EZ) form; this form will provide a few basic indicators for non-sample firms that can be used as a basis for estimating data that they otherwise would have to report on the lengthier BE–15(LF) and BE–15(SF) forms. To bring the annual survey into conformity with the Benchmark Survey of Foreign Direct Investment in the United States—2002, BEA proposes the following changes to the Code of Federal Regulations: (1) Direct that only nonbank majority-owned U.S. affiliates of foreign companies report on the BE–15(LF) long form (minority-owned affiliates will report on the BE–15(SF) short form, or the BE–15(EZ) form, regardless of size); (2) raise the exemption level on the BE–15(LF) long form from $100 million to $125 million (reporting on a given form is required if the affiliate's assets, sales, or net income (or loss) exceed the exemption level); and (3) exempt nonbank subsidiaries or units of U.S. bank or bank holding company affiliates from reporting.

In addition, BEA proposes to make the following changes to the forms: (1) Add questions to the BE–15 (LF) long form to collect detail on premiums earned and claims paid for U.S. affiliates operating in the insurance industry, and to collect detail on finished goods purchased for resale for U.S. affiliates operating in the wholesale and retail trade industries; (2) in conjunction with increasing the exemption level for reporting on the BE–15(LF) long form, add four items to the short form that will serve to improve estimates of gross product for majority-owned U.S. affiliates—certain realized and unrealized gains and losses, U.S. income taxes, interest received, and interest paid; (3) in conjunction with requiring all minority-owned U.S. affiliates to file on the short form, revise the State Schedule to collect additional detail, by State, for minority-owned U.S. affiliates with activities in more than five States; and (4) to reduce overall respondent burden, drop several questions that BEA feels are no longer of significant analytical interest to the data users.

Survey Background

The Bureau of Economic Analysis (BEA), U.S. Department of Commerce, will conduct the survey under the International Investment and Trade in Services Survey Act (22 U.S.C. 3101–3108), hereinafter, ''the Act.'' Section 4(a) of the Act provides that with respect to foreign direct investment in the United States, the President shall, to the extent he deems necessary and feasible, conduct a regular data collection program to secure current information on international capital flows and other information related to international investment and trade in services, including (but not limited to) such information as may be necessary for computing and analyzing the United States balance of payments, the employment and taxes of United States parents and affiliates, and the international investment and trade in services position of the United States.

In Section 3 of Executive Order 11961, the President delegated authority granted under the Act as concerns direct investment to the Secretary of Commerce, who has redelegated it to BEA.

The annual survey is a sample survey that collects data on the financial structure and operations of nonbank U.S. affiliates of foreign companies needed to update similar data for the universe of U.S. affiliates collected once every 5 years in the BE–12 benchmark survey. The data are used to derive annual estimates of the operations of U.S. affiliates of foreign companies, including their balance sheets; income statements; property, plant, and equipment; external financing; employment and employee compensation; merchandise trade; sales of goods and services; taxes; and research and development activity. The data are needed to measure the size and economic significance of foreign direct investment in the United States, to measure changes in such investment, and to assess its impact on the U.S. economy. Such data are generally found

in enterprise-level accounting records of respondent companies. The data are disaggregated by industry of U.S. affiliate, by country and industry of foreign parent or ultimate beneficial owner, and, for selected items, by State.

Executive Order 13132

This proposed rule does not contain policies with Federalism implications as that term is defined in E.O. 13132.

Executive Order 12866

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

Paperwork Reduction Act

This proposed rule contains a collection-of-information requirement subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). The requirement has been submitted to OMB for approval as a revision to a collection currently approved under OMB control number 0608–0034.

Notwithstanding any other provisions of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection displays a currently valid Office of Management and Budget control number.

The survey, as proposed, is expected to result in the filing of reports from approximately 4,950 U.S. affiliates. The respondent burden for this collection of information is expected to vary from 20 minutes for the smallest and least complex company reporting on the BE–15 Supplement C form to 550 hours for the largest and most complex company reporting on the BE–15(LF) long form, with an average burden of 21.8 hours per response (down from 32 hours for the previous annual survey), including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Total respondent burden for the previous (2001) annual survey was estimated at 128,000 hours. Total respondent burden for this proposed survey is estimated at about 107,900 hours (4,950 responses times 21.8 hours average burden). The decrease of 20,100 hours in the estimated total respondent burden is largely attributable to the proposed changes to the reporting requirements.

Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Comments should be addressed to: Director, Bureau of Economic Analysis (BE–1), U.S. Department of Commerce, Washington, DC 20230; and to the Office of Management and Budget, O.I.R.A., Paperwork Reduction Project 0608–0034, Attention PRA Desk Officer for BEA, via the Internet at *pbugg@omb.eop.gov*, or by fax at (202) 395–7245.

Regulatory Flexibility Act

The Chief Counsel for Regulation, Department of Commerce, has certified to the Chief Counsel for Advocacy, Small Business Administration, under the provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this proposed rulemaking, if adopted, will not have a significant economic impact on a substantial number of small entities. Few, if any, small U.S. businesses are subject to the reporting requirements of this survey. Most small businesses are not foreign owned; those that are and have total assets, sales or gross operating revenues, and net income each equal to or less than $30 million are not required to report on the BE–15(LF) long form, BE–15 (SF) short form, or BE–15(EZ) form. Such entities need only file, on a one-time basis, a BE–15, Supplement C-Claim for Exemption.

BEA estimates that each year there will be approximately 300 small business that file the BE–15, Supplement C—Claim for Exemption. Of the 300 small entities that will be filing the BE–15, Supplement C, the respondent burden for this collection of information is expected to range from 20 minutes to 75 minutes, with an average burden of 1 hour, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Thus, the aggregate respondent burden would be 300 hours.

Because there are few small businesses that are subject to the reporting requirements and because those small businesses that are subject to reporting are subject to minimal recordkeeping burdens, the Chief Counsel for Regulation certifies that this proposed rule will not have a significant impact on a substantial number of small entities.

List of Subjects in 15 CFR Part 806

International transactions, Economic statistics, Foreign investment in the United States, Penalties, Reporting and record keeping requirements.

Dated: August 19, 2003.

Rosemary Marcuss,

Deputy Director, Bureau of Economic Analysis.

For reasons set forth in the preamble, BEA proposes to amend 15 CFR part 806 as follows:

PART 806—DIRECT INVESTMENT SURVEYS

1. The authority citation for 15 CFR part 806 continues to read as follows:

Authority: 5 U.S.C. 301; 22 U.S.C. 3101–3108; and E.O. 11961 (3 CFR, 1977 Comp., p. 86), as amended by E.O. 12013 (3 CFR, 1977 Comp., p. 147), E.O. 12318 (3 CFR, 1981 Comp., p. 173), and E.O. 12518 (3 CFR, 1985 Comp., p. 348).

2. Section 806.15(i) is revised to read as follows:

§ 806.15 Foreign direct investment in the United States.

* * * * *

(i) *Annual report form.* BE–15—Annual Survey of Foreign Direct Investment in the United States: One report is required for each consolidated U.S. affiliate, except a U.S. banking affiliate or U.S. bank holding company affiliate (including all of the subsidiaries and units of the bank holding company), exceeding an exemption level of $30 million. A long form, BE–15(LF), must be filed by each nonbank majority-owned U.S. affiliate (a ''majority-owned'' U.S. affiliate is one in which the combined direct and indirect ownership interests of all foreign parents of the U.S. affiliate exceed 50 percent) for which at least one of the three items—total assets, sales or gross operating revenues excluding sales taxes, or net income after provision for U.S. income taxes—exceeds $125 million (positive or negative), unless the nonbank majority-owned U.S. affiliate is selected to file a BE–15(EZ) form. A short form, BE–15(SF), must be filed by each nonbank majority-owned U.S. affiliate for which at least one of the three items—total assets, sales or gross operating revenues excluding sales taxes, or net income after provision for U.S. income taxes—exceeds $30 million but no one item exceeds $125 million (positive or negative), and by each nonbank minority-owned U.S. affiliate (a ''minority-owned'' U.S. affiliate is one in which the combined direct and

indirect ownership interest of all foreign parents of the U.S. affiliate is 50 percent or less) for which at least one of the three items—total assets, sales or gross operating revenues excluding sales taxes, or net income after provision for U.S. income taxes—exceeds $30 million (positive or negative), unless the nonbank U.S. affiliate is selected to file a BE–15(EZ) form. A BE–15(EZ) form must be filed by each nonbank U.S. affiliate that is selected to file this form in lieu of filing the BE–15(LF) or BE–15(SF). A BE–15 Supplement C (Exemption Claim) must be filed by each nonbank U.S. affiliate to claim exemption from filing a BE–15(LF), BE–15(SF), or BE–15(EZ). Following an initial filing, the BE–15 Supplement C is not required annually from those nonbank U.S. affiliates that meet the stated exemption criteria from year to year.

* * * * *

[FR Doc. 03–22074 Filed 8–28–03; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–106486–98; INTL–0015–91]

RIN 1545–AW33; RIN 1545–PP78

Guidance Regarding the Treatment of Certain Contingent Payment Debt Instruments With One or More Payments That Are Denominated in, or Determined by Reference to, a Nonfunctional Currency

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking; notice of public hearing; and withdrawal of previous proposed regulations section.

SUMMARY: This document contains proposed regulations regarding the treatment of contingent payment debt instruments for which one or more payments are denominated in, or determined by reference to, a currency other than the taxpayer's functional currency. These regulations are necessary because current regulations do not provide guidance concerning the tax treatment of such instruments. The proposed regulations generally provide that taxpayers should apply the existing rules under section 1275 of the Internal Revenue Code, with certain modifications, to nonfunctional currency contingent payment debt instruments. This document also withdraws existing proposed regulations and provides notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments and requests to speak (with outlines of oral comments to be discussed) at the public hearing scheduled for December 3, 2003, at 10 a.m. must be submitted by November 12, 2003.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–106486–98), room 5203, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 4 p.m. to: REG–106486–98, Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC or sent electronically, via the IRS Internet site at: *http://www.irs.gov/regs.* The public hearing will be held in room 6718, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Milton Cahn at (202) 622–3870; concerning submission and delivery of comments and the public hearing, Treena Garrett, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collections of information 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. Comments on the collection of Information should be received by October 28, 2003. Comments are specifically requested concerning:

Whether the proposed collections of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collections of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information.

The collections of information in this proposed regulation are in § 1.988–6(a)(1) (cross reference to § 1.1275–4) and § 1.988–6(d)(3). This information is required to ensure consistency in the treatment of the debt instrument between the issuer and the holders. This information will be used for audit and examination purposes. The disclosure of information is mandatory as regards the issuers of nonfunctional currency contingent payment debt instruments. The reporting of information is mandatory as regards holders of debt instruments which determine their own projected payment schedule. The recordkeeping requirement is mandatory for any party that determines the comparable yield and projected payment schedule for a debt instrument. The likely respondents are business or other for-profit institutions.

Taxpayers provide the information on a statement attached to its timely filed federal income tax return for the taxable year that includes the acquisition date of the debt instrument.

Estimated total annual reporting, and/or recordkeeping burden: 100 hours.

Estimated average annual burden hours per respondent and/or recordkeeper: 1 hour.

Estimated number of respondents and/or recordkeepers: 100.

Estimated annual frequency of responses: on occasion.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

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 March 17, 1992, Treasury and the IRS issued proposed regulations (INTL–0015–91), §§ 1.988–1(a)(3), (4) and (5), regarding contingent payment debt instruments, dual currency debt instruments and multi-currency debt

instruments. The proposed regulations followed the general approach in the then-proposed § 1.1275–4(g) contingent payment debt regulations (LR–189–84; 51 FR 12022 (1986), amended at 56 FR 8308 (1991)) and bifurcated such debt instruments into contingent and noncontingent components. After an instrument was bifurcated, the proposed regulations applied the rules in §§ 1.988–1 through 1.988–5, as appropriate, to the resulting components.

On December 16, 1994, Treasury and the IRS withdrew the then proposed § 1.1275–4(g) regulations and proposed a new set of § 1.1275–4 regulations (FI–59–91, 59 FR–64884). These regulations were finalized on June 14, 1996.

Section 1.1275–4 of the final regulations adopted the ''noncontingent bond method'' for certain contingent payment debt instruments. Under the noncontingent bond method, interest accrues on a contingent payment debt instrument at a rate equal to the instrument's comparable yield, which is the yield at which an issuer would issue a fixed rate debt instrument with terms and conditions similar to those of the contingent payment debt instrument. In addition, the noncontingent bond method treats all interest on a debt instrument as original issue discount, which must be taken into account as it accrues, regardless of the taxpayer's normal method of accounting.

Under the noncontingent bond method, the comparable yield is used to construct a projected payment schedule for the debt instrument, which includes a projected amount for each contingent payment. If the actual amount of a contingent payment is greater than the projected amount, the difference is treated as additional interest. If the actual amount of a contingent payment is less than the projected amount, the difference generally offsets current interest accruals. In some cases, the difference may result in a loss to the holder and income to the issuer.

On August 2, 1999, as a result of the withdrawal of the 1994 proposed § 1.1275–4(g) regulations and the promulgation of the final § 1.1275–4 regulations, the IRS issued Announcement 99–76 (1999–2 C.B. 223) which provided a description of a regulatory approach that Treasury and the IRS were considering as a replacement to the proposed regulations in §§ 1.988–1(a)(3), (4) and (5) for contingent payment debt instruments with one or more payments denominated in, or determined by reference to, a nonfunctional currency. Announcement 99–76 stated that Treasury and the IRS were considering issuing regulations that would apply the noncontingent bond method in the taxpayer's nonfunctional currency and would translate payments received on the instrument into functional currency under the rules of §§ 1.988–1 through 1.988–5. Announcement 99–76 requested comments on this approach. No comments were received.

Treasury and the IRS believe that proposed regulations § 1.988–1(a)(3), (4) and (5) should be withdrawn because they incorporate the bifurcation approach rather than the noncontingent bond method ultimately adopted under § 1.1275–4. Treasury and the IRS believe, as reflected in Announcement 99–76, that nonfunctional currency contingent payment debt instruments should be accounted for under rules similar to those that govern the treatment of functional currency contingent payment debt instruments. Treasury and the IRS believe that providing a consistent set of rules in this area is in the best interests of sound tax administration.

Explanation of Provisions

In General

These proposed regulations provide guidance for four different types of debt instruments: (1) Debt instruments issued for money or publicly-traded property for which all payments of principal and interest are denominated in, or determined by reference to, a single nonfunctional currency and which have one or more non-currency contingencies, (2) debt instruments issued for money or publicly-traded property for which payments of principal or interest are denominated in, or determined by reference to, more than one currency and which have no non-currency contingencies, (3) debt instruments issued for money or publicly-traded property for which payments of principal or interest are denominated in, or determined by reference to, more than one currency and which also have one or more non-currency contingencies, and (4) debt instruments which otherwise would fall into one of the three foregoing categories but for the fact that the instruments are not issued for money or publicly-traded property. These proposed regulations do not discuss the treatment of tax-exempt obligations described in § 1.1275–4(d) which are denominated in one or more nonfunctional currencies. Comments are requested as to the proper treatment of such instruments.

Consistent with the approach described in Announcement 99–76, these proposed regulations generally apply the rules of § 1.1275–4(b) (*i.e.,* the noncontingent bond method) to nonfunctional currency contingent payment debt instruments issued for money or publicly traded property. The proposed regulations generally provide that the noncontingent bond method is applied in the currency in which the instrument is denominated (the denomination currency).

Application of the § 1.1275–4(b) rules to nonfunctional currency contingent instruments generally requires taxpayers (i) to accrue interest in the denomination currency at a yield at which the issuer would issue a fixed rate debt instrument denominated in the denomination currency with terms and conditions similar to those of the contingent payment debt instrument, (ii) to translate the interest accrued from the denomination currency into the functional currency (and account for foreign currency gain or loss on payments of interest and principal) under the principles of § 1.988–2(b), and (iii) to account for gain or loss arising from contingencies in a manner consistent with the rules of § 1.1275–4(b).

Applying the Noncontingent Bond Method in the Denomination Currency

As noted, the proposed regulations require taxpayers to apply the noncontingent bond method in the instrument's denomination currency. For example, in the case of an instrument whose denomination currency is the British pound, an issuer whose functional currency is the U.S. dollar would first determine the comparable yield of the instrument, that is, the yield at which the issuer would issue a fixed rate instrument in British pounds with terms and conditions similar to those of the instrument actually being issued. Second, the issuer would construct a projected payment schedule applying that yield. Third, the amount of interest accrued in each taxable year would be determined in British pounds based on the comparable yield and translated into dollars under the principles of section 988. Fourth, the issuer and holder would account for differences between the projected amount of payments and the actual amount of payments (so-called positive adjustments and negative adjustments) under rules similar to those in § 1.1275–4(b). Consistent with the rules of § 1.1275–4(b), the proposed regulations provide that net positive adjustments are treated as additional interest on the instrument. Net negative adjustments generally offset current interest accruals, and in some cases may result in a loss to the holder and income to the issuer. Finally, the issuer and holders would

determine foreign currency gain or loss with respect to interest and principal payments on the instrument.

Determination of the Comparable Yield and Projected Payment Schedule

Consistent with § 1.1275–4(b)(4)(iv), the holder uses the yield and projected payment schedule determined by the issuer to determine the holder's interest accruals and adjustments for a debt instrument. If the issuer does not determine a comparable yield and projected payment schedule for the debt instrument, or if the issuer's comparable yield or projected payment schedule is unreasonable, the holder of the debt instrument must determine the comparable yield and the projected payment schedule for the debt instrument under the rules of the proposed regulations. A holder that determines its own comparable yield and projected payment schedule must explicitly disclose, in the manner set forth in § 1.1275–4(b)(4)(iv), both this fact and the reason why the holder made its own determination.

Determination of Basis

In general, the proposed regulations provide that a holder maintains its adjusted basis in functional currency by computing basis adjustments in the denomination currency under the rules of § 1.1275–4(b)(7)(iii) and then translating such adjustments into functional currency. Thus, the proposed regulations provide that a holder's basis is increased by the holder's accrued but unpaid interest inclusions on the debt instrument, generally without regard to any positive or negative adjustments, and decreased by the amount of any noncontingent payment and the projected amount of any contingent payment previously made on the debt instrument to the holder. These amounts are translated into functional currency under the principles of § 1.988–2(b).

Determination of Amount Realized

The proposed regulations generally follow § 1.1275–4(b)(7)(iv) in determining the amount realized, but do so in the denomination currency. Thus, for purposes of determining the amount realized by a holder on the scheduled retirement of a debt instrument, the holder generally is treated as receiving the projected amount of any contingent payment due at maturity. In the case of a sale, exchange or unscheduled retirement of a debt instrument, general recognition principles of tax law generally apply (*e.g.*, section 1001(b)). However, the amount realized by a holder on either the scheduled retirement, or the sale, exchange, or unscheduled retirement of a debt instrument, is reduced by any negative adjustment carryforward existing in the taxable year of the sale, exchange or retirement.

To calculate gain or loss other than foreign currency gain or loss, the proposed regulations require the translation of the amount realized into functional currency. Foreign currency gain or loss is computed separately, as described below. The proposed regulations generally translate the amount realized by reference to the rates used to translate the components of interest and principal that make up adjusted basis. The amount realized is translated using the adjusted basis rates in order to separate from the foreign currency gain or loss the amount of gain or loss on the sale, exchange or retirement of the debt instrument which does not result from changes in foreign exchange rates. Thus, where the amount realized in the denomination currency equals the adjusted basis of the instrument in the denomination currency prior to translation, the amount realized is translated in its entirety by reference to the rates used to translate adjusted basis. Where the amount realized differs from the adjusted basis prior to translation, additional attribution and translation rules are required.

Where the amount realized in the denomination currency is less than the adjusted basis in the denomination currency, that is, where the holder realizes a loss (not taking into account foreign currency gain or loss), the following rules apply as to which parts of adjusted basis are not recovered. In the case of a scheduled retirement at maturity, the loss is attributable to principal (the amount in denomination currency which the holder paid to purchase the debt instrument). The loss is attributable to principal because the holder will not entirely recover the holder's original investment in the debt instrument. In the case of a sale or exchange, the loss is first attributable to accrued interest. Attributing the loss first to interest results in symmetrical treatment between a loss resulting from a negative adjustment and a loss resulting from a sale.

When the holder's amount realized in the denomination currency exceeds the amount of its basis in the denomination currency prior to translation, that is, where the holder realizes a gain (not taking into account foreign currency gain or loss), the excess of amount realized over adjusted basis is translated at the spot rate on the date of receipt. This rule ensures symmetrical treatment between a positive adjustment and a gain on the instrument.

Determination of Foreign Currency Gain or Loss

The proposed regulations provide that foreign currency gain or loss is determined on an instrument with respect to principal and interest based on the comparable yield and projected payment schedule under the principles of § 1.988–2(b). In general, no foreign currency gain or loss is recognized until payment is made or received pursuant to the instrument, and no foreign currency gain or loss is computed with respect to positive or negative adjustments. However, foreign currency gain or loss is determined with respect to positive adjustments described in § 1.1275–4(b)(9)(ii) (relating to certain fixed but deferred contingent payments), based upon the difference between the spot rate on the date the positive adjustment becomes fixed and the spot rate on the date the positive adjustment is paid or received.

Source Rules

Consistent with the rules of § 1.1275–4(b)(6)(ii), the proposed regulations provide that all gain (other than foreign currency gain) on an instrument is characterized as interest for all tax purposes, including source and character rules. Losses of a holder from a contingent payment debt instrument are generally sourced by reference to the rules of § 1.1275–4(b)(9)(iv). Under § 1.1275–4(b)(9)(iv), a holder's deductions or loss related to a contingent payment debt instrument that are treated as ordinary losses are treated as deductions that are definitely related to the class of gross income to which income from such debt instrument belongs. Deductions or losses that the holder treats as capital losses are allocated, consistently with the general principles of § 1.865–1(b)(2), to the class of gross income with respect to which interest income from the instrument would give rise.

Treatment of Subsequent Holders

The proposed regulations provide that the rules of § 1.1275–4(b)(9) generally apply to subsequent holders of an instrument who purchase the instrument for an amount greater or less than the instrument's adjusted issue price (determined in the denomination currency). Accordingly, to the extent that the purchase price for an instrument exceeds the adjusted issue price of the instrument, the holder is required to allocate such excess to interest accrued on the instrument or to projected payments on the instrument

in a reasonable manner. Each such allocation is treated as a negative adjustment on the instrument, and the holder's basis on the instrument is decreased as these negative adjustments are taken into account.

To the extent that the adjusted issue price of the instrument exceeds its purchase price, the holder is required to allocate such excess to interest accrued on the instrument or to projected payments on the instrument in a reasonable manner. As the difference is taken into account, the holder is treated as receiving a positive adjustment on the instrument, and the holder's basis is increased as these positive adjustments are taken into account.

The proposed regulations generally translate the difference between the purchase price and adjusted issue price into functional currency at the rate used to translate the interest or projected payment subject to the adjustment. Thus, for example, a positive adjustment attributable to interest is translated at the same rate used to translate interest in the period in which it accrues (*e.g.*, the average rate for the accrual period). The basis adjustment corresponding to such a positive or negative adjustment is translated at the same rate applicable to the positive or negative adjustment itself.

Netting

The proposed regulations do not provide for the netting of market gain or loss with currency gain or loss on nonfunctional currency contingent payment debt instruments. On the one hand, different character and source rules generally apply to market gain or loss and currency gain or loss, and netting such items may produce results inconsistent with the tax treatment of other types of instruments. On the other hand, where market gain or loss and currency gain or loss counteract each other with respect to a taxpayer, requiring separate recognition of such gain and loss may not accurately reflect the economic benefits and burdens associated with the instrument. Accordingly, Treasury and the IRS request comments regarding the extent to which netting should be permitted or required. *Examples 2* and *4* of the proposed regulations demonstrate cases in which netting potentially could be permitted or required because both illustrate instances in which market loss could be netted against currency gain.

Debt Instruments Denominated in Multiple Currencies

In the case of an instrument for which payments are denominated in, or determined by reference to, more than one currency, the proposed regulations provide that the issuer must first determine the instrument's predominant currency, which will be used as the instrument's denomination currency for purposes of applying the rules of the proposed regulations. The predominant currency of the instrument is determined on the issue date by comparing the present value in functional currency of the noncontingent and projected payments denominated in, or determined by reference to, each currency. For this purpose, the applicable discount rate must be a nonfunctional currency discount rate, but the rate may be determined using any method, consistently applied, that reasonably reflects the instrument's economic substance. If a taxpayer does not determine a discount rate using such a method, the Commissioner may choose a method for determining the discount rate that does reflect the instrument's economic substance.

After the denomination currency has been determined, all payments on the instrument that are denominated in, or determined by reference to, a currency other than the denomination currency are treated as non-currency related contingent payments for purposes of applying the rules of the proposed regulations. Treasury and the IRS request comments regarding whether all gain or loss with respect to a debt instrument for which payments are denominated in, or determined by reference to, more than one currency and which has no non-currency contingencies should be treated as foreign currency gain or loss.

Debt Instruments Issued for Non-Publicly Traded Property

In the case of a nonfunctional currency contingent debt instrument issued for non-publicly traded property, the instrument is not accounted for using the noncontingent bond method. Rather, the debt instrument is separated into its components based on the currency in which the payments are denominated and whether the payments are contingent or noncontingent. The noncontingent components in each currency are treated as a separate debt instrument denominated in the currency in which the payment (or payments) is denominated. A component consisting of a contingent payment is generally treated in the manner provided in § 1.1275–4(c)(4). For purposes of the contingent payment, the test rate (the interest rate which is used to discount the contingent payment so as to determine the amount of the payment which is treated as principal, and the amount which is treated as interest) is determined by reference to the dollar unless the dollar does not reasonably reflect the economic substance of the contingent component.

Proposed Effective Dates

Section 1.988–6 is proposed to apply to nonfunctional currency contingent payment debt instruments issued 60 days or more after the date § 1.988–6 is published as a final regulation in the **Federal Register**.

Special Analysis

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required.

It is hereby certified that 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, if any, small entities issue or hold foreign currency denominated contingent payment debt instruments. Generally, it is expected that the only domestic holders of these instruments will likely be financial institutions, investment banking firms, investment funds, and other sophisticated investors, due to the foreign currency risk and other contingencies inherent in these instruments. 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, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (preferably a signed original and eight (8) copies) that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed regulations and how they can be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for December 3, 2003, at 10 a.m. in room 6718 Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building.

Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit electronic or written comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by November 12, 2003. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

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

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Section 1.988–1(a)(3), (4) and (5) as proposed on March 17, 1992 at 57 FR 9218 income tax regulations are withdrawn, and 26 CFR Part 1 is proposed to be 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 * * *

Par. 2. Section 1.988–2 is amended by:

1. Adding the text of paragraph (b)(2)(i)(B)(*1*).

2. Removing the last sentence of paragraph (b)(2)(i)(B)(*2*).

The addition reads as follows:

§ 1.988–2 Recognition and computation of exchange gain or loss.

* * * * *

(b) * * *

(2) * * *

(i) * * *

(B) * * * (*1*) *Operative rules.* See § 1.988–6 for rules applicable to contingent debt instruments for which one or more payments are denominated in, or determined by reference to, a nonfunctional currency.

* * * * *

Par. 3. Section 1.988–6 is added to read as follows:

§ 1.988–6 Nonfunctional currency contingent payment debt instruments.

(a) *In general*—(1) *Scope.* This section determines the accrual of interest and the amount, timing, source, and character of any gain or loss on nonfunctional currency contingent payment debt instruments described in this paragraph (a)(1). Except as set forth by the rules in this section, the rules in § 1.1275–4 (relating to contingent payment debt instruments) apply to the following instruments—

(i) A debt instrument described in § 1.1275–4(b)(1) for which all payments of principal and interest are denominated in, or determined by reference to, a single nonfunctional currency and which has one or more non-currency related contingencies;

(ii) A debt instrument described in § 1.1275–4(b)(1) for which payments of principal or interest are denominated in, or determined by reference to, more than one currency and which has no non-currency related contingencies;

(iii) A debt instrument described in § 1.1275–4(b)(1) for which payments of principal or interest are denominated in, or determined by reference to, more than one currency and which has one or more non-currency related contingencies; and

(iv) A debt instrument otherwise described in paragraph (a)(1)(i), (ii) or (iii) of this section, except that the debt instrument is described in § 1.1275–4(c)(1) rather than § 1.1275–4(b)(1) (*e.g.*, the instrument is issued for non-publicly traded property).

(2) *Exception for hyperinflationary currencies*—(i) *In general.* Except as provided in paragraph (a)(2)(ii) of this section, this section shall not apply to an instrument described in paragraph (a)(1) of this section if any payment made under such instrument is determined by reference to a hyperinflationary currency, as defined in § 1.985–1(b)(2)(ii)(D). In such case, the amount, timing, source and character of interest, principal, foreign currency gain or loss, and gain or loss relating to a non-currency contingency shall be determined under the method that reflects the instrument's economic substance.

(ii) *Discretion as to method.* If a taxpayer does not account for an instrument described in paragraph (a)(2)(i) of this section in a manner that reflects the instrument's economic substance, the Commissioner may apply the rules of this section to such an instrument or apply the principles of § 1.988–2(b)(15), reasonably taking into account the contingent feature or features of the instrument.

(b) *Instruments described in paragraph (a)(1)(i) of this section*—(1) *In general.* Paragraph (b)(2) of this section provides rules for applying the noncontingent bond method (as set forth in § 1.1275–4(b)) in the nonfunctional currency in which a debt instrument described in paragraph (a)(1)(i) of this section is denominated, or by reference to which its payments are determined (the denomination currency). Paragraph (b)(3) of this section describes how amounts determined in paragraph (b)(2) of this section shall be translated from the denomination currency of the instrument into the taxpayer's functional currency. Paragraph (b)(4) of this section describes how gain or loss (other than foreign currency gain or loss) shall be determined and characterized with respect to the instrument. Paragraph (b)(5) of this section describes how foreign currency gain or loss shall be determined with respect to accrued interest and principal on the instrument. Paragraph (b)(6) of this section provides rules for determining the source and character of any gain or loss with respect to the instrument. Paragraph (b)(7) of this section provides rules for subsequent holders of an instrument who purchase the instrument for an amount other than the adjusted issue price of the instrument. Paragraph (c) of this section provides examples of the application of paragraph (b) of this section. See paragraph (d) of this section for the determination of the denomination currency of an instrument described in paragraph (a)(1)(ii) or (iii) of this section. See paragraph (e) of this section for the treatment of an instrument described in paragraph (a)(1)(iv) of this section.

(2) *Application of noncontingent bond method*—(i) *Accrued interest.* Interest accruals on an instrument described in paragraph (a)(1)(i) of this section are initially determined in the denomination currency of the instrument by applying the noncontingent bond method, set forth in § 1.1275–4(b), to the instrument in its denomination currency. Accordingly, the comparable yield, projected payment schedule, and comparable fixed rate debt instrument, described in § 1.1275–4(b)(4), are determined in the denomination currency. For purposes of applying the noncontingent bond method to instruments described in this paragraph, the applicable Federal rate described in § 1.1275–4(b)(4)(i) shall be

the rate described in § 1.1274–4(d) with respect to the denomination currency.

(ii) *Net positive and negative adjustments.* Positive and negative adjustments, and net positive and net negative adjustments, with respect to an instrument described in paragraph (a)(1)(i) of this section are determined by applying the rules of § 1.1275–4(b)(6) (and § 1.1275–4(b)(9)(i) and (ii), if applicable) in the denomination currency. Accordingly, a net positive adjustment is treated as additional interest (in the denomination currency) on the instrument. A net negative adjustment first reduces interest that otherwise would be accrued by the taxpayer during the current tax year in the denomination currency. If a net negative adjustment exceeds the interest that would otherwise be accrued by the taxpayer during the current tax year in the denomination currency, the excess is treated as ordinary loss (if the taxpayer is a holder of the instrument) or ordinary income (if the taxpayer is the issuer of the instrument). The amount treated as ordinary loss by a holder with respect to a net negative adjustment is limited, however, to the amount by which the holder's total interest inclusions on the debt instrument (determined in the denomination currency) exceed the total amount of the holder's net negative adjustments treated as ordinary loss on the debt instrument in prior taxable years (determined in the denomination currency). Similarly, the amount treated as ordinary income by an issuer with respect to a net negative adjustment is limited to the amount by which the issuer's total interest deductions on the debt instrument (determined in the denomination currency) exceed the total amount of the issuer's net negative adjustments treated as ordinary income on the debt instrument in prior taxable years (determined in the denomination currency). To the extent a net negative adjustment exceeds the current year's interest accrual and the amount treated as ordinary loss to a holder (or ordinary income to the issuer), the excess is treated as a negative adjustment carryforward, within the meaning of § 1.1275–4(b)(6)(iii)(C), in the denomination currency.

(iii) *Adjusted issue price.* The adjusted issue price of an instrument described in paragraph (a)(1)(i) of this section is determined by applying the rules of § 1.1275–4(b)(7) in the denomination currency. Accordingly, the adjusted issue price is equal to the debt instrument's issue price in the denomination currency, increased by the interest previously accrued on the debt instrument (determined without regard to any net positive or net negative adjustments on the instrument) and decreased by the amount of any noncontingent payment and the projected amount of any contingent payment previously made on the instrument. All adjustments to the adjusted issue price are calculated in the denomination currency.

(iv) *Adjusted basis.* The adjusted basis of an instrument described in paragraph (a)(1)(i) of this section is determined by applying the rules of § 1.1275–4(b)(7) in the taxpayer's functional currency. In accordance with those rules, a holder's basis in the debt instrument is increased by the interest previously accrued on the debt instrument (translated into functional currency), without regard to any net positive or net negative adjustments on the instrument (except as provided in paragraph (b)(7) or (8) of this section, if applicable), and decreased by the amount of any noncontingent payment and the projected amount of any contingent payment previously made on the instrument to the holder (translated into functional currency). See paragraph (b)(3)(iii) of this section for translation rules.

(v) *Amount realized.* The amount realized by a holder and the repurchase price paid by the issuer on the scheduled or unscheduled retirement of a debt instrument described in paragraph (a)(1)(i) of this section are determined by applying the rules of § 1.1275–4(b)(7) in the denomination currency. For example, with regard to a scheduled retirement at maturity, the holder is treated as receiving the projected amount of any contingent payment due at maturity, reduced by the amount of any negative adjustment carryforward. For purposes of translating the amount realized by the holder into functional currency, the rules of paragraph (b)(3)(iv) of this section shall apply.

(3) *Treatment and translation of amounts determined under noncontingent bond method*—(i) *Accrued interest.* The amount of accrued interest, determined under paragraph (b)(2)(i) of this section, is translated into the taxpayer's functional currency at the average exchange rate, as described in § 1.988–2(b)(2)(iii)(A), or, at the taxpayer's election, at the appropriate spot rate, as described in § 1.988–2(b)(2)(iii)(B).

(ii) *Net positive and negative adjustments*—(A) *Net positive adjustments.* A net positive adjustment, as referenced in paragraph (b)(2)(ii) of this section, is translated into the taxpayer's functional currency at the spot rate on the last day of the taxable year in which the adjustment is taken into account under § 1.1275–4(b)(6), or, if earlier, the date the instrument is disposed of or otherwise terminated.

(B) *Net negative adjustments.* A net negative adjustment is treated and, where necessary, is translated from the denomination currency into the taxpayer's functional currency under the following rules:

(*1*) The amount of a net negative adjustment determined in the denomination currency that reduces the current year's interest in that currency shall first reduce the current year's accrued but unpaid interest, and then shall reduce the current year's interest which was accrued and paid. No translation is required.

(*2*) The amount of a net negative adjustment treated as ordinary income or loss under § 1.1275–4(b)(6)(iii)(B) first is attributable to accrued but unpaid interest accrued in prior taxable years. For this purpose, the net negative adjustment shall be treated as attributable to any unpaid interest accrued in the immediately preceding taxable year, and thereafter to unpaid interest accrued in each preceding taxable year. The amount of the net negative adjustment applied to accrued but unpaid interest is translated into functional currency at the same rate used, in each of the respective prior taxable years, to translate the accrued interest.

(*3*) Any amount of the net negative adjustment remaining after the application of paragraphs (b)(3)(ii)(B)(*1*) and (*2*) of this section is attributable to interest accrued and paid in prior taxable years. The amount of the net negative adjustment applied to such amounts is translated into functional currency at the spot rate on the date the debt instrument was issued or, if later, acquired.

(*4*) Any amount of the net negative adjustment remaining after application of paragraphs (b)(3)(ii)(B)(*1*), (*2*) and (*3*) of this section is a negative adjustment carryforward, within the meaning of § 1.1275–4(b)(6)(iii)(C). A negative adjustment carryforward is carried forward in the denomination currency and is applied to reduce interest accruals in subsequent years. In the year in which the instrument is sold, exchanged or retired, any negative adjustment carryforward not applied to interest reduces the holder's amount realized on the instrument (in the denomination currency). An issuer of a debt instrument described in paragraph (a)(1)(i) of this section who takes into income a negative adjustment carryforward (that is not applied to interest) in the year the instrument is

retired, as described in § 1.1275–4(b)(6)(iii)(C), translates such income into functional currency at the spot rate on the date the instrument was issued.

(iii) *Adjusted basis*—(A) *In general.* Except as otherwise provided in this paragraph and paragraphs (b)(7) or (8) of this section, a holder determines and maintains adjusted basis by translating the denomination currency amounts determined under § 1.1275–4(b)(7)(iii) into functional currency as follows:

(*1*) The holder's initial basis in the instrument is determined by translating the amount paid by the holder to acquire the instrument (in the denomination currency) into functional currency at the spot rate on the date the instrument was issued or, if later, acquired.

(*2*) An increase in basis attributable to interest accrued on the instrument is translated at the rate applicable to such interest under paragraph (b)(3)(i) of this section.

(*3*) Any noncontingent payment and the projected amount of any contingent payments determined in the denomination currency that decrease the holder's basis in the instrument under § 1.1275–4(b)(7)(iii) are translated as follows:

(*i*) The payment first is attributable to the most recently accrued interest to which prior amounts have not already been attributed. The payment is translated into functional currency at the rate at which the interest was accrued.

(*ii*) Any amount remaining after the application of paragraph (b)(3)(iii)(A)(*3*)(*i*) of this section is attributable to principal. Such amounts are translated into functional currency at the spot rate on the date the instrument was issued or, if later, acquired.

(B) *Exception for interest reduced by a negative adjustment carryforward.* Solely for purposes of this § 1.988–6, any amounts of accrued interest income that are reduced as a result of a negative adjustment carryforward shall be treated as principal and translated at the spot rate on the date the instrument was issued or, if later, acquired.

(iv) *Amount realized*—(A) *Instrument held to maturity*—(*1*) *In general.* With respect to an instrument held to maturity, a holder translates the amount realized by separating such amount in the denomination currency into the component parts of interest and principal that make up adjusted basis prior to translation under paragraph (b)(3)(iii) of this section, and translating each of those component parts of the amount realized at the same rate used to translate the respective component parts of basis under paragraph (b)(3)(iii) of this section. The amount realized first shall be translated by reference to the component parts of basis consisting of accrued interest during the taxpayer's holding period as determined under paragraph (b)(3)(iii) of this section and ordering such amounts on a last in first out basis. Any remaining portion of the amount realized shall be translated by reference to the rate used to translate the component of basis consisting of principal as determined under paragraph (b)(3)(iii) of this section.

(*2*) *Subsequent purchases at discount and fixed but deferred contingent payments.* For purposes of this paragraph (b)(3)(iv) of this section, any amount which is required to be added to adjusted basis under paragraph (b)(7) or (8) of this section shall be treated as additional interest which was accrued on the date the amount was added to adjusted basis. To the extent included in amount realized, such amounts shall be translated into functional currency at the same rates at which they were translated for purposes of determining adjusted basis. See paragraphs (b)(7)(iv) and (b)(8) of this section for rules governing the rates at which the amounts are translated for purposes of determining adjusted basis.

(B) *Sale, exchange, or unscheduled retirement*—(*1*) *Holder.* In the case of a sale, exchange, or unscheduled retirement, application of the rule stated in paragraph (b)(3)(iv)(A) of this section shall be modified as follows. The holder's amount realized first shall be translated by reference to the principal component of basis as determined under paragraph (b)(3)(iii) of this section, and then to the component of basis consisting of accrued interest as determined under paragraph (b)(3)(iii) of this section and ordering such amounts on a first in first out basis. Any gain recognized by the holder (*i.e.,* any excess of the sale price over the holder's basis, both expressed in the denomination currency) is translated into functional currency at the spot rate on the payment date.

(2) *Issuer.* In the case of an unscheduled retirement of the debt instrument, any excess of the adjusted issue price of the debt instrument over the amount paid by the issuer (expressed in denomination currency) shall first be attributable to accrued unpaid interest, to the extent the accrued unpaid interest had not been previously offset by a negative adjustment, on a last-in-first-out basis, and then to principal. The accrued unpaid interest shall be translated into functional currency at the rate at which the interest was accrued. The principal shall be translated at the spot rate on the date the debt instrument was issued.

(C) *Effect of negative adjustment carryforward with respect to the issuer.* Any amount of negative adjustment carryforward treated as ordinary income under § 1.1275–4(b)(6)(iii)(C) shall be translated at the exchange rate on the day the debt instrument was issued.

(4) *Determination of gain or loss not attributable to foreign currency.* A holder of a debt instrument described in paragraph (a)(1)(i) of this section shall recognize gain or loss upon sale, exchange, or retirement of the instrument equal to the difference between the amount realized with respect to the instrument, translated into functional currency as described in paragraph (b)(3)(iv) of this section, and the adjusted basis in the instrument, determined and maintained in functional currency as described in paragraph (b)(3)(iii) of this section. The amount of any gain or loss so determined is characterized as provided in § 1.1275–4(b)(8), and sourced as provided in paragraph (b)(6) of this section.

(5) *Determination of foreign currency gain or loss*—(i) *In general.* Other than in a taxable disposition of the debt instrument, foreign currency gain or loss is recognized with respect to a debt instrument described in paragraph (a)(1)(i) of this section only when payments are made or received. No foreign currency gain or loss is recognized with respect to a net positive or negative adjustment, as determined under paragraph (b)(2)(ii) of this section (except with respect to a positive adjustment described in paragraph (b)(8) of this section). As described in this paragraph (b)(5), foreign currency gain or loss is determined in accordance with the rules of § 1.988–2(b).

(ii) *Foreign currency gain or loss attributable to accrued interest.* The amount of foreign currency gain or loss recognized with respect to payments of interest previously accrued on the instrument is determined by translating the amount of interest paid or received into functional currency at the spot rate on the date of payment and subtracting from such amount the amount determined by translating the interest paid or received into functional currency at the rate at which such interest was accrued under the rules of paragraph (b)(3)(i) of this section. For purposes of this paragraph, the amount of any payment that is treated as accrued interest shall be reduced by the amount of any net negative adjustment treated as ordinary loss (to the holder) or ordinary income (to the issuer), as provided in paragraph (b)(2)(ii) of this

section. For purposes of determining whether the payment consists of interest or principal, see the payment ordering rules in paragraph (b)(5)(iv) of this section.

(iii) *Principal.* The amount of foreign currency gain or loss recognized with respect to payment or receipt of principal is determined by translating the amount paid or received into functional currency at the spot rate on the date of payment or receipt and subtracting from such amount the amount determined by translating the principal into functional currency at the spot rate on the date the instrument was issued or, in case of the holder, if later, acquired. For purposes of determining whether the payment consists of interest or principal, see the payment ordering rules in paragraph (b)(5)(iv) of this section.

(iv) *Payment ordering rules*—(A) *In general.* Except as provided in paragraph (b)(5)(iv)(B) of this section, payments with respect to an instrument described in paragraph (a)(1)(i) of this section shall be treated as follows:

(*1*) A payment shall first be attributable to any net positive adjustment on the instrument that has not previously been taken into account.

(*2*) Any amount remaining after applying paragraph (b)(5)(iv)(A)(*1*) of this section shall be attributable to accrued but unpaid interest, remaining after reduction by any net negative adjustment, and shall be attributable to the most recent accrual period to the extent prior amounts have not already been attributed to such period.

(*3*) Any amount remaining after applying paragraphs (b)(5)(iv)(A)(*1*) and (*2*) of this section shall be attributable to principal. Any interest paid in the current year that is reduced by a net negative adjustment shall be considered a payment of principal for purposes of determining foreign currency gain or loss.

(B) *Special rule for sale or exchange or unscheduled retirement.* Payments made or received upon a sale or exchange or unscheduled retirement shall first be applied against the principal of the debt instrument (or in the case of a subsequent purchaser, the purchase price of the instrument in denomination currency) and then against accrued unpaid interest (in the case of a holder, accrued while the holder held the instrument).

(C) *Subsequent purchaser that has a positive adjustment allocated to a daily portion of interest.* A positive adjustment that is allocated to a daily portion of interest pursuant to paragraph (b)(7)(iv) of this section shall be treated as interest for purposes of applying the payment ordering rule of this paragraph (b)(5)(iv).

(6) *Source of gain or loss.* The source of foreign currency gain or loss recognized with respect to an instrument described in paragraph (a)(1)(i) of this section shall be determined pursuant to § 1.988–4. Consistent with the rules of § 1.1275–4(b)(8), all gain (other than foreign currency gain) on an instrument described in paragraph (a)(1)(i) of this section is treated as interest income for all purposes. The source of an ordinary loss (other than foreign currency loss) with respect to an instrument described in paragraph (a)(1)(i) of this section shall be determined pursuant to § 1.1275–4(b)(9)(iv). The source of a capital loss with respect to an instrument described in paragraph (a)(1)(i) of this section shall be determined pursuant to § 1.865–1(b)(2).

(7) *Basis different from adjusted issue price*—(i) *In general.* The rules of § 1.1275–4(b)(9)(i), except as set forth in this paragraph (b)(7), shall apply to an instrument described in paragraph (a)(1)(i) of this section purchased by a subsequent holder for more or less than the instrument's adjusted issue price.

(ii) *Determination of basis.* If an instrument described in paragraph (a)(1)(i) of this section is purchased by a subsequent holder, the subsequent holder's initial basis in the instrument shall equal the amount paid by the holder to acquire the instrument, translated into functional currency at the spot rate on the date of acquisition.

(iii) *Purchase price greater than adjusted issue price.* If the purchase price of the instrument (determined in the denomination currency) exceeds the adjusted issue price of the instrument, the holder shall, consistent with the rules of § 1.1275–4(b)(9)(i)(B), reasonably allocate such excess to the daily portions of interest accrued on the instrument or to a projected payment on the instrument. To the extent attributable to interest, the excess shall be reasonably allocated over the remaining term of the instrument to the daily portions of interest accrued and shall be a negative adjustment on the dates the daily portions accrue. On the date of such adjustment, the holder's adjusted basis in the instrument is reduced by the amount treated as a negative adjustment under this paragraph (b)(7)(iii), translated into functional currency at the rate used to translate the interest which is offset by the negative adjustment. To the extent related to a projected payment, such excess shall be treated as a negative adjustment on the date the payment is made. On the date of such adjustment, the holder's adjusted basis in the instrument is reduced by the amount treated as a negative adjustment under this paragraph (b)(7)(iii), translated into functional currency at the spot rate on the date the instrument was acquired.

(iv) *Purchase price less than adjusted issue price.* If the purchase price of the instrument (determined in the denomination currency) is less than the adjusted issue price of the instrument, the holder shall, consistent with the rules of § 1.1275–4(b)(9)(i)(C), reasonably allocate the difference to the daily portions of interest accrued on the instrument or to a projected payment on the instrument. To the extent attributable to interest, the difference shall be reasonably allocated over the remaining term of the instrument to the daily portions of interest accrued and shall be a positive adjustment on the dates the daily portions accrue. On the date of such adjustment, the holder's adjusted basis in the instrument is increased by the amount treated as a positive adjustment under this paragraph (b)(7)(iv), translated into functional currency at the rate used to translate the interest to which it relates. For purposes of determining adjusted basis under paragraph (b)(3)(iii) of this section, such increase in adjusted basis shall be treated as an additional accrual of interest during the period to which the positive adjustment relates. To the extent related to a projected payment, such difference shall be treated as a positive adjustment on the date the payment is made. On the date of such adjustment, the holder's adjusted basis in the instrument is increased by the amount treated as a positive adjustment under this paragraph (b)(7)(iv), translated into functional currency at the spot rate on the date the adjustment is taken into account. For purposes of determining the amount realized on the instrument in functional currency under paragraph (b)(3)(iv) of this section, amounts attributable to the excess of the adjusted issue price of the instrument over the purchase price of the instrument shall be translated into functional currency at the same rate at which the corresponding adjustments are taken into account under this paragraph (b)(7)(iv) for purposes of determining the adjusted basis of the instrument.

(8) *Fixed but deferred contingent payments.* In the case of an instrument with a contingent payment that becomes fixed as to amount before the payment is due, the rules of § 1.1275–4(b)(9)(ii) shall be applied in the denomination currency of the instrument. For this purpose, foreign currency gain or loss shall be recognized on the date payment

is made or received with respect to the instrument under the principles of paragraph (b)(5) of this section. Any increase or decrease in basis required under § 1.1275–4(b)(9)(ii)(D) shall be taken into account at the same exchange rate as the corresponding net positive or negative adjustment is taken into account.

(c) *Examples.* The provisions of paragraph (b) of this section may be illustrated by the following examples. In each example, assume that the instrument described is a debt instrument for federal income tax purposes. No inference is intended, however, as to whether the instrument is a debt instrument for federal income tax purposes. The examples are as follows:

Example 1. Treatment of net positive adjustment—(i) *Facts.* On December 31, 2004, Z, a calendar year U.S. resident taxpayer whose functional currency is the U.S. dollar, purchases from a foreign corporation, at original issue, a zero-coupon debt instrument with a non-currency contingency for £1000. All payments of principal and interest with respect to the instrument are denominated in, or determined by reference to, a single nonfunctional currency (the British pound). The debt instrument would be subject to § 1.1275–4(b) if it were denominated in dollars. The debt instrument's comparable yield, determined in British pounds under paragraph (b)(2)(i) of this section and § 1.1275–4(b), is 10 percent, compounded annually, and the projected payment schedule, as constructed under the rules of § 1.1275–4(b), provides for a single payment of £1210 on December 31, 2006 (consisting of a noncontingent payment of £975 and a projected payment of £235). The debt instrument is a capital asset in the hands of Z. Z does not elect to use the spot-rate convention described in § 1.988–2(b)(2)(iii)(B). The payment actually made on December 31, 2006, is £1300. The relevant pound/dollar spot rates over the term of the instrument are as follows:

Date	Spot rate (pounds to dollars)
Dec. 31, 2004	£1.00=$1.00
Dec. 31, 2005	£1.00=$1.10
Dec. 31, 2006	£1.00=$1.20

Accrual period	Average rate (pounds to dollars)
2005	£1.00=$1.05
2006	£1.00=$1.15

(ii) *Treatment in 2005*—(A) *Determination of accrued interest.* Under paragraph (b)(2)(i) of this section, and based on the comparable yield, Z accrues £100 of interest on the debt instrument for 2005 (issue price of £1000 × 10 percent). Under paragraph (b)(3)(i) of this section, Z translates the £100 at the average exchange rate for the accrual period ($1.05 × £100 = $105). Accordingly, Z has interest income in 2005 of $105.

(B) *Adjusted issue price and basis.* Under paragraphs (b)(2)(iii) and (iv) of this section, the adjusted issue price of the debt instrument determined in pounds and Z's adjusted basis in dollars in the debt instrument are increased by the interest accrued in 2005. Thus, on January 1, 2006, the adjusted issue price of the debt instrument is £1100. For purposes of determining Z's dollar basis in the debt instrument, the $1000 basis ($1.00 × £1000 original cost basis) is increased by the £100 of accrued interest, translated at the rate at which interest was accrued for 2005. See paragraph (b)(3)(iii) of this section. Accordingly, Z's adjusted basis in the debt instrument as of January 1, 2006, is $1105.

(iii) *Treatment in 2006*—(A) *Determination of accrued interest.* Under paragraph (b)(2)(i) of this section, and based on the comparable yield, Z accrues £110 of interest on the debt instrument for 2006 (adjusted issue price of £1100 × 10 percent). Under paragraph (b)(3)(i) of this section, Z translates the £110 at the average exchange rate for the accrual period ($1.15 × £110 = $126.50). Accordingly, Z has interest income in 2006 of $126.50.

(B) *Effect of net positive adjustment.* The payment actually made on December 31, 2006, is £1300, rather than the projected £1210. Under paragraph (b)(2)(ii) of this section, Z has a net positive adjustment of £90 on December 31, 2006, attributable to the difference between the amount of the actual payment and the amount of the projected payment. Under paragraph (b)(3)(ii)(A) of this section, the £90 net positive adjustment is treated as additional interest income and is translated into dollars at the spot rate on the last day of the year ($1.20 × £90 = $108). Accordingly, Z has a net positive adjustment of $108 resulting in a total interest inclusion for 2006 of $234.50 ($126.50 + $108 = $234.50).

(C) *Adjusted issue price and basis.* Based on the projected payment schedule, the adjusted issue price of the debt instrument immediately before the payment at maturity is £1210 (£1100 plus £110 of accrued interest for 2006). Z's adjusted basis in dollars, based only on the noncontingent payment and the projected amount of the contingent payment to be received, is $1231.50 ($1105 plus $126.50 of accrued interest for 2006).

(D) *Amount realized.* Even though Z receives £1300 at maturity, for purposes of determining the amount realized, Z is treated under paragraph (b)(2)(v) of this section as receiving the projected amount of the contingent payment on December 31, 2006. Therefore, Z is treated as receiving £1210 on December 31, 2006. Under paragraph (b)(3)(iv) of this section, Z translates its amount realized into dollars and computes its gain or loss on the instrument (other than foreign currency gain or loss) by breaking the amount realized into its component parts. Accordingly, £100 of the £1210 (representing the interest accrued in 2005) is translated at the rate at which it was accrued (£1 = $1.05), resulting in an amount realized of $105; £110 of the £1210 (representing the interest accrued in 2006) is translated into dollars at the rate at which it was accrued (£1 = $1.15), resulting in an amount realized of $126.50; and £1000 of the £1210 (representing a return of principal) is translated into dollars at the spot rate on the date the instrument was purchased (£1 = $1), resulting in an amount realized of $1000. Z's total amount realized is $1231.50, the same as its basis, and Z recognizes no gain or loss (before consideration of foreign currency gain or loss) on retirement of the instrument.

(E) *Foreign currency gain or loss.* Under paragraph (b)(5) of this section Z recognizes foreign currency gain under section 988 on the instrument with respect to the consideration actually received at maturity (except for the net positive adjustment), £1210. The amount of recognized foreign currency gain is determined based on the difference between the spot rate on the date the instrument matures and the rates at which the principal and interest were taken into account. With respect to the portion of the payment attributable to interest accrued in 2005, the foreign currency gain is $15 [£100 × ($1.20 − $1.05)]. With respect to interest accrued in 2006, the foreign currency gain equals $5.50 [£110 × ($1.20 − $1.15)]. With respect to principal, the foreign currency gain is $200 [£1000 × ($1.20 − $1.00)]. Thus, Z recognizes a total foreign currency gain on December 31, 2006, of $220.50.

(F) *Source.* Z has interest income of $105 in 2005, interest income of $234.50 in 2006 (attributable to £110 of accrued interest and the £90 net positive adjustment), and a foreign currency gain of $220.50 in 2006. Under paragraph (b)(6) of this section and section 862(a)(1), the interest income is sourced by reference to the residence of the payor and is therefore from sources without the United States. Under paragraph (b)(6) of this section and § 1.988–4, Z's foreign currency gain of $220.50 is sourced by reference to Z's residence and is therefore from sources within the United States.

Example 2. Treatment of net negative adjustment—(i) *Facts.* Assume the same facts as in *Example 1*, except that Z receives £975 at maturity instead of £1300.

(ii) *Treatment in 2005.* The treatment of the debt instrument in 2005 is the same as in Example 1. Thus, Z has interest income in 2005 of $105. On January 1, 2006, the adjusted issue price of the debt instrument is £1100, and Z's adjusted basis in the instrument is $1105.

(iii) *Treatment in 2006*—(A) *Determination of accrued interest.* Under paragraph (b)(2)(i) of this section and based on the comparable yield, Z's accrued interest for 2006 is £110 (adjusted issue price of £1100 × 10 percent). Under paragraph (b)(3)(i) of this section, the £110 of accrued interest is translated at the average exchange rate for the accrual period ($1.15 × £110 = $126.50).

(B) *Effect of net negative adjustment.* The payment actually made on December 31, 2006, is £975, rather than the projected £1210. Under paragraph (b)(2)(ii) of this section, Z has a net negative adjustment of £235 on December 31, 2006, attributable to the difference between the amount of the actual payment and the amount of the

projected payment. Z's accrued interest income of £110 in 2006 is reduced to zero by the net negative adjustment. Under paragraph (b)(3)(ii)(B)(*1*) of this section the net negative adjustment which reduces the current year's interest is not translated into functional currency. Under paragraph (b)(2)(ii) of this section, Z treats the remaining £125 net negative adjustment as an ordinary loss to the extent of the £100 previously accrued interest in 2005. This £100 ordinary loss is attributable to interest accrued but not paid in the preceding year. Therefore, under paragraph (b)(3)(ii)(B)(*2*) of this section, Z translates the loss into dollars at the average rate for such year (£1 = $1.05). Accordingly, Z has an ordinary loss of $105 in 2006. The remaining £25 of net negative adjustment is a negative adjustment carryforward under paragraph (b)(2)(ii) of this section.

(C) *Adjusted issue price and basis.* Based on the projected payment schedule, the adjusted issue price of the debt instrument immediately before the payment at maturity is £1210 (£1100 plus £110 of accrued interest for 2006). Z's adjusted basis in dollars, based only on the noncontingent payments and the projected amount of the contingent payments to be received, is $1231.50 ($1105 plus $126.50 of accrued interest for 2006).

(D) *Amount realized.* Even though Z receives £975 at maturity, for purposes of determining the amount realized, Z is treated under paragraph (b)(2)(v) of this section as receiving the projected amount of the contingent payment on December 31, 2006, reduced by the amount of Z's negative adjustment carryforward of £25. Therefore, Z is treated as receiving £1185 (£1210 − £25) on December 31, 2006. Under paragraph (b)(3)(iv) of this section, Z translates its amount realized into dollars and computes its gain or loss on the instrument (other than foreign currency gain or loss) by breaking the amount realized into its component parts. Accordingly, £100 of the £1185 (representing the interest accrued in 2005) is translated at the rate at which it was accrued (£1 = $1.05), resulting in an amount realized of $105; £110 of the £1185 (representing the interest accrued in 2006) is translated into dollars at the rate at which it was accrued (£1 = $1.15), resulting in an amount realized of $126.50; and £975 of the £1185 (representing a return of principal) is translated into dollars at the spot rate on the date the instrument was purchased (£1 = $1), resulting in an amount realized of $975. Z's amount realized is $1206.50 ($105 + $126.50 + $975 = $1206.50), and Z recognizes a capital loss (before consideration of foreign currency gain or loss) of $25 on retirement of the instrument ($1206.50 − $1231.50 = −$25).

(E) *Foreign currency gain or loss.* Z recognizes foreign currency gain with respect to the consideration actually received at maturity, £975. Under paragraph (b)(5)(ii) of this section, no foreign currency gain or loss is recognized with respect to unpaid accrued interest reduced to zero by the net negative adjustment resulting in 2006. In addition, no foreign currency gain or loss is recognized with respect to unpaid accrued interest from 2005, also reduced to zero by the ordinary loss. Accordingly, Z recognizes foreign currency gain with respect to principal only. Thus, Z recognizes a total foreign currency gain on December 31, 2006, of $195 [£975 × ($1.20 − $1.00)].

(F) *Source.* In 2006, Z has an ordinary loss of $105, a capital loss of $25, and a foreign currency gain of $195. Under paragraph (b)(6) of this section and § 1.1275–4(b)(9)(iv), the $105 ordinary loss generally reduces Z's foreign source passive income under section 904(d) and the regulations thereunder. Under paragraph (b)(6) of this section and § 1.865–1(b)(2), the $25 capital loss is sourced by reference to how interest income on the instrument would have been sourced. Therefore, the $25 capital loss generally reduces Z's foreign source passive income under section 904(d) and the regulations thereunder. Under paragraph (b)(6) of this section and § 1.988–4, Z's foreign currency gain of $195 is sourced by reference to Z's residence and is therefore from sources within the United States.

Example 3. Negative adjustment and periodic interest payments—(i) *Facts.* On December 31, 2004, Z, a calendar year U.S. resident taxpayer whose functional currency is the U.S. dollar, purchases from a foreign corporation, at original issue, a two-year debt instrument with a non-currency contingency for £1000. All payments of principal and interest with respect to the instrument are denominated in, or determined by reference to, a single nonfunctional currency (the British pound). The debt instrument would be subject to § 1.1275–4(b) if it were denominated in dollars. The debt instrument's comparable yield, determined in British pounds under §§ 1.988–2(b)(2) and 1.1275–4(b), is 10 percent, compounded semiannually. The debt instrument provides for semiannual interest payments of £30 payable each June 30, and December 31, and a contingent payment at maturity on December 31, 2006, which is projected to equal £1086.20 (consisting of a noncontingent payment of £980 and a projected payment of £106.20) in addition to the interest payable at maturity. The debt instrument is a capital asset in the hands of Z. Z does not elect to use the spot-rate convention described in § 1.988–2(b)(2)(iii)(B). The payment actually made on December 31, 2006, is £981.00. The relevant pound/dollar spot rates over the term of the instrument are as follows:

Date	Spot rate (pounds to dollars)
Dec. 31, 2004	£1.00=$1.00
June 30, 2005	£1.00=$1.20
Dec. 31, 2005	£1.00=$1.40
June 30, 2006	£1.00=$1.60
Dec. 31, 2006	£1.00=$1.80

Accrual period	Average rate (pounds to dollars)
Jan.–June 2005	£1.00=$1.10
July–Dec. 2005	£1.00=$1.30
Jan.–June 2006	£1.00=$1.50
July–Dec. 2006	£1.00=$1.70

(ii) *Treatment in 2005*—(A) *Determination of accrued interest.* Under paragraph (b)(2)(i) of this section, and based on the comparable yield, Z accrues £50 of interest on the debt instrument for the January–June accrual period (issue price of £1000 × 10 percent/2). Under paragraph (b)(3)(i) of this section, Z translates the £50 at the average exchange rate for the accrual period ($1.10 × £50 = $55.00). Similarly, Z accrues £51 of interest in the July–December accrual period [(£1000 + £50 − £30) × 10 percent/2], which is translated at the average exchange rate for the accrual period ($1.30 × £51 = £66.30). Accordingly, Z accrues £121.30 of interest income in 2005.

(B) *Adjusted issue price and basis*—(*1*) *January–June accrual period.* Under paragraphs (b)(2)(iii) and (iv) of this section, the adjusted issue price of the debt instrument determined in pounds and Z's adjusted basis in dollars in the debt instrument are increased by the interest accrued, and decreased by the interest payment made, in the January–June accrual period. Thus, on July 1, 2005, the adjusted issue price of the debt instrument is £1020 (£1000 + £50 − £30 = £1020). For purposes of determining Z's dollar basis in the debt instrument, the $1000 basis is increased by the £50 of accrued interest, translated, under paragraph (b)(3)(iii) of this section, at the rate at which interest was accrued for the January–June accrual period ($1.10 × £50 = $55). The resulting amount is reduced by the £30 payment of interest made during the accrual period, translated, under paragraph (b)(3)(iii) of this section and § 1.988–2(b)(7), at the rate applicable to accrued interest ($1.10 × £30 = $33). Accordingly, Z's adjusted basis as of July 1, 2005, is $1022 ($1000 + $55 − $33).

(*2*) *July–December accrual period.* Under paragraphs (b)(2)(iii) and (iv) of this section, the adjusted issue price of the debt instrument determined in pounds and Z's adjusted basis in dollars in the debt instrument are increased by the interest accrued, and decreased by the interest payment made, in the July–December accrual period. Thus, on January 1, 2006, the adjusted issue price of the instrument is £1041 (£1020 + £51 − £30 = £1041). For purposes of determining Z's dollar basis in the debt instrument, the $1022 basis is increased by the £51 of accrued interest, translated, under paragraph (b)(3)(iii) of this section, at the rate at which interest was accrued for the July–December accrual period ($1.30 × £51 = $66.30). The resulting amount is reduced by the £30 payment of interest made during the accrual period, translated, under paragraph (b)(3)(iii) of this section and § 1.988–2(b)(7), at the rate applicable to accrued interest ($1.30 × £30 = $39). Accordingly, Z's adjusted basis as of January 1, 2006, is $1049.30 ($1022 + $66.30 − $39).

(C) *Foreign currency gain or loss.* Z will recognize foreign currency gain on the receipt of each £30 payment of interest actually received during 2005. The amount of foreign currency gain in each case is determined, under paragraph (b)(5)(ii) of this section, by reference to the difference between the spot rate on the date the £30 payment was made and the average exchange

rate for the accrual period during which the interest accrued. Accordingly, Z recognizes $3 of foreign currency gain on the January–June interest payment [£30 × ($1.20 − $1.10)], and $3 of foreign currency gain on the July–December interest payment [£30 × ($1.40 − $1.30)]. Z recognizes in 2005 a total of $6 of foreign currency gain.

(D) *Source.* Z has interest income of $121.30 and a foreign currency gain of $6. Under paragraph (b)(6) of this section and section 862(a)(1), the interest income is sourced by reference to the residence of the payor and is therefore from sources without the United States. Under paragraph (b)(6) of this section and § 1.988–4, Z's foreign currency gain of $6 is sourced by reference to Z's residence and is therefore from sources within the United States.

(iii) *Treatment in 2006*—(A) *Determination of accrued interest.* Under paragraph (b)(2)(i) of this section, and based on the comparable yield, Z's accrued interest for the January–June accrual period is £52.05 (adjusted issue price of £1041 × 10 percent/2). Under paragraph (b)(3)(i) of this section, Z translates the £52.05 at the average exchange rate for the accrual period ($1.50 × £52.05 = $78.08). Similarly, Z accrues £53.15 of interest in the July–December accrual period [(£1041 + £52.05 − £30) × 10 percent/2], which is translated at the average exchange rate for the accrual period ($1.70 × £53.15 = $90.35). Accordingly, Z accrues £105.20, or $168.43, of interest income in 2006.

(B) *Effect of net negative adjustment.* The payment actually made on December 31, 2006, is £981.00, rather than the projected £1086.20. Under paragraph (b)(2)(ii)(B) of this section, Z has a net negative adjustment of £105.20 on December 31, 2006, attributable to the difference between the amount of the actual payment and the amount of the projected payment. Z's accrued interest income of £105.20 in 2006 is reduced to zero by the net negative adjustment. Elimination of the 2006 accrued interest fully utilizes the net negative adjustment.

(C) *Adjusted issue price and basis*—(1) *January–June accrual period.* Under paragraphs (b)(2)(iii) and (iv) of this section, the adjusted issue price of the debt instrument determined in pounds and Z's adjusted basis in dollars in the debt instrument are increased by the interest accrued, and decreased by the interest payment made, in the January–June accrual period. Thus, on July 1, 2006, the adjusted issue price of the debt instrument is £1063.05 (£1041 + £52.05 − £30 = £1063.05). For purposes of determining Z's dollar basis in the debt instrument, the $1049.30 adjusted basis is increased by the £52.05 of accrued interest, translated, under paragraph (b)(3)(iii) of this section, at the rate at which interest was accrued for the January–June accrual period ($1.50 × £52.05 = $78.08). The resulting amount is reduced by the £30 payment of interest made during the accrual period, translated, under paragraph (b)(3)(iii) of this section and § 1.988–2(b)(7), at the rate applicable to accrued interest ($1.50 × £30 = $45). Accordingly, Z's adjusted basis as of July 1, 2006, is $1082.38 ($1049.30 + $78.08 − $45).

(2) *July–December accrual period.* Under paragraphs (b)(2)(iii) and (iv) of this section, the adjusted issue price of the debt instrument determined in pounds and Z's adjusted basis in dollars in the debt instrument are increased by the interest accrued, and decreased by the interest payment made, in the July–December accrual period. Thus, immediately before maturity on December 31, 2006, the adjusted issue price of the instrument is £1086.20 (£1063.05 + £53.15 − £30 = £1086.20). For purposes of determining Z's dollar basis in the debt instrument, the $1082.38 adjusted basis is increased by the £53.15 of accrued interest, translated, under paragraph (b)(3)(iii) of this section, at the rate at which interest was accrued for the July–December accrual period ($1.70 × £53.15 = $90.36). The resulting amount is reduced by the £30 payment of interest made during the accrual period, translated, under paragraph (b)(3)(iii) of this section and § 1.988–2(b)(7), at the rate applicable to accrued interest ($1.70 × £30 = $51). Accordingly, Z's adjusted basis on December 31, 2006, immediately prior to maturity is $1121.74 ($1082.38 + $90.36 − $51).

(D) *Amount realized.* Even though Z receives £981.00 at maturity, for purposes of determining the amount realized, Z is treated under paragraph (b)(2)(v) of this section as receiving the projected amount of the contingent payment on December 31, 2006. Therefore, Z is treated as receiving £1086.20 on December 31, 2006. Under paragraph (b)(3)(iv) of this section, Z translates its amount realized into dollars and computes its gain or loss on the instrument (other than foreign currency gain or loss) by breaking the amount realized into its component parts. Accordingly, £20 of the £1086.20 (representing the interest accrued in the January–June 2005 accrual period, less £30 interest paid) is translated into dollars at the rate at which it was accrued (£1 = $1.10), resulting in an amount realized of $22; £21 of the £1086.20 (representing the interest accrued in the July–December 2005 accrual period, less £30 interest paid) is translated into dollars at the rate at which it was accrued (£1 = $1.30), resulting in an amount realized of $27.30; £22.05 of the £1086.20 (representing the interest accrued in the January–June 2006 accrual period, less £30 interest paid) is translated into dollars at the rate at which it was accrued (£1 = $1.50), resulting in an amount realized of $33.08; £23.15 of the £1086.20 (representing the interest accrued in the July 1–December 31, 2006 accrual period, less the £30 interest payment) is translated into dollars at the rate at which it was accrued (£1 = $1.70), resulting in an amount realized of $39.36; and £1000 (representing principal) is translated into dollars at the spot rate on the date the instrument was purchased (£1 = $1), resulting in an amount realized of $1000. Accordingly, Z's total amount realized is $1121.74 ($22 + $27.30 + $33.08 + $39.36 + $1000), the same as its basis, and Z recognizes no gain or loss (before consideration of foreign currency gain or loss) on retirement of the instrument.

(E) *Foreign currency gain or loss.* Z recognizes foreign currency gain with respect to each £30 payment actually received during 2006. These payments, however, are treated as payments of principal for this purpose because all 2006 accrued interest is reduced to zero by the net negative adjustment. See paragraph (b)(5)(iv)(A)(*3*) of this section. The amount of foreign currency gain in each case is determined, under paragraph (b)(5)(iii) of this section, by reference to the difference between the spot rate on the date the £30 payment is made and the spot rate on the date the debt instrument was issued. Accordingly, Z recognizes $18 of foreign currency gain on the January–June 2006 interest payment [£30 × ($1.60 − $1.00)], and $24 of foreign currency gain on the July–December 2006 interest payment [£30 × ($1.80 − $1.00)]. Z separately recognizes foreign currency gain with respect to the consideration actually received at maturity, £981.00. The amount of such gain is determined based on the difference between the spot rate on the date the instrument matures and the rates at which the principal and interest were taken into account. With respect to the portion of the payment attributable to interest accrued in January–June 2005 (other than the £30 payments), the foreign currency gain is $14 [£20 × ($1.80 − $1.10)]. With respect to the portion of the payment attributable to interest accrued in July–December 2005 (other than the £30 payments), the foreign currency gain is $10.50 [£21 × ($1.80 − $1.30)]. With respect to the portion of the payment attributable to interest accrued in 2006 (other than the £30 payments), no foreign currency gain or loss is recognized under paragraph (b)(5)(ii) of this section because such interest was reduced to zero by the net negative adjustment. With respect to the portion of the payment attributable to principal, the foreign currency gain is $752 [£940 × ($1.80 − $1.00)]. Thus, Z recognizes a foreign currency gain of $42 on receipt of the two £30 payments in 2006, and $776.50 ($14 + $10.50 + $752) on receipt of the payment at maturity, for a total 2006 foreign currency gain of $818.50.

(F) *Source.* Under paragraph (b)(6) of this section and § 1.988–4, Z's foreign currency gain of $818.50 is sourced by reference to Z's residence and is therefore from sources within the United States.

Example 4. Purchase price greater than adjusted issue price—(i) *Facts.* On July 1, 2005, Z, a calendar year U.S. resident taxpayer whose functional currency is the U.S. dollar, purchases a debt instrument with a non-currency contingency for £1405. All payments of principal and interest with respect to the instrument are denominated in, or determined by reference to, a single nonfunctional currency (the British pound). The debt instrument would be subject to § 1.1275–4(b) if it were denominated in dollars. The debt instrument was originally issued by a foreign corporation on December 31, 2003, for an issue price of £1000, and matures on December 31, 2006. The debt instrument's comparable yield, determined in British pounds under §§ 1.988–2(b)(2) and 1.1275–4(b), is 10.25 percent, compounded semiannually, and the projected payment schedule for the debt instrument (determined as of the issue date under the rules of

§ 1.1275–4(b)) provides for a single payment at maturity of £1349.70 (consisting of a noncontingent payment of £1000 and a projected payment of £349.70). At the time of the purchase, the adjusted issue price of the debt instrument is £1161.76, assuming semiannual accrual periods ending on June 30 and December 31 of each year. The increase in the value of the debt instrument over its adjusted issue price is due to an increase in the expected amount of the contingent payment. The debt instrument is a capital asset in the hands of Z. Z does not elect to use the spot-rate convention described in § 1.988–2(b)(2)(iii)(B). The payment actually made on December 31, 2006, is £1400. The relevant pound/dollar spot rates over the term of the instrument are as follows:

Date	Spot rate (pounds to dollars)
July 1, 2005	£1.00=$1.00
Dec. 31, 2006	£1.00=$2.00

Accrual period	Average rate (pounds to dollars)
July 1–December 31, 2005	£1.00=$1.50
January 1–June 30, 2006	£1.00=$1.50
July 1–December 31, 2006	£1.00=$1.50

(ii) *Initial basis.* Under paragraph (b)(7)(ii) of this section, Z's initial basis in the debt instrument is $1405, Z's purchase price of £1405, translated into functional currency at the spot rate on the date the debt instrument was purchased (£1 = $1).

(iii) *Allocation of purchase price differential.* Z purchased the debt instrument for £1405 when its adjusted issue price was £1161.76. Under paragraph (b)(7)(iii) of this section, Z allocates the £243.24 excess of purchase price over adjusted issue price to the contingent payment at maturity. This allocation is reasonable because the excess is due to an increase in the expected amount of the contingent payment and not, for example, to a decrease in prevailing interest rates.

(iv) *Treatment in 2005*—(A) *Determination of accrued interest.* Under paragraph (b)(2)(i) of this section, and based on the comparable yield, Z accrues £59.54 of interest on the debt instrument for the July–December 2005 accrual period (issue price of £1161.76 × 10.25 percent/2). Under paragraph (b)(3)(i) of this section, Z translates the £59.54 of interest at the average exchange rate for the accrual period ($1.50 × £59.54 = $89.31). Accordingly, Z has interest income in 2005 of $89.31.

(B) *Adjusted issue price and basis.* Under paragraphs (b)(2)(iii) and (iv) of this section, the adjusted issue price of the debt instrument determined in pounds and Z's adjusted basis in dollars in the debt instrument are increased by the interest accrued in July–December 2005. Thus, on January 1, 2006, the adjusted issue price of the debt instrument is £1221.30 (£1161.76 + £59.54). For purposes of determining Z's dollar basis in the debt instrument on January 1, 2006, the $1405 basis is increased by the £59.54 of accrued interest, translated at the rate at which interest was accrued for the July–December 2005 accrual period. Paragraph (b)(3)(iii) of this section. Accordingly, Z's adjusted basis in the instrument, as of January 1, 2006, is $1494.31 [$1405 + (£59.54 × $1.50)].

(v) *Treatment in 2006*—(A) *Determination of accrued interest.* Under paragraph (b)(2)(i) of this section, and based on the comparable yield, Z accrues £62.59 of interest on the debt instrument for the January–June 2006 accrual period (issue price of £1221.30 × 10.25 percent/2). Under paragraph (b)(3)(i) of this section, Z translates the £62.59 of accrued interest at the average exchange rate for the accrual period ($1.50 × £62.59 = $93.89). Similarly, Z accrues £65.80 of interest in the July–December 2006 accrual period [(£1221.30 + £62.59) × 10.25 percent/2], which is translated at the average exchange rate for the accrual period ($1.50 × £65.80 = $98.70). Accordingly, Z accrues £128.39, or $192.59, of interest income in 2006.

(B) *Effect of positive and negative adjustments*—(*1*) *Offset of positive adjustment.* The payment actually made on December 31, 2006, is £1400, rather than the projected £1349.70. Under paragraph (b)(2)(ii) of this section, Z has a positive adjustment of £50.30 on December 31, 2006, attributable to the difference between the amount of the actual payment and the amount of the projected payment. Under paragraph (b)(7)(iii) of this section, however, Z also has a negative adjustment of £243.24, attributable to the excess of Z's purchase price for the debt instrument over its adjusted issue price. Accordingly, Z will have a net negative adjustment of £192.94 (£50.30 − £243.24 = − £192.94) for 2006.

(*2*) *Offset of accrued interest.* Z's accrued interest income of £128.39 in 2006 is reduced to zero by the net negative adjustment. The net negative adjustment which reduces the current year's interest is not translated into functional currency. Under paragraph (b)(2)(ii) of this section, Z treats the remaining £64.55 net negative adjustment as an ordinary loss to the extent of the £59.54 previously accrued interest in 2005. This £59.54 ordinary loss is attributable to interest accrued but not paid in the preceding year. Therefore, under paragraph (b)(3)(ii)(B)(*2*) of this section, Z translates the loss into dollars at the average rate for such year (£1 = $1.50). Accordingly, Z has an ordinary loss of $89.31 in 2006. The remaining £5 of net negative adjustment is a negative adjustment carryforward under paragraph (b)(2)(ii) of this section.

(C) *Adjusted issue price and basis*—(*1*) *January–June accrual period.* Under paragraph (b)(2)(iii) of this section, the adjusted issue price of the debt instrument on July 1, 2006, is £1283.89 (£1221.30 + £62.59 = £1283.89). Under paragraphs (b)(2)(iv) and (b)(3)(iii) of this section, Z's adjusted basis as of July 1, 2006, is $1588.20 ($1494.31 + $93.89).

(*2*) *July–December accrual period.* Based on the projected payment schedule, the adjusted issue price of the debt instrument immediately before the payment at maturity is £1349.70 (£1283.89 + £65.80 accrued interest for July–December). Z's adjusted basis in dollars, based only on the noncontingent payments and the projected amount of the contingent payments to be received, is $1686.90 ($1588.20 plus $98.70 of accrued interest for July–December).

(*3*) *Adjustment to basis upon contingent payment.* Under paragraph (b)(7)(iii) of this section, Z's adjusted basis in the debt instrument is reduced at maturity by £243.24, the excess of Z's purchase price for the debt instrument over its adjusted issue price. For this purpose, the adjustment is translated into functional currency at the spot rate on the date the instrument was acquired (£1 = $1). Accordingly, Z's adjusted basis in the debt instrument at maturity is $1443.66 ($1686.90 − $243.24).

(D) *Amount realized.* Even though Z receives £1400 at maturity, for purposes of determining the amount realized, Z is treated under paragraph (b)(2)(v) of this section as receiving the projected amount of the contingent payment on December 31, 2006, reduced by the amount of Z's negative adjustment carryforward of £5.01. Therefore, Z is treated as receiving £1344.69 (£1349.70 − £5.01) on December 31, 2006. Under paragraph (b)(3)(iv) of this section, Z translates its amount realized into dollars and computes its gain or loss on the instrument (other than foreign currency gain or loss) by breaking the amount realized into its component parts. Accordingly, £59.54 of the £1344.69 (representing the interest accrued in 2005) is translated at the rate at which it was accrued (£1 = $1.50), resulting in an amount realized of $89.31; £62.59 of the £1344.69 (representing the interest accrued in January–June 2006) is translated into dollars at the rate at which it was accrued (£1 = $1.50), resulting in an amount realized of $93.89; £65.80 of the £1344.69 (representing the interest accrued in July–December 2006) is translated into dollars at the rate at which it was accrued (£1 = $1.50), resulting in an amount realized of $98.70; and £1156.76 of the £1344.69 (representing a return of principal) is translated into dollars at the spot rate on the date the instrument was purchased (£1 = $1), resulting in an amount realized of $1156.76. Z's amount realized is $1438.66 ($89.31 + $93.89 + $98.70 + $1156.76), and Z recognizes a capital loss (before consideration of foreign currency gain or loss) of $5 on retirement of the instrument ($1438.66 − $1443.66 = − $5).

(E) *Foreign currency gain or loss.* Z recognizes foreign currency gain under section 988 on the instrument with respect to the entire consideration actually received at maturity, £1400. While foreign currency gain or loss ordinarily would not have arisen with respect to £50.30 of the £1400, which was initially treated as a positive adjustment in 2006, the larger negative adjustment in 2006 reduced this positive adjustment to zero. Accordingly, foreign currency gain or loss is recognized with respect to the entire £1400. Under paragraph (b)(5)(ii) of this section, however, no foreign currency gain or loss is recognized with respect to unpaid accrued interest reduced to zero by the net negative adjustment resulting in 2006, and no foreign currency gain or loss is recognized with respect to unpaid accrued interest from 2005,

also reduced to zero by the ordinary loss. Therefore, the entire £1400 is treated as a return of principal for the purpose of determining foreign currency gain or loss, and Z recognizes a total foreign currency gain on December 31, 2001, of $1400 [£1400 × ($2.00 − $1.00)].

(F) *Source.* Z has an ordinary loss of $89.31, a capital loss of $5, and a foreign currency gain of $1400. Under paragraph (b)(6) of this section and § 1.1275–4(b)(9)(iv), the $89.31 ordinary loss generally reduces Z's foreign source passive income under section 904(d) and the regulations thereunder. Under paragraph (b)(6) of this section and § 1.865–1(b)(2), the $5 capital loss is sourced by reference to how interest income on the instrument would have been sourced. Therefore, the $5 capital loss generally reduces Z's foreign source passive income under section 904(d) and the regulations thereunder. Under paragraph (b)(6) of this section and § 1.988–4, Z's foreign currency gain of $1400 is sourced by reference to Z's residence and is therefore from sources within the United States.

Example 5. Sale of an instrument with a negative adjustment carryforward—(i) *Facts.* On December 31, 2003, Z, a calendar year U.S. resident taxpayer whose functional currency is the U.S. dollar, purchases at original issue a debt instrument with non-currency contingencies for £1000. All payments of principal and interest with respect to the instrument are denominated in, or determined by reference to, a single nonfunctional currency (the British pound). The debt instrument would be subject to § 1.1275–4(b) if it were denominated in dollars. The debt instrument's comparable yield, determined in British pounds under §§ 1.988–2(b)(2) and 1.1275–4(b), is 10 percent, compounded annually, and the projected payment schedule for the debt instrument provides for payments of £310 on December 31, 2005 (consisting of a noncontingent payment of £50 and a projected amount of £260) and £990 on December 31, 2006 (consisting of a noncontingent payment of £940 and a projected amount of £50). The debt instrument is a capital asset in the hands of Z. Z does not elect to use the spot-rate convention described in § 1.988–2(b)(2)(iii)(B). The payment actually made on December 31, 2005, is £50. On December 30, 2006, Z sells the debt instrument for £940. The relevant pound/dollar spot rates over the term of the instrument are as follows:

Date	Spot rate (pounds to dollars)
Dec. 31, 2003	£1.00=$1.00
Dec. 31, 2005	£1.00=$2.00
Dec. 30, 2006	£1.00=$2.00

Accrual period	Average rate (pounds to dollars)
January 1—December 31, 2004.	£1.00=$2.00
January 1—December 31, 2005.	£1.00=$2.00
January 1—December 31, 2006.	£1.00=$2.00

(ii) *Treatment in 2004*—(A) *Determination of accrued interest.* Under paragraph (b)(2)(i) of this section, and based on the comparable yield, Z accrues £100 of interest on the debt instrument for 2004 (issue price of £1000 × 10 percent). Under paragraph (b)(3)(i) of this section, Z translates the £100 at the average exchange rate for the accrual period ($2.00 × £100 = $200). Accordingly, Z has interest income in 2004 of $200.

(B) *Adjusted issue price and basis.* Under paragraphs (b)(2)(iii) and (iv) of this section, the adjusted issue price of the debt instrument determined in pounds and Z's adjusted basis in dollars in the debt instrument are increased by the interest accrued in 2004. Thus, on January 1, 2005, the adjusted issue price of the debt instrument is £1100. For purposes of determining Z's dollar basis in the debt instrument, the $1000 basis ($1.00 × £1000 original cost basis) is increased by the £100 of accrued interest, translated at the rate at which interest was accrued for 2004. See paragraph (b)(3)(iii) of this section. Accordingly, Z's adjusted basis in the debt instrument as of January 1, 2005, is $1200 ($1000 + $200).

(iii) *Treatment in 2005*—(A) *Determination of accrued interest.* Under paragraph (b)(2)(i) of this section, and based on the comparable yield, Z's accrued interest for 2005 is £110 (adjusted issue price of £1100 × 10 percent). Under paragraph (b)(3)(i) of this section, the £110 of accrued interest is translated at the average exchange rate for the accrual period ($2.00 × £110 = $220).

(B) *Effect of net negative adjustment.* The payment actually made on December 31, 2005, is £50, rather than the projected £310. Under paragraph (b)(2)(ii) of this section, Z has a net negative adjustment of £260 on December 31, 2005, attributable to the difference between the amount of the actual payment and the amount of the projected payment. Z's accrued interest income of £110 in 2005 is reduced to zero by the net negative adjustment. Under paragraph (b)(3)(ii)(B)(*1*) of this section, the net negative adjustment which reduces the current year's interest is not translated into functional currency. Under paragraph (b)(2)(ii) of this section, Z treats the remaining £150 net negative adjustment as an ordinary loss to the extent of the £100 previously accrued interest in 2004. This £100 ordinary loss is attributable to interest accrued but not paid in the preceding year. Therefore, under paragraph (b)(3)(ii)(B)(*2*) of this section, Z translates the loss into dollars at the average rate for such year (£1 = $2.00). Accordingly, Z has an ordinary loss of $200 in 2005. The remaining £50 of net negative adjustment is a negative adjustment carryforward under paragraph (b)(2)(ii) of this section.

(C) *Adjusted issue price and basis.* Based on the projected payment schedule, the adjusted issue price of the debt instrument on January 1, 2006 is £900, *i.e.*, the adjusted issue price of the debt instrument on January 1, 2005 (£1100), increased by the interest accrued in 2005 (£110), and decreased by the projected amount of the December 31, 2005, payment (£310). See paragraph (b)(2)(iii) of this section. Z's adjusted basis in dollars, based only on the noncontingent payments and the projected amount of the contingent payments to be received, is $900 (determined as described below). Z's adjusted basis on January 1, 2006 is Z's adjusted basis on January 1, 2005 ($1200), increased by the functional currency amount of interest accrued in 2005 ($220), and decreased by the amount of the payments made in 2005, based solely on the projected payment schedule, (£310). The amount of the projected payment is first attributable to the interest accrued in 2005 (£110), and then to the interest accrued in 2004 (£100), and the remaining amount to principal (£100). The interest component of the projected payment is translated into functional currency at the rates at which it was accrued, and the principal component of the projected payment is translated into functional currency at the spot rate on the date the instrument was issued. See paragraph (b)(3)(iii) of this section. Accordingly, Z's adjusted basis in the debt instrument, following the increase of adjusted basis for interest accrued in 2005 ($1200 + $220 = $1420), is decreased by $520 ($220 + $200 + $100 = $520). Z's adjusted basis on January 1, 2006 is therefore, $900.

(D) *Foreign currency gain or loss.* Z will recognize foreign currency gain on the receipt of the £50 payment actually received on December 31, 2005. Based on paragraph (b)(5)(iv) of this section, the £50 payment is attributable to principal since the accrued unpaid interest was completely eliminated by the net negative adjustment. The amount of foreign currency gain is determined, under paragraph (b)(5)(iii) of this section, by reference to the difference between the spot rate on the date the £50 payment was made and the spot rate on the date the debt instrument was issued. Accordingly, Z recognizes $50 of foreign currency gain on the £50 payment. [($2.00 − $1.00) × £50 = $50]. Under paragraph (b)(6) of this section and § 1.988–4, Z's foreign currency gain of $50 is sourced by reference to Z's residence and is therefore from sources within the United States.

(iv) *Treatment in 2006*—(A) *Determination of accrued interest.* Under paragraph (b)(2)(i) of this section, and based on the comparable yield, Z accrues £90 of interest on the debt instrument for 2004 (adjusted issue price of £900 × 10 percent). Under paragraph (b)(3)(i) of this section, Z translates the £90 at the average exchange rate for the accrual period ($2.00 × £90 = $180). Accordingly, prior to taking into account the 2005 negative adjustment carryforward, Z has interest income in 2006 of $180.

(B) *Effect of net negative adjustment.* The £50 negative adjustment carryforward from 2005 is a negative adjustment for 2006. Since there are no other positive or negative adjustments, there is a £50 negative adjustment in 2006 which reduces Z's accrued interest income by £50. Accordingly, after giving effect to the £50 negative

adjustment carryforward, Z will accrue $80 of interest income. [(£90 − £50) × $2.00 = $80]

(C) *Adjusted issue price.* Under paragraph (b)(2)(iii) of this section, the adjusted issue price of the debt instrument determined in pounds is increased by the interest accrued in 2006 (prior to taking into account the negative adjustment carryforward). Thus, on December 30, 2006, the adjusted issue price of the debt instrument is £990.

(D) *Adjusted basis.* For purposes of determining Z's dollar basis in the debt instrument, Z's $900 adjusted basis on January 1, 2006 is increased by the accrued interest, translated at the rate at which interest was accrued for 2006. See paragraph (b)(3)(iii)(A) of this section. Note, however, that under paragraph (b)(3)(iii)(B) the amount of accrued interest which is reduced as a result of the negative adjustment carryforward, *i.e.*, £50, is treated for purposes of this section as principal, and is translated at the spot rate on the date the instrument was issued, *i.e.*, £1.00 =$1.00. Accordingly, Z's adjusted basis in the debt instrument as of December 30, 2006, is $1030 ($900 + $50 + $80).

(E) *Amount realized.* Z's amount realized in denomination currency is £940, *i.e.*, the amount of pounds Z received on the sale of the debt instrument. Under paragraph (b)(3)(iv)(B)(*1*) of this section, Z's amount realized is first translated by reference to the principal component of basis (including the amount which is treated as principal under paragraph (b)(3)(iii)(B) of this section) and then the remaining amount realized, if any, is translated by reference to the accrued unpaid interest component of adjusted basis. Thus, £900 of Z's amount realized is translated by reference to the principal component of adjusted basis. The remaining £40 of Z's amount realized is treated as principal under paragraph (b)(3)(iii)(B) of this section, and is also translated by reference to the principal component of adjusted basis. Accordingly, Z's amount realized in functional currency is $940. (No part of Z's amount realized is attributable to the interest accrued on the debt instrument.) Z realizes a loss of $90 on the sale of the debt instrument ($1030 basis—$940 amount realized). Under paragraph (b)(4) of this section and § 1.1275–4(b)(8), $80 of the loss is characterized as ordinary loss, and the remaining $10 of loss is characterized as capital loss. Under §§ 1.988–6(b)(6) and 1.1275–4(b)(9)(iv) the $80 ordinary loss is treated as a deduction that is definitely related to the interest income accrued on the debt instrument. Similarly, under §§ 1.988–6(b)(6) and 1.865–1(b)(2) the $10 capital loss is also allocated to the interest income from the debt instrument.

(F) *Foreign currency gain or loss.* Z recognizes foreign currency gain with respect to the £940 he received on the sale of the debt instrument. Under paragraph (b)(5)(iv) of this section, the £940 Z received is attributable to principal (and the amount which is treated as principal under paragraph (b)(3)(iii)(B) of this section). Thus, Z recognizes foreign currency gain on December 31, 2006, of $940. [($2.00 − $1.00) × £940]. Under paragraph (b)(6) of this section and § 1.988–4, Z's foreign currency gain of $940 is sourced by reference to Z's residence and is therefore from sources within the United States.

(d) *Multicurrency debt instruments*—(1) *In general.* Except as provided in this paragraph (d), a multicurrency debt instrument described in paragraph (a)(1)(ii) or (iii) of this section shall be treated as an instrument described in paragraph (a)(1)(i) of this section and shall be accounted for under the rules of paragraph (b) of this section. Because payments on an instrument described in paragraph (a)(1)(ii) or (iii) of this section are denominated in, or determined by reference to, more than one currency, the issuer and holder or holders of the instrument are required to determine the denomination currency of the instrument under paragraph (d)(2) of this section before applying the rules of paragraph (b) of this section.

(2) *Determination of denomination currency.* The denomination currency of an instrument described in paragraph (a)(1)(ii) or (iii) of this section shall be the predominant currency of the instrument. The predominant currency of the instrument shall be determined by comparing the functional currency value of the noncontingent and projected payments denominated in, or determined by reference to, each currency on the issue date, discounted to present value (in each relevant currency), and translated (if necessary) into functional currency at the spot rate on the issue date. For this purpose, the applicable discount rate may be determined using any method, consistently applied, that reasonably reflects the instrument's economic substance. If a taxpayer does not determine a discount rate using such a method, the Commissioner may choose a method for determining the discount rate that does reflect the instrument's economic substance. The predominant currency is determined as of the issue date and does not change based on subsequent events (*e.g.*, changes in value of one or more currencies).

(3) *Issuer/holder consistency.* The issuer determines the denomination currency under the rules of paragraph (d)(2) of this section and provides this information to the holders of the instrument in a manner consistent with the issuer disclosure rules of § 1.1275–2(e). If the issuer does not determine the denomination currency of the instrument, or if the issuer's determination is unreasonable, the holder of the instrument must determine the denomination currency under the rules of paragraph (d)(2) of this section. A holder that determines the denomination currency itself must explicitly disclose this fact on a statement attached to the holder's timely filed federal income tax return for the taxable year that includes the acquisition date of the instrument.

(4) *Treatment of payments in currencies other than the denomination currency.* For purposes of applying the rules of paragraph (b) of this section to debt instruments described in paragraph (a)(1)(ii) or (iii) of this section, payments not denominated in (or determined by reference to) the denomination currency shall be treated as non-currency-related contingent payments. Accordingly, if the denomination currency of the instrument is determined to be the taxpayer's functional currency, the instrument shall be accounted for under § 1.1275–4(b) rather than this section.

(e) *Instruments issued for nonpublicly traded property*—(1) Applicability. This paragraph (e) applies to debt instruments issued for nonpublicly traded property that would be described in paragraph (a)(1)(i), (ii), or (iii) of this section, but for the fact that such instruments are described in § 1.1275–4(c)(1) rather than § 1.1275–4(b)(1). For example, this paragraph (e) generally applies to a contingent debt instrument denominated in a nonfunctional currency that is issued for non-publicly traded property. Generally the rules of § 1.1275–4(c) apply except as set forth by the rules of this paragraph (e).

(2) *Separation into components.* An instrument described in this paragraph (e) is not accounted for using the noncontingent bond method of § 1.1275–4(b) and paragraph (b) of this section. Rather, the instrument is separated into its component payments. Each noncontingent payment or group of noncontingent payments which is denominated in a single currency shall be considered a single component treated as a separate debt instrument denominated in the currency of the payment or group of payments. Each contingent payment shall be treated separately as provided in paragraph (e)(4) of this section.

(3) *Treatment of components consisting of one or more noncontingent payments in the same currency.* The issue price of each component treated as a separate debt instrument which consists of one or more noncontingent payments is the sum of the present values of the noncontingent payments contained in the separate instrument. The present value of any noncontingent payment shall be determined under § 1.1274–2(c)(2), and the test rate shall be determined under § 1.1274–4 with respect to the currency in which each separate instrument is considered denominated. No interest payments on the separate debt instrument are

qualified stated interest payments (within the meaning of § 1.1273–1(c)) and the *de minimis* rules of section 1273(a)(3) and § 1.1273–1(d) do not apply to the separate debt instrument. Interest income or expense is translated, and exchange gain or loss is recognized on the separate debt instrument as provided in § 1.988–2(b)(2), if the instrument is denominated in a nonfunctional currency.

(4) *Treatment of components consisting of contingent payments*—(i) *General rule.* A component consisting of a contingent payment shall generally be treated in the manner provided in § 1.1275–4(c)(4). However, except as provided in paragraph (e)(4)(ii) of this section, the test rate shall be determined by reference to the U.S. dollar unless the dollar does not reasonably reflect the economic substance of the contingent component. In such case, the test rate shall be determined by reference to the currency which most reasonably reflects the economic substance of the contingent component. Any amount received in nonfunctional currency from a component consisting of a contingent payment shall be translated into functional currency at the spot rate on the date of receipt. Except in the case when the payment becomes fixed more than six months before the payment is due, no foreign currency gain or loss shall be recognized on a contingent payment component.

(ii) *Certain delayed contingent payments*—(A) *Separate debt instrument relating to the fixed component.* The rules of § 1.1275–4(c)(4)(iii) shall apply to a contingent component the payment of which becomes fixed more than 6 months before the payment is due. For this purpose, the denomination currency of the separate debt instrument relating to the fixed payment shall be the currency in which payment is to be made and the test rate for such separate debt instrument shall be determined in the currency of that instrument. If the separate debt instrument relating to the fixed payment is denominated in nonfunctional currency, the rules of § 1.988–2(b)(2) shall apply to that instrument for the period beginning on the date the payment is fixed and ending on the payment date.

(B) *Contingent component.* With respect to the contingent component, the issue price considered to have been paid by the issuer to the holder under § 1.1275–4(c)(4)(iii)(A) shall be translated, if necessary, into the functional currency of the issuer or holder at the spot rate on the date the payment becomes fixed.

(5) *Basis different from adjusted issue price.* The rules of § 1.1275–4(c)(5) shall apply to an instrument subject to this paragraph (e).

(6) *Treatment of a holder on sale, exchange, or retirement.* The rules of § 1.1275–4(c)(6) shall apply to an instrument subject to this paragraph (e).

(f) *Rules for nonfunctional currency tax exempt obligations described in § 1.1275–4(d).* [RESERVED]

(g) *Effective date.* This section shall apply to debt instruments issued 60 days or more after the date final regulations are published in the **Federal Register**.

Par. 4. In § 1.1275–4, paragraph (a)(2)(iv) is revised to read as follows:

§ 1.1275–4 Contingent payment debt instruments.

(a) * * *

(2) * * *

(iv) A debt instrument subject to section 988 (except as provided in § 1.988–6);

* * * * *

David A. Mader,

Acting Deputy Commissioner of Internal Revenue.

[FR Doc. 03–21827 Filed 8–28–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF DEFENSE

Department of the Air Force

32 CFR Part 806b

[Air Force Instruction 37–132]

Privacy Act; Implementation

AGENCY: Department of the Air Force, DoD.

ACTION: Proposed rule.

SUMMARY: The Department of the Air Force is proposing to amend an existing exemption rule for the Privacy Act system of records notice F031 AF SP A, entitled Correction and Rehabilitation Records. The amendments consist of changing the system identifier to F031 AF SF A, and revising the reasons for exempting from disclosure certain subsections of the Privacy Act of 1974.

DATES: Comments must be received on or before October 28, 2003 to be considered by this agency.

FOR FURTHER INFORMATION CONTACT: Mrs. Anne Rollins at (703) 601–4043 or DSN 329–4043.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, ''Regulatory Planning and Review''.

It has been determined that Privacy Act rules for the Department of Defense are not significant rules. The rules do not (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy; a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive order.

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. Chapter 6).

It has been determined that Privacy Act rules for the Department of Defense do not have significant economic impact on a substantial number of small entities because they are concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35).

It has been determined that Privacy Act rules for the Department of Defense impose no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

Section 202, Public Law 104–4, ''Unfunded Mandates Reform Act''.

It has been determined that the Privacy Act rulemaking for the Department of Defense does not involve a Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more and that such rulemaking will not significantly or uniquely affect small governments.

Executive Order 13132, ''Federalism''.

It has been determined that the Privacy Act rules for the Department of Defense do not have federalism implications. The rules do not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

List of Subjects in 32 CFR Part 806b

Privacy.

Accordingly, 32 CFR part 806b is proposed to be revised to read as follows:

PART 806b—AIR FORCE PRIVACY ACT PROGRAM

1. The authority citation for 32 CFR part 806b continues to read as follows:

Authority: Pub. L. 93–579, 88 Stat. 1896 (5 U.S.C. 552a).

2. Paragraph (a)(5) of Appendix C to part 806b is revised to read as follows:

Appendix C to Part 806b—General and Specific Exemptions

* * * * *

(a) General exemptions. * * *

(5) *System identifier and name:* F031 AF SF A, Correction and Rehabilitation Records.

(i) *Exemption:* (A) Parts of this system may be exempt pursuant to 5 U.S.C. 552a(j)(2) if the information is compiled and maintained by a component of the agency, which performs as its principle function any activity pertaining to the enforcement of criminal laws.

(B) Portions of this system of records may be exempt pursuant to 5 U.S.C. 552a(j)(2) from the following subsections of 5 U.S.C. 552a(c)(3), (c)(4), (d), (e)(3), (e)(4)(G), (H) and (I), (e)(5), (e)(8), (f), and (g).

(ii) *Authority:* 5 U.S.C. 552a(j)(2).

(iii) *Reasons:* (A) From subsection (c)(3) because the release of the disclosure accounting, for disclosures pursuant to the routine uses published for this system, would permit the subject of a criminal investigation or matter under investigation to obtain valuable information concerning the nature of that investigation which will present a serious impediment to law enforcement.

(B) From subsection (c)(4) because an exemption is being claimed for subsection (d), this subsection will not be applicable.

(C) From subsection (d) because access to the records contained in this system would inform the subject of a criminal investigation of the existence of that investigation, provide the subject of the investigation with information that might enable him to avoid detection or apprehension, and would present a serious impediment to law enforcement.

(D) From subsection (e)(3) would constitute a serious impediment to law enforcement in that it could compromise the existence of a confidential investigation, reveal the identity of confidential sources of information and endanger the life and physical safety of confidential informants.

(E) From subsections (e)(4)(G) and (H) because this system of records is exempt from individual access pursuant to subsections (j)(2) of the Privacy Act of 1974.

(F) From subsection (e)(4)(I) because the identity of specific sources must be withheld in order to protect the confidentiality of the sources of criminal and other law enforcement information. This exemption is further necessary to protect the privacy and physical safety of witnesses and informants.

(G) From subsection (e)(5) because in the collection of information for law enforcement purposes it is impossible to determine in advance what information is accurate, relevant, timely, and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light and the accuracy of such information can only be determined in a court of law. The restrictions of subsection (e)(5) would restrict the ability of trained investigators and intelligence analysts to exercise their judgment reporting on investigations and impede the development of intelligence necessary for effective law enforcement.

(H) From subsection (e)(8) because the individual notice requirements of subsection (e)(8) could present a serious impediment to law enforcement as this could interfere with the ability to issue search authorizations and could reveal investigative techniques and procedures.

(I) From subsection (f) because this system of records has been exempted from the access provisions of subsection (d).

(J) From subsection (g) because this system of records compiled for law enforcement purposes and has been exempted from the access provisions of subsections (d) and (f).

(K) Consistent with the legislative purpose of the Privacy Act of 1974, the Department of the Air Force will grant access to nonexempt material in the records being maintained. Disclosure will be governed by the Department of the Air Force's Privacy Instruction, but will be limited to the extent that the identity of confidential sources will not be compromised; subjects of an investigation of an actual or potential criminal violation will not be alerted to the investigation; the physical safety of witnesses, informants and law enforcement personnel will not be endangered, the privacy of third parties will not be violated; and that the disclosure would not otherwise impede effective law enforcement. Whenever possible, information of the above nature will be deleted from the requested documents and the balance made available. The controlling principle behind this limited access is to allow disclosures except those indicated above. The decisions to release information from these systems will be made on a case-by-case basis necessary for effective law enforcement.

Dated: August 22, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–22114 Filed 8–28–03; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 082503C]

New England Fishery Management Council; Public Meeting

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

ACTION: Public Meeting.

SUMMARY: The New England Fishery Management Council (Council) will hold a three-day public meeting on September 16, 17, and 18, 2003, to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

DATES: The meeting will be held on Tuesday, September 16, 2003 at 9 a.m., Wednesday, September 17, 2003 at 8:30 a.m., and on Thursday, September 18, at 8:30 a.m.

ADDRESSES: The meeting will be held at the Holiday Inn Express, 110 Middle Street, Fairhaven, Massachusetts 02719; telephone (508) 997–1281. Requests for special accommodations should be addressed to the New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, Massachusetts 01950; telephone: (978) 465–0492.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council (781) 231–0422.

SUPPLEMENTARY INFORMATION:

Tuesday, September 16, 2003

Following introductions, the Council will elect its 2003–2004 slate of officers followed by reports on recent activities from the Council Chairman and Executive Director, NMFS Regional Administrator, NOAA General Counsel, Northeast Fisheries Science Center and Mid-Atlantic Fishery Management Council liaisons, and representatives of the U.S. Coast Guard, NMFS Enforcement and the Atlantic States Marine Fisheries Commission. Following reports, the Council will receive a NMFS report on the status and implementation of electronic reporting for federally permitted seafood dealers. The Council is then scheduled to take action on the final Atlantic Sea Scallop Fishery Management (FMP) Amendment 10 documents, including draft regulations, for submission to the Secretary of Commerce. The FMP will implement DAS allocations for the 2004

and 2005 fishing years, increase twine top mesh to 10–inches, increase dredge ring size to 4–inches, implement a rotation area management closure system, and allocate Hudson Canyon Area trips with a 21,000 lb. possession limit and a 9 day-at-sea tradeoff. NMFS will hold a special session to gather input from stakeholders on broad themes related to fisheries management, including information on daily operations and potential ways to evaluate solutions to problems.

Wednesday, September 17, 2003

The meeting will commence with a report by the Monkfish Committee requesting that the Council review and possibly approve the Monkfish FMP Amendment 2 Draft Supplemental Environmental Impact Statement (DSEIS). If approved, the Mid-Atlantic Fishery Management Council (MAFMC) will consider approval of the DSEIS in October. Following this report, the Council will discuss vessel upgrading and permit issues. The Council will discuss its intent concerning the vessel permit upgrading baseline during the development of the Monkfish FMP; develop a response to the MAFMC's request to examine the issue of small vessel length and horsepower upgrade limits in the ''Consistency Amendment'' now in effect for a number of the Council and MAFMC FMPs; and develop a position about the 30–day sign-in requirement for exempted fisheries programs. The day will conclude with a report from the Marine Protected Areas (MPA) Committee which will review and seek approval of committee recommendations concerning a Council position on MPAs; review and approve committee comments developed in response to a **Federal Register** notice on proposed criteria for building an Inventory of Existing Marine Managed Areas; and review and approve a draft work plan to address MPA issues for consideration in setting 2004 Council priorities.

Thursday, September 18, 2003

The meeting will convene with a Herring Committee Report requesting that the Council review and approve a range of management alternatives to be analyzed in the Draft Environmental Impact Statement (DEIS) for Amendment 1 to the Atlantic Herring FMP. The amendment may include the following: revised estimates of maximum sustainable yield and optimum yield; changes to the process for determining area-specific total allowable catch levels (TACs); initial area-specific TACs upon implementation of Amendment 1; adjustments to the timing of the specification process; adjustments to management area boundaries; a limited access program for the Atlantic herring fishery; observer coverage requirements; measures to address fixed gear fisheries and other effort controls. Following this agenda item, the Council will provide a brief opportunity for comments from the public on issues that are not otherwise listed on the agenda, but relevant to Council business. The Red Crab Committee will review and approve recommendations concerning the annual specifications for the red crab fishery for fishing year 2004 (March 1, 2004 February 28, 2005). The Research Steering Committee will discuss approval of a policy concerning the incorporation of cooperative research results into the management process. The day will conclude with approval of the Council's Standard Operating Procedures and Practices.

Although other issues not contained in this agenda may come before this Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (*see* **ADDRESSES**) at least five days prior to the meeting date.

Dated: August 25, 2003.

Bruce C. Morehead,

Acting Director, office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–22189 Filed 8–28–03; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 68, No. 168

Friday, August 29, 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

Notice of Settlement Pursuant to CERCLA; Jordan Road Shooting Range, Coconino County, AZ

AGENCY: Forest Service, USDA.

ACTION: Notice of settlement.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (CERCLA), 42 U.S.C. 9622(i), notice is hereby given of an administrative settlement for recovery of past response costs with Coconino County (the Settling Party) concerning the Jordan Road Shooting Range, Coconino County, Arizona. The settlement requires the Settling Party to pay $155,000 to the USDA Forest Service, Southwestern Region, pursuant to section 122(h)(1) of CERCLA, 42 U.S.C. 9622(h)(1). The settlement includes a covenant not to use the Settling Party pursuant to sections 106 and 107(a) of CERCLA, 42 U.S.C. 9606 and 9607(a), with regard to the Site.

For thirty (30) days following the date of publication of this notice, the United States will receive written comments relating to the settlement. The United States will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The United States' response to any comments received will be available for public inspection at the Red Rock Ranger District, P.O. Box 300, 250 Brewer Road, Sedona, AZ 86339–0330, and at the offices of the USDA Forest Service Southwestern Region, 333 Broadway, SE., Albuquerque, NM 87102.

DATES: Comments must be submitted on or before September 29, 2003.

ADDRESSES: The proposed settlement is available for public inspection at the Red Rock Ranger District, P.O. Box 300, 250 Brewer Road, Sedona, AZ 86339–0330 and at the offices of the USDA Forest Service Southwestern Region, 333 Broadway, SW., Albuquerque, NM 87102. A copy of the proposed settlement may be obtained from Ken Anderson on the Red Rock Ranger District at 928–203–7501 (direct) or 928–282–4119 (backup) or from Kirk M. Minckler with USDA's Office of the General Counsel, (303) 275–5549. Comments should reference the Jordan Road Shooting Range, Coconino County, Arizona, and should be addressed to Kirk M. Minckler, USDA Office of the General Counsel, P.O. Box 25005, Denver, CO 80225–0005.

FOR FURTHER INFORMATION CONTACT: For technical information, contact Maria McGaha, USDA Forest Service Southwestern Region, 333 Broadway, SE., Albuquerque, NM 87102, phone (505) 842–3837. For legal information, contact Kirk M. Minckler, USDA Office of the General Counsel, P.O. Box 25005, Denver, CO 80225–0005; phone (303) 275–5549.

Dated: August 20, 2003.

Marlin A. Johnson,

Assistant Director, Forestry, USDA Forest Service, Southwestern Region.

[FR Doc. 03–22075 Filed 8–28–03; 8:45 am]

BILLING CODE 3410–11–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee is proposing to add to the Procurement List products to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: Comments must be received on or before September 28, 2003.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments of the proposed actions. If the Committee approves the proposed additions, the entities of the Federal Government identified in the notice for each product or service will be required to procure the products listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products to the Government.

2. If approved, the action will result in authorizing small entities to furnish the products to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following products are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Products

Product/NSN: H2Orange2
7930–00–NIB–0163—Ultimate Cleaner/Degreaser
7930–00–NIB–0326—Concentrate 117 Cleaner/Degreaser
7930–00–NIB–0327—Grout Safe
7930–00–NIB–0341—Crystal Carpet Concentrate
7930–00–NIB–0342—Quick Spot Crystal Carpet Spot Remover
7930–00–NIB–0353—Mineral Shock Cleaner

NPA: Blind Industries & Services of

Maryland, Baltimore, Maryland
Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York
Product/NSN: Skilcraft SAVVY Cleaning Products
7930–00–NIB–0080—SKILCRAFT SAVVY Green Plus—1 gallon
7930–00–NIB–0081—SKILCRAFT SAVVY Green Plus—5 gallon
7930–00–NIB–0082—SKILCRAFT SAVVY Green Plus—55 gallon
7930–00–NIB–0152—SKILCRAFT SAVVY Unreal Spot Remover—32 ounce
7930–00–NIB–0153—SKILCRAFT SAVVY Unreal Spot Remover—1 gallon
7930–00–NIB–0154—SKILCRAFT SAVVY Unreal Spot Remover—5 gallon
7930–00–NIB–0155—SKILCRAFT SAVVY Unreal Spot Remover—55 gallon
7930–00–NIB–0156—SKILCRAFT SAVVY Non Acid Bathroom Cleaner—32 ounce
7930–00–NIB–0157—SKILCRAFT SAVVY Non Acid Bathroom Cleaner—1 gallon
7930–00–NIB–0158—SKILCRAFT SAVVY Non Acid Bathroom Cleaner—5 gallon
7930–00–NIB–0159—SKILCRAFT SAVVY Non Acid Bathroom Cleaner—55 gallon
7930–00–NIB–0173—SKILCRAFT SAVVY Green Plus—32 ounce
7930–00–NIB–0183—SKILCRAFT SAVVY Green—32 ounce
7930–00–NIB–0184—SKILCRAFT SAVVY Green—5 gallon
7930–00–NIB–0185—SKILCRAFT SAVVY Green—1 gallon
7930–00–NIB–0189—SKILCRAFT SAVVY Green—55 gallon
NPA: Susquehanna Association for the Blind and Visually Impaired, Lancaster, Pennsylvania
Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York
Product/NSN: Staple Remover.
7520–00–162–6177
Product/NSN: Stapler, Stand Up—Vertical Grip
7520–00–NSH–0200
NPA: The Arc of Bergen and Passaic Counties, Inc., Hackensack, New Jersey
Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York
Product/NSN: Telephone Cards
M.R. 987
M.R. 988
M.R. 993
NPA: Winston-Salem Industries for the Blind, Winston-Salem, North Carolina
Contract Activity: Defense Commissary Agency (DeCA), Ft. Lee, Virginia.

Louis R. Bartalot,

Acting Deputy Executive Director.

[FR Doc. 03–22145 Filed 8–28–03; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from Procurement List.

SUMMARY: This action adds to the Procurement List a product and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List a service previously furnished by such agencies.

EFFECTIVE DATE: September 28, 2003.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION:

Additions

On June 27, July 3, and July 11, 2003, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (68 FR 38288/38289, 39894 and 41297) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and services and impact of the additions on the current or most recent contractors, the Committee has determined that the products and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the product and services to the Government.

2. The action will result in authorizing small entities to furnish the product and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the product and services proposed for addition to the Procurement List.

End of Certification

Accordingly, the following product and services are added to the Procurement List:

Product

Product/NSN: Jumbo Butterfly Mop, M.R. 1035.
NPA: L.C. Industries For The Blind, Inc., Durham, North Carolina.
Contract Activity: Defense Commissary Agency (DeCA), Ft. Lee, Virginia.

Services

Service Type/Location: Commissary Custodial and Warehousing, Naval Education Training Center, Newport, Rhode Island.
NPA: Newport County Chapter, Rhode Island Association for Retarded Citizens, Middletown, Rhode Island.
Contract Activity: Defense Commissary Agency (DeCA)—East Region, Virginia Beach, Virginia.
Service Type/Location: Custodial Services, Patrick AFB, Florida.
NPA: Brevard Achievement Center, Inc., Rockledge, Florida.
Contract Activity: AFSPC-Patrick, Patrick AFB, Florida.
Service Type/Location: Janitorial/Custodial, Federal Building, U.S. Post Office and Courthouse, Hannibal, Missouri.
NPA: Learning Opportunities/Quality Works, Inc., Monroe City, Missouri.
Contract Activity: GSA/PBS, Kansas City, Missouri.
Service Type/Location: Janitorial/Custodial, New Federal Courthouse, Seattle, Washington.
NPA: Northwest Center for the Retarded, Seattle, Washington.
Contract Activity: GSA/PBS (Region 10), Auburn, Washington.
Service Type/Location: Laundry/Dry Cleaning, 911th Airlift Wing, Coraopolis, Pennsylvania.
NPA: Hancock County Sheltered Workshop, Inc., Weirton, West Virginia.
Contract Activity: 911th Airlift Wing (AFRES), Pittsburgh, Pennsylvania.
Service Type/Location: Mailroom Operation, Department of Commerce, Boulder Laboratories, Building 1 and 2, Boulder, Colorado.
NPA: Bayaud Industries, Inc., Denver, Colorado.
Contract Activity: National Oceanic and Atmospheric Administration, Boulder, Colorado.

Deletion

On June 20, 2003, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (68 FR 36972) of proposed deletion to the Procurement List. After consideration of the relevant matter presented, the committee has

determined that the service listed below is no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action may result in any additional reporting, recordkeeping or other compliance requirements for small entities.
2. The action may result in authorizing small entities to furnish the service to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service deleted from the Procurement List.

End of Certification

Accordingly, the following service is deleted from the Procurement List:

Service

Service Type/Location: Operation of Self Service Supply Store, GSA, Sam Nunn Federal Center, Atlanta, Georgia

NPA: Raleigh Lions Clinic for the Blind, Inc., Raleigh, North Carolina.

Contract Activity: GSA, Sam Nunn Federal Center, Atlanta, Georgia.

Louis R. Bartalot,

Acting Deputy Executive Director.

[FR Doc. 03–22146 Filed 8–28–03; 8:45 am]

BILLING CODE 6353–01–P

BROADCASTING BOARD OF GOVERNORS

Proposed Collection Reinstatement; Comment Request

AGENCY: The Broadcasting Board of Governors.

ACTION: Proposed collection reinstatement; comment request.

SUMMARY: The Broadcasting Board of Governors (BBG), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on an information collection titled, ''Interviews and Other Audience Research for Radio and TV Marti.'' This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3506(c)(2)(A)).

The information collection activity involved with this program is conducted pursuant to the mandate given to the BBG (formerly the United States Information Agency) in accordance with Pub. L. 98–11, the Radio Broadcasting to Cuba Act, dated, October 4, 1983, to provide for the broadcasting of accurate information to the people of Cuba and for other purposes. This act was then amended by Pub. L. 101–246, dated, February 16, 1990, which established the authority for TV Marti.

DATES: Comments must be submitted on or before October 28, 2003.

FOR FURTHER INFORMATION CONTACT: Ms. Jeannette Giovetti, the BBG Clearance Officer, BBG, M/AO, Room 1657A–1, 330 Independence Avenue, SW., Washington, DC 20237, telephone (202) 205–9692, e-mail address *JGiovett@IBB.GOV.*

Copies: Copies of the Request for Clearance (OMB 83–I), supporting statement, and other documents that will be submitted to OMB for approval may be obtained from the BBG Clearance Officer.

SUPPLEMENTARY INFORMATION: Public reporting burden for this proposed collection of information is estimated to average 30 minutes (.50 of an hour) per response for field survey respondents (700), and 240 minutes (4 hours) for Focus Group Study respondents (48), including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Responses are voluntary and respondents will be required to respond only one time. Comments are requested on the proposed information collection concerning:

(a) Whether the proposed collection of information is necessary for the proper performance of the agency, including whether the information has practical utility;

(b) The accuracy of the Agency's burden estimates;

(c) Ways to enhance the quality, utility, and clarity of the information collected; and

(d) Ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Send comments regarding this burden estimate or any other aspect of this collection of information to Ms. Jeannette Giovetti, the BBG Clearance Officer, BBG, M/AO, Room 1657A–1, 330 Independence Avenue, SW, Washington, D.C. 20237, telephone (202) 205–9692, e-mail address *JGiovett@IBB.GOV.*

Current Actions: BBG is requesting reinstatement of this collection for a three-year period and approval for a revision to the burden hours.

Title: Interviews and Other Audience Research for Radio and TV Marti.

Abstract: Data from this information collection are used by BBG's Office of Cuba Broadcasting (OCB) in fulfillment of its mandate to evaluate effectiveness of Radio and TV Marti operations by estimating the audience size and composition for broadcasts; and assess signal reception, credibility and relevance of programming through this research.

Proposed Frequency of Responses:

No. of Respondents—700 Field Study + 48 Group Study = 748

Recordkeeping Hours—.50 Field Study + 4 Group Study = (350) + (192) =

Total Annual Burden—542

Dated: August 25, 2003.

Carol F. Baker,

Director of Administration.

[FR Doc. 03–22098 Filed 8–28–03; 8:45 am]

BILLING CODE 8230–01–P

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

Sunshine Act Meeting

In connection with its investigation into the cause of a deadly flash fire at an oilfield waste recovery facility south of Houston, which killed two workers and injured three others on Monday, January 13, 2003, the United States Chemical Safety and Hazard Investigation Board announces that it will convene a Public Meeting beginning at 9:30 am local time on September 17, at the George Washington University Conference Center's Third Floor Amphitheater, 800 21st Street, NW., Washington, DC.

The accident occurred at the BLSR Operating Ltd. petroleum storage and separation facility on Route 521 in Rosharon, TX. The CSB is an independent federal agency charged with determining root causes of chemical accidents and making recommendations to prevent their recurrence.

The CSB will also hear presentation on a case study on a hydrogen sulfide exposure incident that occurred December 11, 2002 at the Environmental Enterprises, Inc. facility in Cincinnati, Ohio. One injury was reported. Using the incorrect vessel for waste treatment caused the hydrogen sulfide exposure.

At the meeting CSB staff will present to the Board the results of their investigations into these incidents, including an analysis of the incident together with a discussion of the key

findings, root and contributing causes, and draft recommendations.

Recommendations are issued by a vote of the Board and address an identified safety deficiency uncovered during the investigation, and specify how to correct the situation. Safety recommendations are the primary tool used by the Board to motivate implementation of safety improvements and prevent future incidents. The CSB uses its unique independent accident investigation perspective to identify trends or issues that might otherwise be overlooked. CSB recommendations may be directed to corporations, trade associations, government entities, safety organizations, labor unions and others.

After the staff presentation, the Board will allow a time for public comment. Following the conclusion of the public comment period, the Board will consider whether to vote to approve the final report and recommendations. When a report and its recommendations are approved, this will begin CSB's process for disseminating the findings and recommendations of the report not only to the recipients of recommendations but also to other public and industry sectors. The CSB believes that this process will ultimately lead to the adoption of recommendations and the growing body of safety knowledge in the industry, which, in turn, should save future lives and property.

All staff presentations are preliminary and are intended solely to allow the Board to consider in a public forum the issues and factors involved in this case. No factual analyses, conclusions or findings should be considered final. Only after the Board has considered the staff presentation and approved the staff report will there be an approved final record of this incident.

The meeting will be open to the public. Please notify CSB if a translator or interpreter is needed, at least 5 business days prior to the public meeting. For more information, please contact the Chemical Safety and Hazard Investigation Board at (202)–261–7600, or visit our Web site at: *http://www.csb.gov.*

Christopher W. Warner,

General Counsel.

[FR Doc. 03–22237 Filed 8–26–03; 4:31 pm]

BILLING CODE 6350–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1279]

Grant of Authority for Subzone Status; Ricoh Electronics, Inc. Manufacturing Facilities (Copier, Printer, Thermal Paper, and Related Products), Orange County, CA

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for '' * * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved; and when the activity results in a significant public benefit and is in the public interest;

Whereas, the Board of Harbor Commissioners of the City of Long Beach, grantee of Foreign-Trade Zone 50, has made application to the Board for authority to establish special-purpose subzone status at the copier, printer, thermal paper, and related products manufacturing facilities of Ricoh Electronics, Inc., located at sites in the Orange County, California area, (FTZ Docket 52–2002, filed November 19, 2002);

Whereas, notice inviting public comment has been given in the **Federal Register** (67 FR 72641, 12/06/2002; amended, 68 FR 9973, 3/03/2003); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations would be satisfied, and that approval of the application, as amended, would be in the public interest, if approval, with respect to thermal paper, were subject to the time limit described below;

Now, Therefore, the Board hereby grants authority for subzone status at the copier, printer, thermal paper, and related products manufacturing plant of Ricoh Electronics, Inc., located at sites in the Orange County, California, area (Subzone 50J), at the locations described in the application, subject to the FTZ Act and the Board's regulations, including section 400.28. Further, the approval for manufacturing of thermal paper under zone procedures is limited to an initial period of four years (from activation), subject to extension upon review.

Signed at Washington, DC, this 14th day of August 2003.

James J. Jochum,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 03–22167 Filed 8–28–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1280]

Grant of Authority for Subzone Status; Ricoh Electronics, Inc. Manufacturing Plant (Toner Cartridges, Related Toner Products and Thermal Paper Products), Lawrenceville, GA

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for ''* * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved; and when the activity results in a significant public benefit and is in the public interest;

Whereas, the Georgia Foreign-Trade Zone, Inc., grantee of FTZ 26, has made application to the Board for authority to establish special-purpose subzone status at the toner cartridges, related toner products, and thermal paper products manufacturing plant of Ricoh Electronics, Inc., located in Lawrenceville, Georgia (FTZ Docket 53–2002, filed November 19, 2002);

Whereas, notice inviting public comment has been given in the **Federal Register** (67 FR 72642, 12/06/2002; amended, 68 FR 9973, 3/03/2003); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations would be satisfied,

and that approval of the application, as amended, would be in the public interest, if approval, with respect to thermal paper, were subject to the time limit described below;

Now, Therefore, the Board hereby grants authority for subzone status at the toner cartridges, related toner products, and thermal paper products manufacturing plant of Ricoh Electronics, Inc., located in Lawrenceville, Georgia (Subzone 26H), at the location described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28. Further, the approval for manufacturing of thermal paper under zone procedures is limited to an initial period of four years (from activation), subject to extension upon review.

Signed at Washington, DC, this 14th day of August 2003.

James J. Jochum,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 03–22168 Filed 8–28–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1281]

Expansion of Foreign-Trade Zone 214; Lenoir County, NC

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the North Carolina Global TransPark Authority, grantee of Foreign-Trade Zone 214, submitted an application to the Board for authority to expand FTZ 214 to include a site (35 acres) in Rocky Mount, North Carolina, adjacent to the Durham Customs port of entry (FTZ Docket 34–2002; filed 9/3/02);

Whereas, notice inviting public comment was given in the **Federal Register** (67 FR 57376. 9/10/02) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, Therefore, the Board hereby orders:

The application to expand FTZ 214 is approved, subject to the Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 14th day of August 2003.

James J. Jochum,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 03–22169 Filed 8–28–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C-475–819]

Certain Pasta From Italy: Notice of Extension of Time Limit for Countervailing Duty New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce is extending the time limit for the preliminary results of the countervailing duty new shipper review on certain pasta from Italy. The period of review is January 1 through December 31, 2002.

EFFECTIVE DATE: August 29, 2003.

FOR FURTHER INFORMATION CONTACT: Daniel J. Alexy, Office of AD/CVD Enforcement I, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–1540.

SUPPLEMENTARY INFORMATION:

Background:

On February 27, 2003, the Department of Commerce (''the Department'') initiated a countervailing duty new shipper review for certain pasta from Italy, covering calendar year 2002. *See Notice of Initiation of Countervailing Duty New Shipper Review*, 68 FR 10446 (March 5, 2003). Corrections to the initiation notice were published in the **Federal Register** on March 24, 2003 (*See* 68 FR 14198). The preliminary results are currently due no later than August 26, 2003.

Statutory Time Limits

Section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended (the Act), requires the Department to issue the preliminary results within 180 days after the date on which the new shipper review is initiated. However, if the proceeding is extraordinarily complicated, section 751(a)(2)(B)(iv) of the Act allows the Department to extend this deadline to a maximum of 300 days.

Postponement

The Department has determined that additional time is necessary to issue the preliminary results in this new shipper review for the reasons stated in our memorandum from Susan Kuhbach to Jeffrey May, dated August 25, 2003. Therefore, in accordance with section 751 (a)(2)(B)(iv) of the Act, we are postponing the preliminary results of this new shipper review until no later than December 24, 2003.

This notice is published pursuant to section 777(i)(1) of the Act.

Dated: August 25, 2003.

Jeffrey May,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 03–22166 Filed 8–28–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

Minority Business Development Agency

[Docket No. 000724217–3200–05]

Solicitation of Applications for the Minority Business Development Center (MBDC) Program

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625 and 15 U.S.C. 1512, the Minority Business Development Agency (MBDA) is soliciting competitive applications from organizations to operate Minority Business Development Centers (MBDCs) under its Minority Business Development Center (MBDC) Program.

In order to receive consideration, applicants must comply with all information and requirements contained in this Notice. For-profit entities (including sole-proprietorships, partnerships, and corporations), non-profit organizations, state and local government entities, American Indian Tribes and educational institutions are eligible to operate MBDCs.

The current MBDC Program, as described in this Notice, requires MBDC staff to provide standardized business assistance services to rapid growth potential minority businesses directly; to develop a network of strategic partnerships; to charge client fees; and to provide strategic business consulting.

These requirements will be used to generate increased results with respect to financing and contracts awarded to minority-owned firms and thus, are a key component of this program.

DATES: The closing date for applications for each MBDC project is October 10, 2003. Anticipated time for processing of applications is one hundred twenty (120) days from the date of publication of this notice.

MBDA anticipates that awards for the MBDC program will be made with a start date of January 1, 2004. Completed applications for the MBDC program must be (1) mailed (USPS postmark) to the address below; or (2) received by MBDA no later than 5 p.m. Eastern Daylight Time. Applications postmarked later than the closing date or received after the closing date and time will not be considered.

ADDRESSES: If the application is mailed by the applicant or its representative, they must submit one signed original plus two (2) copies of the application. Completed application packages must be mailed to: Office of Business Development, Office of Executive Secretariat, HCHB, Room 5063, Minority Business Development Agency, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

If the application is hand-delivered by the applicant or his/her representative, one signed original plus two (2) copies of the application must be delivered to Room 1874, which is located at Entrance #10, 15th Street, NW., between Pennsylvania and Constitution Avenues.

FOR FURTHER INFORMATION CONTACT: For further information or to obtain an application package, contact the specified MBDA National Enterprise Center (NEC) for the geographic service area in which the project will be located or visit MBDA's Minority Business Internet Portal (MBDA Portal) at *http://www.mbda.gov.*

SUPPLEMENTARY INFORMATION: Electronic Access: Applicants are encouraged to submit their proposal electronically via the Internet and mail or hand-deliver only the pages that require original signatures by the closing date and time stated above. Applicants may submit their applications on MBDA's website: *http://www.mbda.gov.* All required forms are located at this web address. However, the following paper forms must be submitted with original signatures in conjunction with any electronic submissions by the closing date and time stated above: (1) SF–424, Application for Federal Assistance; (2) the SF–424B, Assurances-Non-Construction Programs; (3) the SF–LLL (Rev. 7–97) (if applicable), Disclosure of Lobbying Activities; (4) Department of Commerce Form CD–346 (if applicable), Applicant for Funding Assistance; and (5) the CD–511, Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying.

Pre-Application Conference: A pre-application conference will be held for the MBDC project solicitation. Contact the specified MBDA NEC for the geographic service area in which the project will be located to receive further information. Proper identification is required for entrance into any Federal building. Notice of the pre-application conference will be available on MBDA Portal at *http://www.mbda.gov.*

Authority: Executive Order 11625 and 15 U.S.C. 1512.

Catalog of Federal Domestic Assistance (CFDA): 11.800 Minority Business Development Center Program.

Program Description

MBDA is soliciting applications for the following geographic service areas: Georgia Statewide, North Carolina Statewide, Puerto Rico Islandwide, South Carolina Statewide, Illinois Statewide, Ohio Statewide, Michigan Statewide, Dallas/Ft. Worth/Arlington, El Paso, New Mexico Statewide, San Antonio, Manhattan/Bronx/Westchester, Queens/Nassau/Suffolk, New Jersey Statewide, Pennsylvania Statewide, Washington Metro, Williamsburg (Brooklyn), Alaska Statewide, Arizona Statewide, Los Angeles Metro, Inland Empire, Central/Northern California, Washington Statewide.

The MBDC Program will concentrate on rapid growth potential minority business enterprises (MBEs), *e.g.*, those generating $500,000 or more in annual revenues or capable of generating significant employment and long-term economic growth. The MBDC Program shall continue to leverage telecommunications technology, including the Internet, and a variety of online computer-based resources to dramatically increase the level of service that the MBDC can provide to minority-owned firms, including micro-enterprises.

The MBDC program incorporates an entrepreneurial approach to building market stability and improving the quality of services delivered. This strategy expands the reach of the MBDC by requiring project operators to develop and build upon strategic alliances with public and private sector partners, as a means of serving the growing numbers of minority firms with rapid growth potential within the project's geographic service area. In addition, MBDA will establish specialized business consulting training programs to support the MBDC client assistance services. These MBDC training programs are designed specifically to foster growth assistance to its clients. The MBDC will also encourage increased collaboration and client/non-client referrals among the MBDA-sponsored networks. This will provide a comprehensive approach to serving the emerging sector of the minority business community.

The MBDC will operate through the use of trained professional business consultants who will assist minority entrepreneurs through direct client engagements.

Entrepreneurs eligible for assistance under the MBDC Program are African Americans, Puerto Ricans, Spanish-speaking Americans, Aleuts, Asian Pacific Americans, Asian Indians, Native Americans, Eskimos, and Hasidic Jews.

As part of its strategy for continuous improvement, the MBDC shall expand its delivery capacity to all minority firms, with greater emphasis on emerging/rapid growth-potential minority firms capable of impacting economic growth and employment. MBDA wants to ensure that MBDC clients are receiving a consistent level of service throughout its funded network. To that end, MBDA will require MBDC consultants to attend a series of training courses designed to achieve standardized services and quality expectations. Further information about the training is provided in this document under the heading of Work Requirements.

Background

Under the MBDC Program, MBDA has selected locations for the establishment of Centers based on the size of the population in those markets and the density of rapid growth-potential minority business enterprises (MBE), as established by MBDA and U.S. Census Bureau data, as well as other available information.

The MBDC Program is one of MBDA's core competencies of overall business development efforts. Under this strategy, the MBDC will be expected to provide the following four types of client services:

1. *Client Assessment*—This activity requires the MBDC to conduct a standardized client assessment, which includes identifying the client's immediate and long term needs, and establishes a projected growth track. MBDA shall provide a new and innovative electronic tool to support

this function (see Business Needs Analyzer under the heading of Enhancing the MBDCs through Technology for more details). This activity shall be conducted three times for each client on an annual basis: one at the onset of service delivery, one prior to the end of the second quarter and one prior to the end of the funding year. This process may also include referring the client to any of MBDA's other funded projects that specialize in specific growth assistance and/or strategic partners that are capable of continuing client growth. The referral process may occur in conjunction with MBDC direct assistance.

2. *Strategic Business Consulting*—This involves providing intensive business consulting services that can be delivered by two methods:

• *Personalized Consulting*—defined as one-on-one business consulting services utilizing an integrative systems approach to foster the growth of minority firms (see Integrative Systems Approach under the heading Client Services).

• *Group Consulting*—seminars that provide education and training to minority entrepreneurs on important business topics. The consulting should be hands-on, practical, and streamlined in order to reflect the time constraints of the typical entrepreneur. In addition, given the proliferation of online resources from MBDA as well as others, this training should be designed to educate MBEs in the use of the Agency's electronic business assistance tools and in the use of electronic commerce generally to better access suppliers, customers and information.

3. *Access to Capital*—This involves assisting MBEs to secure the financial capital necessary to start-up, and thereafter to fuel growth and expansion of their businesses. Undercapitalization has been a major contributor to the failure of business ventures in the minority community over the years. The goal of this activity is to help minority entrepreneurs obtain the amount of financing appropriate to the scope of the proposed business, thereby helping to ensure the greatest likelihood of success for the minority venture in the marketplace.

4. *Access to Markets*—This involves assisting MBEs to identify and access opportunities for increased sales and revenue. Activities include conducting market analysis, identifying sales leads, bid preparation assistance, creating market promotions, and assisting in the development of joint ventures and strategic alliances.

Enhancing the MBDCs Through Technology

Over the last several years, MBDA has developed a variety of new technology tools designed to leverage the benefits of information technology to assist the minority business community. MBDA uses a high-speed network strategy that links all of its funded projects into a single virtual organization. The goal of MBDA is to allow all funded projects to have access to this technology through the MBDA Portal.

The technology tools that will be available to the MBDCs include but are not limited to the following:

• *Business Needs Analyzer*—a software package designed to standardize and electronically record the Client Assessment process. This tool assists MBDC counselors to interview and benchmark the status, needs and potential growth of its clients. The program is designed and maintained by MBDA and operated by the MBDC.

• *Phoenix/Opportunity*—an electronic bid-matching system that alerts participating MBEs of contract and teaming opportunities directly via e-mail. Procurement leads are transmitted to minority firms on a targeted basis according to the company's industry classification and geographic market.

• *Resource Locator*—a software application that allows MBEs to search for business resources interactively on the Internet. Resource Locator can help MBEs identify trade associations representing their industries, government licensing and permit offices, management and technical assistance providers, and a host of other resources quickly and efficiently.

• *Capital Locator*—an Internet-based tool that allows MBDC consultants to inquire about, identify and locate potential financiers nearest them. This tool shall provide basic financing criteria for each identified capital resource. The tool is designed to give users the benefit of a nationwide market for identifying financing needs and products.

• *Business and Market Planning*—a software package designed to streamline and enhance the development of business plans, marketing plans and other strategic business documents.

• *Business Analyst GIS*—a software operated at an individual computer workstation that provides strategic business data through geographic-based information system. This software will be awarded to select MBDCs, based on availability of funds and competition.

These electronic tools will help streamline the process of delivering client assistance to minority business enterprises, free up time so that the MBDC can implement MBDA's strategic goals and generate critical outcomes as described under the heading Performance Measures.

In addition, MBDA strongly encourages the MBDC to use these electronic tools daily because of the significant value they add to the MBDC and to minority businesses. These tools are designed to reinforce the standardization of services received throughout MBDA's extended network.

Work Requirements

The work requirements specify the duties and responsibilities of each recipient operating a MBDC.

Although it is not necessary for the applicant to have an office in the geographic service area at the time of application, one must be opened and be fully operational within thirty (30) days after receipt of the award. Fully operational means that all staff are hired, all signs are up, all items of furniture and equipment (*e.g.*, hardware, software, Internet services, phones, faxes, *etc.*) are in place, and the MBDC's doors have been fully opened to the public for service.

The MBDC must be accessible to disabled persons and strategically located in the geographic service area (as defined in this Notice) to ensure that it is: (1) Close to the available public and private sector resources, and (2) within a reasonable commuting distance to the minority business community.

The MBDC operator must provide services to eligible clients within its specified geographic service area. Each MBDC operator must contribute its efforts to help support MBDA's online business assistance network as established by Agency policies.

All MBDC consultants and its project director shall be required to attend a one-time five (5) day mandatory training session on ''Implementing a System for High-Quality Service.'' This training will be held three (3) times during the first year of program operation; in the east, in the west, and in the middle of the country (exact locations and dates will be announced). The training sessions may be conducted in the second and third year of operation based on availability of funding. The costs of tuition, materials, conference facilities and amenities for the training program will be covered by MBDA. However, the MBDC shall budget lodging, food and travel expenditures for its attending staff. The program will be conducted approximately forty-five (45) days after receipt of the award. The training shall focus on:

- Orientation to the MBDA strategy
- Instilling the entrepreneurial mindset
- Standardization of client intake services
- Skills and information needed to provide high-quality services to emerging firms

Successful completion of this program, which involves a competency examination, will result in certification of the MBDC staff member by MBDA. In the event that one or more MBDC staff member should fail the competency examination, the MBDC shall lose two (2) points from the assessment score during the evaluation of the project. This training may be provided a second time by the MBDA after mid-year review. The second training session will require the attendance of MBDC staff not previously trained, and/or those who failed to successfully complete the initial training program.

In addition to the initial training, the MBDC is required to have one staff member attend a one-time five (5) day advanced program, held in a Midwest location during the second quarter of 2004. This training session will teach MBDC staff how to transform high-potential minority businesses and put them on a high-growth trajectory. The purpose of this program is to ensure that at least one staff member in each MBDC will have the skills to nurture the growth of MBEs to become large companies, thereby helping to fulfill MBDA's strategic priority. Successful completion of this program, which involves a competency examination, will result in certification of the MBDC staff member by MBDA.

The MBDC shall budget for one staff member's lodging, food and travel expenditures, probably to the Chicago area. The costs of tuition, materials, and registration for the advanced training program will be covered by MBDA.

The MBDC is required to perform work in four (4) basic areas. These elements are designed to increase the exposure and visibility of MBEs (as defined in this Notice). MBDC efforts in these activities should provide quantifiable results.

1. *Market Development*—is designed to facilitate the identification of potential MBEs, methods to solicit potential clients and to identify, develop and leverage public and private sector resources and business opportunities for their clients:

(a) *Market Research and Development*: systematically investigate the service area market to see what business and capital opportunities exist for MBE development and search for sources of capital, sales opportunities, business buy-outs and new start possibilities. As market research is conducted, the MBDC will make optimum use of the MBDA network to ensure that the information is made available to fellow MBDC operators and to MBEs throughout the country.

(b) *Market Promotion*: Promote minority business development in the local business community by obtaining support from the community for the utilization of MBEs.

The MBDC will promote individual MBEs to the public and private sectors to build market awareness of the capability, talent and capacity of its clients. The MBDC may utilize public service announcements and paid advertising. The MBDC may promote its clients locally to entities such as: Chambers of Commerce, business and trade associations, corporations and company trade fairs and meetings, state and local government agency purchasing departments, economic development and planning offices and MBE events.

The MBDC shall carry out a plan-of-action that will include, but is not limited to the following actions: (1) Develop an MBDC brochure for mail-out and distribution to the public; (2) Develop an MBDC program description for inclusion on the MBDA Portal and the MBDC web site; and (3) Adhere to MBDA's communication plan (see Operational Quality, item (j) under this section).

The MBDC shall promote and participate in one Regional NEC and one national Minority Enterprise Development (MED) Week activities. MED Week is an annual event, coordinated through MBDA that celebrates the success of minority businesses. Participation is defined as follows:

(1) NEC MED Week—This event is held annually in late summer or early fall, in or near the MBDA NEC. It involves full participation and collaboration with the designated MBDA NEC. The MBDC shall participate in MBDA's process of nominating their outstanding clients for various awards. The MBDC may be asked to coordinate/host panel discussions and support its MBDA NEC. At a minimum, travel expenditures for the MBDC's project director and (at least) one staff must be included in the proposal.

(2) National MED Week—This event is held annually in the fall in Washington, DC. It shall require at a minimum, travel expenditures for the MBDC's project director and (at least) one staff. During the 2004 National MED Week program, optional training in accounting and finance will be offered to MBDC staff. There will be no charge for tuition or materials. Successful completion of this program, which involves a competency examination, will result in certification of the staff member by MBDA.

(c) *Resource Development* requires the MBDC to identify and electronically record on the MBDA Portal likely sources of the following:

(1) Market Opportunities—e.g., public (Federal, state and local government) and private (domestic and foreign) sector contracting opportunities;

(2) Capital Resources—e.g., standard commercial and alternative debt (loans, lines of credit, *etc.*), equity (venture capital, angel, *etc.*), and mezzanine (near equity, subordinated debt, *etc.*) financing, bonds (performance and surety), and trade credit opportunities;

(3) Business Ownership Opportunities—e.g., franchises, licensing arrangements, mergers and buy-outs;

(4) Education and Training Resources—e.g., educational institution programs and other training resources; and,

(5) Registration of MBEs—e.g., register eligible local MBEs in MBDA's Phoenix system, which is a national electronic inventory of minority firms capable of selling their goods and services to the public and private sector. The identified and recorded resources shall be verified by MBDA prior to publishing on the MBDA Portal.

(d) Develop and Maintain a Network of Strategic Partners and Intra-Strategic Relationships—The work requirements for an award recipient under the MBDC Program include the development of key networks. The purpose for establishing strategic partners is to: assist the MBDC to achieve its goals for assisting minority businesses (as defined in this solicitation, under the heading of Performance Measures); synchronize outreach efforts between the MBDC and MBDA; and, foster collaboration among the MBDA funded network as established under the terms of the award. Each Strategic Partnership shall be documented by a written Memorandum of Understanding (MOU) that shall document the terms and conditions of the partnership. The terms and conditions should assist the MBDC in achieving its goals for assisting MBEs.

A minimum of five (5) strategic partners between the MBDC and key local entities selected by the recipient must be established within one hundred twenty (120) days after receipt of the award. The MBDC is required to maintain these partnerships throughout the life of the award. The MBDC must

replace a Strategic Partner within forty-five (45) days after termination of a previously established partnership. The MBDC shall consult with its MBDA National Enterprise Center prior to completing the MOU. The MBDA shall have no relationship with or responsibility to the MBDC's Strategic Partners.

The Strategic Partners shall be public or private sector organizations located within the project's geographic service area. Strategic Partners may include:

- Minority Business Enterprise (MBE) programs operated by state, county or city governments;
- Chambers of Commerce or trade associations focused on the needs of the minority business community;
- Small Business Development Centers, or other college and university entrepreneurial development programs;
- Community Development Corporations;
- Banks and financial institutions; and
- Faith-based organizations having economic development components, whose activities are *not* used for sectarian purposes.

Also, the MBDC shall establish Intra-Strategic Relationships with other MBDA funded programs in support of their goals for assisting larger minority businesses as defined under the terms of the award. The MBDC is required to meet with other MBDA-funded programs in the NEC (in person or by phone conference) at quarterly meetings conducted by MBDA staff. The MBDC is encouraged to refer and/or accept clients from these Relationships. The Intra-Strategic Relationships shall *not* be counted towards the MBDC goal of obtaining Strategic Partnerships as described above.

(e) *Facilitate Matches* which identify and refer eligible MBEs with specific viable businesses, market and/or capital opportunities.

This function contributes to an MBDC's financing and/or procurement performance goals, and is the *only* MBDC market development function outside of the standard client business assistance in which a portion of an MBDC's time can be directly associated to *individual* minority business clients and resource customers. This client specific time, no matter how small, is considered client assistance and may be subject to client fees. Under this function, the MBDC shall match qualified minority entrepreneurs with identified opportunities and resources by: (1) Accessing vendor information systems, including the Phoenix/Opportunity system; (2) Providing follow-up communication to Phoenix-registered minority firms that receive Opportunity matches within the MBDC geographic area; (3) Maintaining a constant awareness of the minority firms that operate within the geographic service area and their capabilities; (4) Maintaining direct contact with purchasing executives, government procurement officials, banking officials and others so that representatives of the MBDC are in a position to learn about available business opportunities, both formally and informally; (5) Engaging in relationship brokering between purchasing organizations and individual minority firms capable of fulfilling their requirements; and (6) Assisting in direct negotiations between purchasing organizations and individual minority firms, in appropriate cases, in order to help resolve issues, serve as an advocate for the minority firm, or otherwise assist in bringing the transaction to closure.

2. *Client Services*—Provides direct client assistance to MBEs on the basis of individualized professional engagements. Rapid growth-potential minority businesses shall be assisted primarily through one-on-one business consulting.

Rapid growth-potential minority businesses are defined as those firms with $500,000 in annual sales or more or capable of generating significant employment and long term economic growth. Under these duties, the MBDC shall assist minority firms and individuals, which have agreed in writing to become MBDC clients, in establishing, improving and/or successfully maintaining their businesses. *All new clients* shall be entered into the Performance system and registered in the Phoenix system. The MBDC is *required* to enter clients and service hours into the Performance system within seventy-two (72) hours from the time of service. Clients assisted more than once during the funding period may only be counted once in that funding period.

Business consulting to rapid growth-potential minority businesses requires the delivery of sophisticated management and technical assistance based on the client size (see below for definition of sales range). The MBDC shall operate a *systems-integrated approach* (as described below) to assist in minority business growth and development. The MBDC must define its business consulting service approach for each of the following annual sales range categories:

(a) $500,000–$999,999

(b) $1,000,000–$5,000,000

(c) Other rapid growth-potential minority firms (as defined above)

A systems-integrated approach is defined as a customer-based service model supported by the following functions:

- Strategy—*e.g.*, plans for achieving sustainable competitive advantage and creating customer value
- Processes—*e.g.*, efficient, effective ways of manufacturing products or delivering services
- Architecture—*e.g.*, organizational and value chain (outsourcing) structure to implement the strategy and key processes
- Resources—*e.g.*, the acquisition and management of financial, human, and technical assets
- Systems—*e.g.*, mechanisms for control and communication, including management information systems (MIS)
- Empowerment—*e.g.*, delegation in a way that encourages staff to pursue strategic initiatives and continuous improvement.

The MBDC shall be responsible for providing business consulting to MBEs based on these principles.

Business consulting services are (as defined under this section) provided by the MBDC to eligible MBEs and individuals (as referenced in Executive Orders 11625 and 12432) seeking assistance from the MBDC, including 8(a) certified and graduate firms. These client services are segments to the systems-integrated approach. They are designed to assist minority firms to bridge operational and strategic gaps. They cannot provide long term business viability without aligning all aspects of the business and its environment. Client services include, but are not limited to, the following types of assistance:

(a) Client Assessment—Provides the MBDC client with a fundamental business evaluation. This process is designed to standardize services across the MBDC network nationwide and to facilitate the client referral process among the MBDA funded network. It requires an interview to be conducted between client and MBDC consultant. This service is designed to provide:

- Background and contact information on the client;
- Client business analysis with respect to its core competency, organizational structure, market and industry placement, production of products/delivery of services, marketing plan, resources and financial viability;
- Analysis and benchmarking of the client;
- Development of an intervention plan utilizing a systems-integrated approach (as defined under Client Services) & client report; and,

- Identification of resources and referrals.

(b) *Functional Assistance*—Provides the MBDC client with detailed business consulting services including but not limited to:

(1) *Marketing, e.g.*, market research, promotion, advertising and sales, sales forecasting, market feasibility studies, pricing, product and customer service, brochure design (excludes mass printing);

(2) *Financial Management, e.g.*, capital budgeting, general accounting, break-even analysis, cost accounting, financial planning and analysis budgeting, tax planning, business consulting (excludes bookkeeping, tax preparation, and audits);

(3) *Financial Assistance, e.g.*, identification, preparation and packaging of standard commercial and alternative debt (loans, lines of credit, etc.), equity (venture capital, angel, *etc.*), and mezzanine (near equity, subordinated debt, *etc.*) financing and trade credit opportunities;

(4) *Procurement Assistance, e.g.*, preparation and planning for the identification of private and public-sector contracting opportunities;

(5) *Operations & Quality Management, e.g.*,

- Manufacturing—plant location and site selection, plant management, materials handling and distribution, total quality management, metrication for world market, and business consulting;
- Construction—estimating, bid preparation, bonding, take-offs, and business consulting;
- International Trade Assistance—exporting, importing, letters of credit, bank draft, dealerships, agencies, distributorship, exporting trading companies, joint ventures, business consulting, and freight forwarding and handling;
- Specialized Certification—ISO 9000 knowledge of program and standards, how to implement standards, how to report and properly apply for ISO 9000 Quality Systems certification;
- Total Quality Management—process engineering, inventory control, purchasing, continuous improvement programs;
- Technology & Systems—automation design, development and integration of technology to support infrastructure, knowledge management, data mining, performance based reporting;

(6) *Organization & Administration, e.g.*, human resource management, job evaluation and rating system, employee stock option programs, training, business consulting; and,

(7) *General Management, e.g.*, organization and structure, formulating corporate policy, feasibility studies, reports and controls, public relations, staff scheduling, legal services (excludes litigation), business planning, organizational development, bid preparation, and business consulting.

The MBDC shall not perform or engage in the day-to-day operations or make decisions for its clients.

Group training sessions are considered a form of business development services that can be provided to minority clients. This function may be subject to client fees and directly contributes to an MBDC's performance goals.

3. *Operational Quality*—Maintains the efficiency and effectiveness of its overall operations as well as the quality of its client services. These duties are the means by which the MBDC manages its overall operations as well as the quality of its client services. The function directly contributes to the MBDC's overall qualitative evaluation and rating as well as the successful completion of all work requirements. Under this function, the MBDC shall:

(a) Execute signed work plan agreements and engagement letters with clients; (b) Formally describe the methodology that will be used in achieving the work plan objectives for each client; (c) Input progress/results to the performance database within seventy-two (72) hours from the time of service; (d) Establish procedures for collecting and accounting for all fees charged to clients; (e) Maintain records/files for all work charged to the program and clients; (f) Obtain *written* acceptance and verification (with client signatures) of services provided to its clients and any financings/contracts obtained. For services reported, documentation must be in the MBDC's client files within thirty (30) days after the end of every quarter in which a client receives services; (g) Comply with all reporting requirements provided upon award; (h) Cooperate with MBDA in maintaining content for the Phoenix/Opportunity system, Resource Locator, and other online tools located at *http://www.mbda.gov;* (i) Promote and utilize the services and resources of other MBDA programs, sponsored efforts and/or voluntary activities; and (j) The MBDC shall adhere to MBDA's trademark and licensing requirements for all forms of communication including but not limited to signage, stationary and other MBDC-related publications. Such requirements shall be provided at the time of award. These requirements include but are not limited to specific size, location, and font of the MBDA logo.

- Signage—Signs should be highly visible to the MBDC clients and general public. They should be prominently displayed on entrances or doors.
- Printed Materials—These items shall include the name of MBDA on all stationery, letterhead, brochures, *etc.*
- Internet Presence and Information—The MBDC is to maintain an Internet presence (see Computer Requirements) and shall include standardized language as provided by MBDA.
- Telephonic Communication—Identify the MBDC immediately upon answering the telephone. If the recipient also requires that its organization's name be given, it should be provided only after the MBDC has been verbally identified to a caller. Refer to MBDA in all advocacy and outreach efforts such as speaking engagements, news conferences, *etc.*

The MBDC is not authorized to use either the Department of Commerce's (DOC) official seal or the MBDA logo in any of its publications, documents or materials without specific written approval from the Department of Commerce.

The term *Minority Business Development Center (MBDC)* is a trademark of the Federal Government, and the Government reserves exclusive rights in the term. Permission to use the term is granted to the award recipient for the sole purpose of representing the activities of the award recipient in the fulfillment of the terms of the financial assistance award. The Minority Business Development Agency reserves the right to control the quality of the use of the term by the award recipient. Whenever possible, for example in promotional literature and stationery, use the ™ designation as in *Minority Business Development Center*™.

Computer Requirements

MBDA requires that all award recipients meet certain requirements related to the acquisition, installation, configuration, maintenance and security of information technology (IT) assets in order to ensure seamless and productive interface between and among all grant recipients, minority-owned businesses, the MBDA federal IT system and the public. These required assets and their configuration are hereinafter referred to as the ''enterprise.'' The basic components of the enterprise are the

desktop workstations, the server, local area network (LAN) components and a connection to the Internet.

At a minimum, each grantee shall provide one (1) desktop computer for the exclusive use of each employee delivering minority business assistance to the public under an award from MBDA. All desktop computers shall be inter-connected with a Server computer using an Ethernet protocol enabling communication with all workstations on the network. The Server shall have a constant, high-speed Internet connection, active during all business hours, preferably through a DSL or cable modem connection. The recipient shall ensure that each of his/her employees, to include management, administrative personnel, contractors, full-time, part-time, and non-paid (volunteer) staff have a unique electronic mail (email) address available to the public. Each grantee shall design, develop and maintain, in accordance with the computer requirements, a presence on the Internet's World Wide Web and shall maintain appropriate computer and network security precautions during all periods of funding by MBDA. All IT requirements, as described herein, shall be met within thirty (30) calendar days after the award.

1. *Network Design:* At all locations where services are delivered to the eligible public as defined by Executive Order 11625, the recipient shall operate a ''Client-Server'' configured local area network (LAN) enabling each staff person delivering services to the eligible public exclusive access to a personal computer workstation during all business hours. MBDA shall, from time to time, designate certain configurations of the enterprise hardware and software to meet interface requirements.

Currently, MBDA recommends servers using an operating system that is fully compatible with Microsoft Windows 2000 with a service pack three (3) or greater. Domain Controller (DC) servers or any server providing principal service to the desktops shall contain 18 or more gigabytes (GB) of hard drive space using two or more 9 GB+ disks configured appropriately to ensure data retention should one disk fail. At least one (1) Pentium IV central processing unit (CPU), or a CPU ensuring similar speed, shall be used in the DC server or any other server providing principal service to the desktops. Web servers, mail servers and/or servers maintained by a third party such as an Internet Service Provider (ISP) shall meet the minimum server specifications as stated herein. A ''trusted'' relationship, as appropriate, shall be established and maintained between the MBDA DC server and those operated by, or operated for, the recipient to ensure access by MBDA system administration personnel during normal business hours. (In a network that consists of two or more domains, each domain acts as a separate network with its own accounts database. Even in the most rigidly stratified organizations, some users in one domain will need to use some or all of the resources in another domain. The usual solution to confirming user access levels among domains is what's called a *trust relationship*.) From time to time, MBDA will require access to servers and desktop workstations after business hours and on holidays and weekends. For this purpose, the recipient shall ensure appropriate communications links are active and appropriate personnel on station, upon 24-hour notice from MBDA.

2. *Desktop Workstations:* All desktop systems shall not be more than two (2) calendar years old at time of award and shall contain a Pentium IV central processing unit (CPU), or a CPU ensuring similar speed, operating at speeds not less than 2+ Gigahertz (GHz). Each desktop system shall contain a hard drive with a storage capacity of at least twenty (20) GB and 512 Megabytes of RAM. All desktop systems shall have installed an operating system fully compatible with Microsoft Windows 2000 with MS Office 2000 Professional (SP1) or higher, Microsoft Internet Explorer 6.x as well as some form of regularly updated antivirus protection software. Additionally, it is suggested that at least one workstation have installed both a full-page scanner and feed, along with software fully compatible with Adobe Acrobat software (version 4.0 or higher) for the production of electronic document submissions.

Since workstations may be linked to a live, two-way conference connection with potential clients, at least 50% of all employee workstations shall be fully operational with a qualified staff person positioned at the keyboard during all business hours to include lunch and break periods.

3. *Maintenance and Security:* A network map (''as-built'') reflecting adherence to the computer and networking requirements set forth herein shall be maintained by the recipient for review by MBDA at any time. Each recipient shall designate and train one administrative person competent in the operation of an operations system fully compatible with Windows 2000 network and local area network (LAN) technology as described herein. If a firewall, proxy server or similar security component is used, MBDA's server shall be ''trusted'' for full access to all files relevant for network and administrative operations. From time to time, MBDA may require certain software be loaded on servers and desktops. In any given year, the cost of this additional software may be $200.00 per workstation and $500.00 per server, such additional cost may be borne by MBDA. Every employee of the MBDC shall be assigned a unique username and password to access the system. Every employee shall be required to sign a written computer security agreement. (A suggested format for the computer security agreement will be provided at the time of award.) Every manager, employee, and contractor and any other person given access to the computer system shall sign the security agreement and an original copy of the signed agreement shall be kept in the MBDC's files. A photocopy of the agreement shall be sent by fax to MBDA at: (202) 482–2693 no later than thirty (30) days after receipt of the award. All subsequent new hires and associations requiring access to the MBDC or MBDA systems shall read, understand and sign the security agreement prior to issuance of a password. No employee shall have access to the MBDA system without a signed security agreement on file at MBDA.

4. *Web site:* Each recipient shall create and maintain a public web site using a unique address (*e.g., http://www.center-name.com*). The first page (Index page) of the web site shall clearly identify the recipient as a Minority Business Development Center funded by the U.S. Department of Commerce's Minority Business Development Agency. The Index page of the web site shall load on software fully compatible with Windows Internet Explorer 6.x browser software using a normal home computer with 56 Kb/s analog phone line connection in less than ten (10) seconds. The web site shall contain the names of all managers and employees, the business and mailing address of the Center, business phone and fax numbers and email addresses of the MBDC and employees, a statement referencing the services available at the MBDC, the hours under which the MBDC operates and a link to the MBDA homepage at *http://www.mbda.gov.* For purpose of electronically directing clients to the appropriate MBDC staff, the web site shall also contain a short biographical statement for each employee of the MBDC including management, contractors, part-time, full time, and non-paid (volunteer) personnel,

providing services directly to the eligible public under an award from MBDA. This biographical statement shall contain: the full name of the employee, and a brief description of the expertise of the employee to include academic degrees, certifications and any other pertinent information with respect to that employee's qualifications to deliver minority business assistance services to eligible members of the public.

No third party advertising of commercial goods and services shall be permitted on the site. All links from the site to other than federal, state or local government agencies and non-profit educational institutions must be requested, in advance and in writing, through the Chief Information Officer, MBDA Office of Information Technology Services to the Grants Office for written approval. Such approval shall not be unreasonably withheld but approval is subject to withdrawal if MBDA determines the linked site unsuitable. No employee of the MBDC, nor any other person, shall use the MBDC web site for any purpose other than that approved under the terms of the agreement between the recipient and MBDA. Every page of the web site shall comply with Federal standards of the Americans With Disabilities Act, Section 508, and be reviewed by the recipient for accuracy, currency, and appropriateness every three (3) months. Appropriate privacy notices and handicapped accessibility will be predominately featured. From time to time, MBDA shall audit the recipient's web site and recommend changes in accordance with the guidelines set forth herein.

5. *Time for Compliance:* Within thirty (30) days after receipt of the award, the recipient shall report via email to the Chief Information Officer, MBDA Office of Information Technology Services and the MBDA Office of Business Development that he/she has complied with all technical requirements as specified herein. Within thirty (30) days after receipt of the award, the recipient shall report the name, contact telephone number and email address of the Project Director, Network or System Administrator. As appropriate, the recipient shall also provide the telephone number and email address for the Technical Contact at the Internet Service Provider (ISP) providing Internet access for the grantee, the IP number of the Domain Name Server (DNS) and/or Domain Control (DC) server, and any other technical information as specified in the Technology Requirements.

6. *Performance System*—All required performance reporting to MBDA shall be conducted via the Internet using the Performance system to be found at a secure web site (*http://www.mbda.gov*). Within thirty (30) days after the receipt of award, each MBDC business consultant and/or anyone providing business assistance to the public under the award shall have satisfactorily completed the Performance System Training Course (PSTC). This course is available on-line from the Performance web site (*http://www.mbda.gov*). Only trained staff shall enter data into the Performance system. There shall be no ''sharing'' of passwords on the Performance system. MBDA encourages input of information on a daily basis.

7. *Data Integrity:* The recipient shall take the necessary steps to ensure that all data entered into MBDA systems, and systems operated by the recipient in support of the award, or by any employee of the recipient is accurate and timely.

Performance Measures

In accordance with 15 CFR parts 14 and 24, applicants selected will be responsible for the effective management of all functions and activities supported by the financial assistance award. Award recipients will be required to use program performance measures in a performance report due thirty (30) days after the end of the second quarter and to provide an end-of-year assessment of the accomplishments of the project using these measures. The end-of-year or final performance report is due ninety (90) days after the end of the funding year. Once the project is awarded, the evaluation criteria, along with the assigned weight value, to be used for measuring the MBDC project performance on an ongoing basis are:

1. The dollar value of transactions (65);
2. Number of jobs created (10);
3. Number of new clients (5);
4. Administrative Management & Operational Quality (20)
   - Client satisfaction (5);
   - Management assessment (5);
   - Market promotion (1);
   - Resource entries (5);
   - Establish strategic partners (2);
   - Facilitated matches (2).

The *minimum* performance goals required for the above listed performance measures for each of the solicited geographic service areas are outlined under the Funding Availability sub-heading for each geographic service area. The *minimum* performance goals are listed on an annual basis by MBDA and will be broken out into quarterly increments by the applicant and submitted as part of their proposal.

The MBDC is required to utilize, in a good faith effort, all of its resources to achieve the stated goals. Should the MBDC exceed its performance requirements prior to the end of a funding year, the MBDC is expected to maintain operations at full strength and *continue to provide services and reach greater performance outcomes.* MBDA views the MBDC as a designated cooperative partner and an envoy to the greater minority business community. Thus, high achievement in one performance measure cannot excuse failure to reach other goals as stated in this notice.

Definitions

1. *Dollar Value of Transactions*—The dollar value of transactions are defined as:

(a) *Dollar Value of Completed Financial Transactions* which represent the total principal value of approved loans, equity financings, bonds, or other binding financial agreements secured by clients of the project, with the assistance of MBDC staff. For purposes of this performance element, eligible financial transactions are those which have a specific dollar value, and which expand its capital base/operations, or produce some other direct commercial benefit for client firms. In order to be deemed complete, a financial transaction must be documented by an executed and binding agreement between the MBDC client (firm) and a party (financier) capable of performing its obligations under the terms of the agreement.

(b) *Dollar Value of Gross Receipts* which represent the total dollar value of successfully awarded contracts and/or the total principal value of executed sales/delivery contracts of services/products/intellectual rights and/or increase in sales and/or completed Mergers and Acquisitions or other binding financial considerations secured by clients of the project, with the assistance of project staff. For purposes of this performance element, Dollar Value of Gross Receipts are those transactions which have a specific dollar value, and which produce some other direct commercial benefit for client firms. In order to be deemed complete, successfully awarded contracts or mergers and acquisitions must be documented by an executed and binding agreement between the client firm and a party capable of performing its obligations under the terms of the agreement. Increase in sales must be documented through an initial client assessment and a midyear and year-end client assessment (see Client

Assessment under Client Services) supported by client submitted financial documentation.

MBDA recognizes that the financial obligations evidenced by these transactions may be long-term, and require performance over an extended period. Consequently it is not necessary that the funds or other financial value specified under the agreements have actually changed hands for the project to receive credit under this performance element, so long as the agreement of the parties is documented and binding.

2. *Number of Jobs Created*—This is defined as the number of new full time and/or part time employment opportunities reported on the client's payroll during the funding year. Persons on paid sick leave, paid holiday and paid vacations are included as employees as are salaried officers and executives of corporations. However, proprietors and partners of unincorporated business are not considered employees under this definition.

3. *Number of New Clients*—This represents the actual number of new clients in a funding year. New clients are defined as those MBEs that complete a written engagement with the MBDC for specific services and registered with the MBDC.

4. *Administrative Management & Operational Quality*—Operational quality refers to the quality and effectiveness of the project operator's delivery of client services and project scope, as evidenced by the following performance elements relating to the day-to-day management of the project:

a. *Client Satisfaction*—An MBDA consultation process with clients of the MBDC used to verify and rate the qualitative level of services rendered by the MBDC.

b. *Management Assessment*—The management assessment reflects MBDA's own evaluation of the overall management of the MBDC project, based on the Agency's internal review of the project's operations. The management assessment reflects such areas as the development of written engagement letters and work plans, proper staffing, adherence to scheduled work hours, recordkeeping, successful completion of Agency training, and any other areas which MBDA may deem to be relevant in determining the overall quality of the project's operations.

c. *Market Promotion*—This represents the total number of successfully completed activities (per reporting period) as proposed in the applicant's response to this Notice.

d. *Resource Entries*—This is defined as the total quantity of accurate and timely records entered into MBDA's Portal tools (*e.g.*, Phoenix, Opportunity, Capital Locator, Resource Locator, etc.) in support of its efforts to disseminate information electronically.

e. *Establish Strategic Partners*—This represents formalized memoranda of understanding between the MBDC and its strategic partners.

f. *Facilitated Matches*—This represents the number of minority firms directed by the MBDC to strategic partners, the MBDA funded network, and other business resources that result in a financial transaction (as described above under Dollar Value of Transactions).

Extraordinary Performance—Support of MBDA's Strategic Initiative

An element of MBDA's overall mission is to advocate on behalf of all MBEs. In part, MBDA recognizes successful efforts of MBDC operators to establish new opportunities for all MBEs. *Extraordinary performance* by a MBDC or the MBDC operator may result in bonus points for the MBDC. The MBDC may receive up to a maximum of (5) performance bonus points (one (1) point for each fully completed initiative as defined below) in any funding period for the successful execution of the following four items:

(a) The MBDC and/or the MBDC operator may develop and maintain a maximum of five (5) *strategic initiatives designed to benefit the minority business community* within the MBDC geographic area.

(b) The strategic initiative(s) should be framed to expand market and financing opportunities for MBEs in areas not previously established by MBDA or the MBDA funded network.

(c) A desired and measurable economic impact that benefits MBEs must be established and accounted for at the end of the MBDC funding year. Economic impact can be formulated by identifying the dollar value of transactions (financings, contracts/procurements) and/or other means of economic opportunities.

(d) The strategic initiative(s) should be documented in writing and should include

—The name(s) and contact information of the collaborating entities;
—Responsibilities and duties of the collaborating entities;
—The resources which each party agrees to commit to the relationship; and,
—The goals which the initiative is to accomplish.

Performance Standards

The year-to-date performance of an MBDC for Year One of the award will be based on the following rating system:

Minimum required percent of goals needed for each rating category	Minimum required points needed for each rating category	Rating categories
100% and above *	100 ** & above	Outstanding
At least 90	90–99	Commendable
At least 80	80–89	Good
At least 75	75–79	Satisfactory
Below 75	Below 75.0	Unsatisfactory

* Not to exceed 110%.
** Not to exceed 110 Points.

The year-to-date performance of an MBDC for Year Two of the award will be based on the following rating system:

Minimum required percent of goals needed for each rating category	Minimum required points needed for each rating category	Rating categories
100% and above *	100 ** & above	Outstanding
At least 90	90–99	Commendable
At least 80	80–89	Good

Minimum required percent of goals needed for each rating category	Minimum required points needed for each rating category	Rating categories
At least 77	77–79	Satisfactory
Below 77	Below 77.0	Unsatisfactory

* Not to exceed 110%.
** Not to exceed 110 Points.

The year-to-date performance of an MBDC for Year Three of the award will be based on the following rating system:

Minimum required percent of goals needed for each rating category	Minimum required points needed for each rating category	Rating categories
100% and above *	100 ** & above	Outstanding
At least 90	90–99	Commendable
At least 85	85–89	Good
At least 80	80–84	Satisfactory
Below 80	Below 80.0	Unsatisfactory

* Not to exceed 110%.
** Not to exceed 110 Points.

Funding Availability

MBDA anticipates that a total of approximately $7.2 million will be available in FY 2004 for Federal assistance under this program. Applicants are hereby given notice that funds have not yet been appropriated for this program. In no event will MBDA or the Department of Commerce be responsible for proposal preparation costs if this program fails to receive funding or is canceled because of other agency priorities.

Financial assistance awards under this program may range from $155,000 to $346,463 in Federal funding per year based upon minority population, the size of the market and its need for MBDA resources. Applicants must submit project plans and budgets for each of the three years. Projects will be funded for no more than one year at a time. Funding for subsequent years will be at the sole discretion of the Department of Commerce and will depend on satisfactory performance by the recipient, the availability of funds to support the continuation of the project, and Agency priorities.

Geographic Service Areas

An operator must provide services to eligible clients within its specified geographic service area. MBDA has defined the service area for each award below. To determine its geographic service areas, MBDA uses states, counties, Metropolitan Areas (MA), which comprise metropolitan statistical areas (MSA), consolidated metropolitan statistical areas (CMSA), and primary metropolitan statistical areas (PMSA) as defined by the OMB Committee on MAs *http://www.whitehouse.gov/omb/bulletins* and other demographic boundaries as specified herein. Services to eligible clients outside of an operator's specified service area may be requested, on a case-by-case basis, through the appropriate MBDA Regional Director and granted by the Grants Officer.

1. MBDC Application: Georgia Statewide

Geographic Service Area: State of Georgia.

Award Number: 04–10–04001–01.

The recipient is required to maintain its MBDC in Atlanta, Georgia. Contingent upon the availability of Federal funds, the cost of performance for each of three 12-month funding periods from January 1, 2004 to December 31, 2006, is estimated at $283,058. The total Federal amount is $240,599. The application must include a minimum cost share of 15% or $42,459 in non-Federal contributions.

The minimum performance goals for the MBDC are:

Dollar Value of Transactions: $21,023,588.

Number of Jobs Created: 65.

Number of New Clients: 135.

Resource Entries: 281.

Facilitated Matches: 7.

Pre-Application Conference: For the exact date, time and place, contact the Atlanta National Enterprise Center at (404) 730–3300 or visit MBDA's website at *http://www.mbda.gov.*

For Further Information and a copy of the application kit, contact Robert Henderson, Regional Director.

2. MBDC Application: North Carolina Statewide

Geographic Service Area: State of North Carolina.

Award Number: 04–10–04002–01.

The recipient is required to maintain its MBDC in Raleigh/Durham, North Carolina. Contingent upon the availability of Federal funds, the cost of performance for each of three 12-month funding periods from January 1, 2004 to December 31, 2006, is estimated at $285,058. The total Federal amount is $240,599. The application must include a minimum cost share of 15% or $42,459 in non-Federal contributions.

The minimum performance goals for the MBDC are:

Dollar Value of Transactions: $21,023,588.

Number of Jobs Created: 65.

Number of New Clients: 135.

Resource Entries: 281.

Facilitated Matches: 7.

Pre-Application Conference: For the exact date, time and place, contact the Atlanta National Enterprise Center at (404) 730–3300 or visit MBDA's website at *http://www.mbda.gov.*

For Further Information and a copy of the application kit, contact Robert Henderson, Regional Director.

3. MBDC Application: Puerto Rico Islandwide

Geographic Service Area: Island of Puerto Rico.

Award Number: 04–10–04003–01.

The recipient is required to maintain its MBDC in San Juan, Puerto Rico. Contingent upon the availability of Federal funds, the cost of performance for each of three 12-month funding periods from January 1, 2004 to December 31, 2006, is estimated at $285,058. The total Federal amount is $240,599. The application must include a minimum cost share of 15% or $42,459 in non-Federal contributions.

The minimum performance goals for the MBDC are:

Dollar Value of Transactions: $21,023,588.

Number of Jobs Created: 65.

Number of New Clients: 135.

Resource Entries: 281.

Facilitated Matches: 7.

Pre-Application Conference: For the exact date, time and place, contact the Atlanta National Enterprise Center at (404) 730–3300 or visit MBDA's website at *http://www.mbda.gov.*

For Further Information and a copy of the application kit, contact Robert Henderson, Regional Director.

4. MBDC Application: South Carolina Statewide

Geographic Service Area: State of South Carolina.

Award Number: 04–10–04004–01.

The recipient is required to maintain its MBDC in Columbia, South Carolina.

Contingent upon the availability of Federal funds, the cost of performance for each of three 12-month funding periods from January 1, 2004 to December 31, 2006, is estimated at $285,058. The total Federal amount is $240,599. The application must include a minimum cost share of 15% or $42,459 in non-Federal contributions.

The minimum performance goals for the MBDC are:

Dollar Value of Transactions: $21,023,588.

Number of Jobs Created: 65.

Number of New Clients: 135.

Resource Entries: 281.

Facilitated Matches: 7.

Pre-Application Conference: For the exact date, time and place, contact the Atlanta National Enterprise Center at (404) 730–3300 or visit MBDA's website at *http://www.mbda.gov.*

For Further Information and a copy of the application kit, contact Robert Henderson, Regional Director.

5. MBDC Application: Illinois Statewide

Geographic Service Area: State of Illinois.

Award Number: 05–10–04001–01.

The recipient is required to maintain its MBDC in Chicago, Illinois. Contingent upon the availability of Federal funds, the cost of performance for each of three 12-month funding periods from January 1, 2004 to December 31, 2006, is estimated at $283,058. The total Federal amount is $240,599. The application must include a minimum cost share of 15% or $42,459 in non-Federal contributions.

The minimum performance goals for the MBDC are:

Dollar Value of Transactions: $21,023,588.

Number of Jobs Created: 65.

Number of New Clients: 135.

Resource Entries: 281.

Facilitated Matches: 7.

Pre-Application Conference: For the exact date, time and place, contact the Chicago National Enterprise Center at (312) 353–0182 or visit MBDA's website at *http://www.mbda.gov.*

For Further Information and a copy of the application kit, contact Carlos Guzman, Acting Regional Director.

6. MBDC Application: Ohio Statewide

Geographic Service Area: State of Ohio.

Award Number: 05–10–04002–01.

The recipient is required to maintain its MBDC in Cincinnati, Ohio. Contingent upon the availability of Federal funds, the cost of performance for each of three 12-month funding periods from January 1, 2004 to December 31, 2006, is estimated at $283,058. The total Federal amount is $240,599. The application must include a minimum cost share of 15% or $42,459 in non-Federal contributions.

The minimum performance goals for the MBDC are:

Dollar Value of Transactions: $21,023,588.

Number of Jobs Created: 65.

Number of New Clients: 135.

Resource Entries: 281.

Facilitated Matches: 7.

Pre-Application Conference: For the exact date, time and place, contact the Atlanta National Enterprise Center at (312) 353–0182 or visit MBDA's website at *http://www.mbda.gov.*

For Further Information and a copy of the application kit, contact Carlos Guzman, Acting Regional Director.

7. MBDC Application: Michigan Statewide.

Geographic Service Area: State of Michigan.

Award Number: 05–10–04003–01.

The recipient is required to maintain its MBDC in Detroit, Michigan. Contingent upon the availability of Federal funds, the cost of performance for each of three 12-month funding periods from January 1, 2004 to December 31, 2006, is estimated at $283,058. The total Federal amount is $240,599. The application must include a minimum cost share of 15% or $42,459 in non-Federal contributions.

The minimum performance goals for the MBDC are:

Dollar Value of Transactions: $21,023,588.

Number of Jobs Created: 65.

Number of New Clients: 135.

Resource Entries: 281.

Facilitated Matches: 7.

Pre-Application Conference: For the exact date, time and place, contact the Chicago National Enterprise Center at (312) 353–0182 or visit MBDA's website at *http://www.mbda.gov.* For Further Information and a copy of the application kit, contact Carlos Guzman, Acting Regional Director.

8. MBDC Application: Dallas/Ft.Worth/Arlington, Texas

Geographic Service Area: Dallas/Ft. Worth/Arlington MAs.

Award Number: 06–10–04001–01.

The recipient is required to maintain its MBDC in Dallas, Texas. Contingent upon the availability of Federal funds, the cost of performance for each of three 12-month funding periods from January 1, 2004 to December 31, 2006, is estimated at $367,811. The total Federal amount is $312,639. The application must include a minimum cost share of 15% or $55,172 in non-Federal contributions.

The minimum performance goals for the MBDC are:

Dollar Value of Transactions: $27,318,191.

Number of Jobs Created: 84.

Number of New Clients: 175.

Resource Entries: 365.

Facilitated Matches: 9.

Pre-Application Conference: For the exact date, time and place, contact the Dallas National Enterprise Center at (214) 767–8001 or visit MBDA's website at *http://www.mbda.gov.*

For Further Information and a copy of the application kit, contact John F. Iglehart, Regional Director.

9. MBDC Application: El Paso, Texas.

Geographic Service Area: El Paso, Texas MA.

Award Number: 06–10–04002–01.

The recipient is required to maintain its MBDC in El Paso, Texas. Contingent upon the availability of Federal funds, the cost of performance for each of three 12-month funding periods from January 1, 2004 to December 31, 2006, is estimated at $236,046. The total Federal amount is $200,639. The application must include a minimum cost share of 15% or $35,047 in non-Federal contributions.

The minimum performance goals for the MBDC are:

Dollar Value of Transactions: $17,532,131.

Number of Jobs Created: 54.

Number of New Clients: 113.

Resource Entries: 235.

Facilitated Matches: 5.

Pre-Application Conference: For the exact date, time and place, contact the Dallas National Enterprise Center at (214) 767–8001 or visit MBDA's website at *http://www.mbda.gov.*

For Further Information and a copy of the application kit, contact John F. Iglehart, Regional Director.

10. MBDC Application: New Mexico Statewide

Geographic Service Area: State of New Mexico.

Award Number: 06–10–04003–01.

The recipient is required to maintain its MBDC in Albuquerque, New Mexico. Contingent upon the availability of Federal funds, the cost of performance for each of three 12-month funding periods from January 1, 2004 to December 31, 2006, is estimated at $258,824. The total Federal amount is $220,000. The application must include a minimum cost share of 15% or $38,824 in non-Federal contributions.

The minimum performance goals for the MBDC are:

Dollar Value of Transactions: $19,223,643.

Number of Jobs Created: 59.

Number of New Clients: 123.

Resource Entries: 257.

Facilitated Matches: 6.

Pre-Application Conference: For the exact date, time and place, contact the Dallas National Enterprise Center at (214) 767–8001 or visit MBDA's website at *http://www.mbda.gov.*

For Further Information and a copy of the application kit, contact John F. Iglehart, Regional Director.

11. MBDC Application: San Antonio

Geographic Service Area: San Antonio, Texas MA.

Award Number: 06–10–04004–01.

The recipient is required to maintain its MBDC in San Antonio, Texas. Contingent upon the availability of Federal funds, the cost of performance for each of three 12-month funding periods from January 1, 2004 to December 31, 2006, is estimated at $301,929. The total Federal amount is $256,639. The application must include a minimum cost share of 15% or $45,289 in non-Federal contributions.

The minimum performance goals for the MBDC are:

Dollar Value of Transactions: $22,425,161.

Number of Jobs Created: 69.

Number of New Clients: 144.

Resource Entries: 300.

Facilitated Matches: 7.

Pre-Application Conference: For the exact date, time and place, contact the Dallas National Enterprise Center at (214) 767–8001 or visit MBDA's website at *http://www.mbda.gov.*

For Further Information and a copy of the application kit, contact John F. Iglehart, Regional Director.

12. MBDC Application: Manhattan/Bronx/Westchester

Geographic Service Area: The Counties of New York (Manhattan), Bronx and Westchester.

Award Number: 02–10–04001–01.

The recipient is required to maintain its MBDC in New York County (Manhattan). Contingent upon the availability of Federal funds, the cost of performance for each of three 12-month funding periods from January 1, 2004 to December 31, 2006, is estimated at $339,670. The total Federal amount is $288,719. The application must include a minimum cost share of 15% or $50,950 in non-Federal contributions.

The minimum performance goals for the MBDC are:

Dollar Value of Transactions: $25,228,306.

Number of Jobs Created: 78.

Number of New Clients: 162.

Resource Entries: 338.

Facilitated Matches: 8.

Pre-Application Conference: For the exact date, time and place, contact the New York National Enterprise Center at (212) 264–3262 or visit MBDA's website at *http://www.mbda.gov*.

For Further Information and a copy of the application kit, contact Heyward Davenport, Regional Director.

13. MBDC Application: New Jersey Statewide

Geographic Service Area: State of New Jersey.

Award Number: 02–10–04002–01.

The recipient is required to maintain its MBDC in Newark, New Jersey. Contingent upon the availability of Federal funds, the cost of performance for each of three 12-month funding periods from January 1, 2004 to December 31, 2006, is estimated at $339,670. The total Federal amount is $288,719. The application must include a minimum cost share of 15% or $50,950 in non-Federal contributions.

The minimum performance goals for the MBDC are:

Dollar Value of Transactions: $25,228,306.

Number of Jobs Created: 78.

Number of New Clients: 162.

Resource Entries: 338.

Facilitated Matches: 8.

Pre-Application Conference: For the exact date, time and place, contact the New York National Enterprise Center at (212) 264–3262 or visit MBDA's website at *http://www.mbda.gov*.

For Further Information and a copy of the application kit, contact Heyward Davenport, Regional Director.

14. MBDC Application: Pennsylvania Statewide

Geographic Service Area: State of Pennsylvania.

Award Number: 02–10–04003–01.

The recipient is required to maintain its MBDC in Philadelphia, Pennsylvania. Contingent upon the availability of Federal funds, the cost of performance for each of three 12-month funding periods from January 1, 2004 to December 31, 2006, is estimated at $339,670. The total Federal amount is $288,719. The application must include a minimum cost share of 15% or $50,950 in non-Federal contributions.

The minimum performance goals for the MBDC are:

Dollar Value of Transactions: $25,228,306.

Number of Jobs Created: 78.

Number of New Clients: 162.

Resource Entries: 338.

Facilitated Matches: 8.

Pre-Application Conference: For the exact date, time and place, contact the New York National Enterprise Center at (212) 264–3262 or visit MBDA's website at *http://www.mbda.gov*.

For Further Information and a copy of the application kit, contact Heyward Davenport, Regional Director.

15. MBDC Application: Queens/Nassau/Suffolk

Geographic Service Area: The Counties of Queens/Nassau/Suffolk.

Award Number: 02–10–04004–01.

The recipient is required to maintain its MBDC in Queens, New York.

Contingent upon the availability of Federal funds, the cost of performance for each of three 12-month funding periods from January 1, 2004 to December 31, 2006, is estimated at $339,670. The total Federal amount is $288,719. The application must include a minimum cost share of 15% or $50,950 in non-Federal contributions.

The minimum performance goals for the MBDC are:

Dollar Value of Transactions: $25,228,306.

Number of Jobs Created: 78.

Number of New Clients: 162.

Resource Entries: 338.

Facilitated Matches: 8.

Pre-Application Conference: For the exact date, time and place, contact the New York National Enterprise Center at (212) 264–3262 or visit MBDA's website at *http://www.mbda.gov*.

For Further Information and a copy of the application kit, contact Heyward Davenport, Regional Director.

16. MBDC Application: Washington Metro

Geographic Service Area: DC/MD/VA/WVA MAs.

Award Number: 02–10–04005–01.

The recipient is required to maintain its MBDC in the District of Columbia. Contingent upon the availability of Federal funds, the cost of performance for each of three 12-month funding periods from January 1, 2004 to December 31, 2006, is estimated at $339,670. The total Federal amount is $288,719. The application must include a minimum cost share of 15% or $50,950 in non-Federal contributions.

The minimum performance goals for the MBDC are:

Dollar Value of Transactions: $25,228,306.

Number of Jobs Created: 78.

Number of New Clients: 162.

Resource Entries: 338.

Facilitated Matches: 8.

Pre-Application Conference: For the exact date, time and place, contact the New York National Enterprise Center at (212) 264–3262 or visit MBDA's website at *http://www.mbda.gov*.

For Further Information and a copy of the application kit, contact Heyward Davenport, Regional Director.

17. MBDC Application: Williamsburg

Geographic Service Area: Kings County (Brooklyn), and Richmond County (Staten Island).

Award Number: 02–10–04006–01.

The recipient is required to maintain its MBDC in Williamsburg in Kings County (Brooklyn). Contingent upon the availability of Federal funds, the cost of performance for each of three 12-month funding periods from January 1, 2004 to December 31, 2006, is estimated at $374,412. The total Federal amount is $318,250. The application must include a minimum cost share of 15% or $56,162 in non-Federal contributions.

The minimum performance goals for the MBDC are:

Dollar Value of Transactions: $27,633,017.

Number of Jobs Created: 86.

Number of New Clients: 178.

Resource Entries: 372.

Facilitated Matches: 9.

Pre-Application Conference: For the exact date, time and place, contact the New York National Enterprise Center at (212) 264–3262 or visit MBDA's website at *http://www.mbda.gov*.

For Further Information and a copy of the application kit, contact Heyward Davenport, Regional Director.

18. MBDC Application: Alaska Statewide

Geographic Service Area: State of Alaska.

Award Number: 09–10–04001–01.

The recipient is required to maintain its MBDC in Anchorage, Alaska. Contingent upon the availability of Federal funds, the cost of performance for each of three 12-month funding periods from January 1, 2004 to December 31, 2006, is estimated at $203,802. The total Federal amount is $173,232. The application must include a minimum cost share of 15% or $30,570 in non-Federal contributions.

The minimum performance goals for the MBDC are:

Dollar Value of Transactions: $15,136,984.

Number of Jobs Created: 47.

Number of New Clients: 97.

Resource Entries: 203.

Facilitated Matches: 5.

Pre-Application Conference: For the exact date, time and place, contact the San Francisco National Enterprise Center at (415) 744–3001 or visit MBDA's website at *http://www.mbda.gov*.

For Further Information and a copy of the application kit, contact Linda Marmolejo, Deputy Regional Director.

19. MBDC Application: Arizona Statewide

Geographic Service Area: State of Arizona.

Award Number: 09–10–04002–01.

The recipient is required to maintain its MBDC in Phoenix, Arizona. Contingent upon the availability of Federal funds, the cost of performance for each of three 12-month funding periods from January 1, 2004 to December 31, 2006, is estimated at $407,604. The total Federal amount is $346,463. The application must include a minimum cost share of 15% or $61,141 in non-Federal contributions.

The minimum performance goals for the MBDC are:

Dollar Value of Transactions: $30,273,967.

Number of Jobs Created: 93.

Number of New Clients: 194.

Resource Entries: 405.

Facilitated Matches: 10.

Pre-Application Conference: For the exact date, time and place, contact the San Francisco National Enterprise Center at (415) 744–3001 or visit MBDA's website at *http://www.mbda.gov*.

For Further Information and a copy of the application kit, contact Linda Marmolejo, Deputy Regional Director.

20. MBDC Application: Central/Northern California

Geographic Service Area: The counties south of the Oregon/California border through, and including Santa Barbara, Inyo and Kern Counties.

Award Number: 09–10–04003–01.

The recipient is required to maintain its MBDC in Oakland, California. Contingent upon the availability of Federal funds, the cost of performance for each of three 12-month funding periods from January 1, 2004 to December 31, 2006, is estimated at $407,604. The total Federal amount is $346,463. The application must include a minimum cost share of 15% or $61,141 in non-Federal contributions.

The minimum performance goals for the MBDC are:

Dollar Value of Transactions: $30,273,967.

Number of Jobs Created: 93.

Number of New Clients: 194.

Resource Entries: 405.

Facilitated Matches: 10.

Pre-Application Conference: For the exact date, time and place, contact the San Francisco National Enterprise Center at (415) 744–3001 or visit MBDA's website at *http://www.mbda.gov*.

For Further Information and a copy of the application kit, contact Linda Marmolejo, Deputy Regional Director.

21. MBDC Application: Inland Empire

Geographic Service Area: The Counties of Orange, Riverside, San Bernardino, Imperial and San Diego, California.

Award Number: 09–10–04004–01.

The recipient is required to maintain its MBDC in Riverside/San Bernardino, California. Contingent upon the availability of Federal funds, the cost of performance for each of three 12-month funding periods from January 1, 2004 to December 31, 2006, is estimated at $407,604. The total Federal amount is $346,463. The application must include a minimum cost share of 15% or $61,141 in non-Federal contributions.

The minimum performance goals for the MBDC are:

Dollar Value of Transactions: $30,273,967.

Number of Jobs Created: 93.

Number of New Clients: 194.

Resource Entries: 405.

Facilitated Matches: 10.

Pre-Application Conference: For the exact date, time and place, contact the San Francisco National Enterprise Center at (415) 744–3001 or visit MBDA's website at *http://www.mbda.gov*.

For Further Information and a copy of the application kit, contact Linda Marmolejo, Deputy Regional Director.

22. MBDC Application: Los Angeles Metro

Geographic Service Area: The Counties of Ventura and Los Angeles, California.

Award Number: 09–10–04005–01.

The recipient is required to maintain its MBDC in the greater Los Angeles

Metropolitan Area. Contingent upon the availability of Federal funds, the cost of performance for each of three 12-month funding periods from January 1, 2004 to December 31, 2006, is estimated at $407,604. The total Federal amount is $346,463. The application must include a minimum cost share of 15% or $61,141 in non-Federal contributions.

The minimum performance goals for the MBDC are:

Dollar Value of Transactions: $30,273,967.

Number of Jobs Created: 93.

Number of New Clients: 194.

Resource Entries: 405.

Facilitated Matches: 10.

Pre-Application Conference: For the exact date, time and place, contact the San Francisco National Enterprise Center at (415) 744–3001 or visit MBDA's website at *http://www.mbda.gov*.

For Further Information and a copy of the application kit, contact Linda Marmolejo, Deputy Regional Director.

23. MBDC Application: Washington Statewide

Geographic Service Area: State of Washington.

Award Number: 09–10–04006–01.

The recipient is required to maintain its MBDC in Seattle, Washington. Contingent upon the availability of Federal funds, the cost of performance for each of three 12-month funding periods from January 1, 2004 to December 31, 2006, is estimated at $203,802. The total Federal amount is $173,232. The application must include a minimum cost share of 15% or $30,570 in non-Federal contributions.

The minimum performance goals for the MBDC are:

Dollar Value of Transactions: $15,136,984.

Number of Jobs Created: 47.

Number of New Clients: 97.

Resource Entries: 203.

Facilitated Matches: 5.

Pre-Application Conference: For the exact date, time and place, contact the San Francisco National Enterprise Center at (415) 744–3001 or visit MBDA's website at *http://www.mbda.gov*.

For Further Information and a copy of the application kit, contact Linda Marmolejo, Deputy Regional Director.

Matching Requirements

Cost sharing of at least 15% is required. Cost sharing is the portion of the project cost not borne by the Federal Government. Applicants must meet this requirement in client fees and any one or more of remaining three means or a combination thereof: (1) Client fees (mandatory); (2) cash contributions; (3) non-cash applicant contributions; and/or (4) third party in-kind contributions.

The MBDC must charge client fees for services rendered. The fees may range from $10 to $60 per hour based on the gross receipts of the client's business ranging from $0 to $5 million and above. The MBDC must comply with the following policy restrictions when charging client service fees: (1) Client fees charged for one-on-one assistance must be based on a rate of $100 per hour, (2) the MBDC must set fee rates based on the following chart:

Gross receipts of client	Base rate for services rendered	Percent of cost borne by client	Client fee per hour
$0–99,999	$100.00	10	$10.00
$100,000–299,999	100.00	20	20.00
$300,000–999,999	100.00	30	30.00
$1 Million–2,999,999	100.00	40	40.00
$3 Million–4,999,999	100.00	50	50.00
$5 Million and Above	100.00	60	60.00

(3) the MBDC must contribute cash for uncollected fees that were included as part of the cost sharing contribution committed for this award, and (4) client fees applied directly to the award's cost sharing requirement must be used in furtherance of the program objectives.

Type of Funding Instrument

Financial assistance awards in the form of cooperative agreements will be used to fund this program. MBDA's substantial involvement with recipients will include performing the following duties to further the MBDC's objectives:

Post-Award Conferences

MBDA shall conduct post-award conferences for all new MBDC awards to ensure that each MBDC has a clear understanding of the program and its components. The conference will: (1) Provide an MBDA Directory of Business Resources; (2) Orient MBDC program officers; (3) Explain program reporting requirements and procedures; (4) Identify available resources that can enhance the capabilities of the MBDC; and (5) Provide detailed information about MBDA's business and other information systems.

Training

MBDA shall conduct various qualitative training sessions for the MBDC staff. The training sessions are designed (in part) to improve communications, understandings, client service delivery, performance and reporting. The following training sessions are designated for the 2004 funding year:

(1) A systems integrated approach to client services, including client assessment and functional assistance (initial 5-day training), and subsequent advanced training (5-day follow-up training), and

(2) MBDA Portal tools including (but not limited to) Performance, Resource Locator, Capital Locator, Business Plan, Phoenix and Opportunity System. We anticipate that the training will be provided at MBDA's annual National conference. Training sessions may be offered each funding year based on the availability of funds. Locations for the training sessions are subject to change.

Networking, Promotion and Information Exchange

MBDA shall provide the following: (1) Access to business information systems, which support the work of the MBDC as described in the Enhancing the MBDCs Through Technology section. This information will be provided by MBDA's Office of Information Technology. The specific information systems and access to them will be provided at the time of the award for a particular MBDC; (2) Sponsor one national and at least one NEC conference; (3) Expand the Phoenix data bank of minority-owned firms by requiring other MBDA-funded programs to provide additional entries; (4) Promote the exchange of business opportunity information within the MBDA funded system using the Capital Locator, Resource Locator, Phoenix and

Opportunity system on the MBDA Portal located at *http://www.mbda.gov*; (5) Work closely with the MBDC to establish a system in which procurement and contract opportunities can be shared with the network of MBDCs. This system will include opportunities identified throughout the MBDA network using the Phoenix and Opportunity system located at *http://www.mbda.gov;* (6) Help promote special events to be scheduled at the local community, state and national levels in celebration of MED Week, which occurs annually; and (7) Identify Federal, state and local governments, and private sector market opportunities to the MBDC using the Capital Locator, Resource Locator, Phoenix and Opportunity system on the MBDA Portal located at *http://www.mbda.gov.*

Project Monitoring

MBDA will systematically monitor the performance of the MBDC. This monitoring includes regular review of data input to the performance system, assessment of the end of the second quarter progress report, an on-site review of the center's client files to verify MBDC performance, reported assistance and interviews with clients assisted. In consultation with clients of the individual MBDC, MBDA will assess the Center's effectiveness in providing business development services to their respective minority business communities. MBDA will then provide a report of findings and recommendations for improvement as a result of evaluations and monitoring visits. MBDA will also assess the MBDC's performance for the first and third quarters of performance data (as recorded in the Performance System) and provide a written report of findings. MBDA will approve qualifications of key MBDC staff and respond in a timely manner to correspondence requesting MBDA action.

Eligibility Criteria

For-profit entities (including sole-proprietorships, partnership, and corporations), and non-profit organizations, state and local government entities, American Indian Tribes, and educational institutions are eligible to operate MBDCs.

Award Period

The total award period is three (3) years. Funding will be provided annually at the discretion of MBDA and DoC, and will depend upon satisfactory performance by the award recipient, availability of funds to continue the project, and Agency priorities. Project proposals accepted for funding will not compete for funding in subsequent budget periods within the approved award period. Publication of this notice does not obligate MBDA or DoC to award any specific cooperative agreement or to obligate all or any part of available funds.

Indirect Costs

The total dollar amount of the indirect costs proposed in an application under this program must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award or 100 percent of the total proposed direct costs dollar amount in the application, whichever is less.

Proposal Format

The structure of the proposal should contain the following headings and information, in the following order:

I. Table of Contents

II. Program Narrative

a. Applicant Capability—Include a resume setting forth the qualifications of the project director as part of the application, along with a copy of a college transcript, as appropriate. Position descriptions and qualification standards for all staff should be included as part of the application. Applicants must provide a copy of their Articles of Incorporation, by-laws and IRS 501(c)(3) non-profit letter or other evidence of non-profit status.

b. Resources—Include original commitment letters from those resources listed and indicate their willingness to work with the applicant. These resources can include such items as facilities, equipment, voluntary staff time and space, and financial resources. One to two letters of support (with contact information) from prior assisted larger minority firms *and* community organizations should be included from those resources willing to work with the applicant.

c. Techniques and Methodologies—The applicant's proposal shall include a specific plan-of-action detailing *how* the work requirements will be met and how those techniques will be implemented. MBDA requires the applicant to provide a quarterly breakdown of the goals.

d. Costs—Include how client fees will be used to meet the cost-share.

III. Forms

Note: Pages of the proposal should be numbered consecutively.

Application Forms and Package

One (1) original and two (2) signed copies of the application must consist of: Standard Forms 424, Application for Federal Assistance; 424A, Budget Information-Non-Construction Programs; and 424B, Assurances-Non-Construction Programs, SF–LLL (Rev. 7–97); Department of Commerce forms, CD–436, Applicant for Funding Assistance, CD–511, Certifications Regarding Debarment, Suspension and Other Responsibility matters: Drug-Free Workplace Requirements and Lobbying, CD–512, Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying. These forms may be obtained by (1) contacting MBDA as described in the **FOR FURTHER INFORMATION CONTACT** section above; (2) by downloading Standard forms at *http://www.whitehouse.gov/omb/grants* and Department of Commerce at *http://www.doc.gov/forms,* or (3) by applying on-line via the World Wide Web at MBDA's web site located at *http://www.mbda.gov.*

Failure to submit a signed, original SF–424 with the application, or separately in conjunction with submitting a proposal electronically, by the deadline will result in the application being rejected and returned to the applicant. Failure to sign and submit with the application, or separately in conjunction with submitting a proposal electronically, the forms identified above by the deadline will automatically cause an application to lose two (2) points. Failure to submit other documents or information may adversely affect an applicant's overall score. MBDA shall not accept any changes, additions, revisions or deletions to competitive applications after the closing date for receiving applications, except through a formal negotiation process.

Evaluation Criteria

Proposals will be evaluated and applicants will be selected based on the following criteria. An application must receive at least 70% of the total points available for each evaluation criterion, in order for the application to be considered for funding.

1. Applicant Capability (45 Points)

The applicant's proposal will be evaluated with respect to the applicant firm's experience and expertise in providing the work requirements listed. Specifically, the proposals will be evaluated as follows:

- MBE Community—experience in and knowledge of the minority business

sector and strategies for enhancing its growth and expansion (5 points);

• Business Consulting—experience in and knowledge of business consulting of rapid growth-potential minority firms (10 points);

• Financing—experience in and knowledge of the preparation and formulation of successful financial transactions (5 points);

• Procurements and Contracting—experience in and knowledge of the public and private sector contracting opportunities for minority businesses (5 points);

• Financing Networks—resources and professional relationships within the corporate, banking and investment community that may be beneficial to minority-owned firms (5 points);

• MBE Advocacy—experience and expertise in advocating on behalf of minority businesses, both as to specific transactions in which a minority business seeks to engage, and as to broad market advocacy for the benefit of the minority community at large (5 points); and

• Key Staff—assessment of the qualifications, experience and proposed role of staff who will operate the MBDC. In particular, an assessment will be made to determine whether proposed staff possess the expertise in utilizing information systems as contemplated under the heading entitled, ''Computer Requirements'' (10 points).

2. Resources (20 Points)

The applicant's proposal will be evaluated according to the following criteria:

• *Resources*—discuss those resources (not included as part of the cost-sharing arrangement) that will be used. (10 points);

• *Partners*—discuss how you plan to establish and maintain the network of five (5) Strategic Partners (5 points);

• *Equipment*—discuss how you plan to accomplish the computer hardware and software requirements (5 points).

3. Techniques and Methodologies (25 Points)

The applicant's proposal will be evaluated as follows:

• *Performance Measures*—relate each performance measure to the financial, information and market resources available in the geographic service area to the applicant and how the goals will be met. Specific attention should be placed on the Dollar Value of Transactions (as described under Definitions). This goal represents the sum of (a) Dollar Value of Financial Transactions and (b) Dollar Value of Gross Receipts. When proposing the minimum goal under Dollar Value of Transactions, the applicant is given the flexibility to address the percentage breakdown for items (a) and (b) above within a specific range—not more than 60% and not less than 40%. The applicant should consider existing market conditions and its strategy to achieve the goal. The applicant may vary the percentage breakdown for items (a) and (b) above as long as the sum meets the required goal as provided by MBDA in this Notice (as described under Geographic Service Areas). (15 points);

• *Plan of Action*—provide specific detail on how the applicant will start operations. MBDCs have thirty (30) days to become fully operational after an award is made. Fully operational means that all staff are hired, all signs are up, all items of furniture and equipment are in place and operational, all necessary forms are developed (*e.g.*, client engagement letters, other standard correspondence, etc.), and the center is ready to open its doors to the public (5 points);

• *Work Requirement Execution Plan*—The applicant will be evaluated on how effectively and efficiently all staff time will be used to achieve the work requirements (5 points).

4. Proposed Budget and Supporting Budget Narrative (10 Points)

The applicant's proposal will be evaluated on the following sub-criteria:

• Reasonableness, allowability and allocability of costs (5 points).

• Proposed cost sharing of 15% is required. The non-Federal share must be adequately documented, including how client fees will be used to meet the cost-share (5 points).

Bonus Points

Proposals with cost sharing which exceeds 15% will be awarded bonus points on the following scale: 16–20%—1 point; 21–25%—2 points; 26–30%—3 points; 31–35%—4 points; and over 36%—5 points.

• *Key points to remember:* The Federal amount is not negotiable! The full amount of Federal funds designated for the award *must* be used in its entirety in the proposal.

• All proposed costs must be accompanied by written narrative. Read the budget narrative requirements in the application kit carefully. All costs must be explained in writing.

• Indirect Costs. The indirect cost policies contained in OMB Circulars A–21, A–87 and A–122 will apply to MBDA awards for its business development programs. Indirect costs are those costs proposed for *common* or *joint* objectives and which cannot be readily identified with a particular cost objective. Therefore, if the MBDA award is to be the sole source of support for the applicant organization, all costs are direct costs and no indirect costs should be proposed.

Organizations with indirect costs that do not have an established indirect cost rate negotiated and approved by a cognizant Federal agency may still propose indirect costs. For the recipient to recover indirect costs, however, the proposed budget must include a line item for such costs. Also, the recipient must prepare and submit a cost allocation plan and indirect cost rate proposal as required by applicable OMB circulars (A–21, A–87 and A–122). The allocation plan and the rate proposal must be submitted to the Department's Office of Acquisition Management within 90 days from the effective date of the proposed award.

• Audit Costs. Audits shall be performed in accordance with audit requirements contained in Office of Management and Budget Circular A–133, Audits of States, Local Governments, and Non-Profit Organizations, revised June 27, 2003. OMB Circular A–133 requires that non-profit organizations, government agencies, Indian tribes and educational institutions expending $500,000 or more in federal funds during a one-year period conduct a single audit in accordance with guidelines outlined in the circular. Applicants are reminded that other audits may be conducted by the Office of Inspector General.

• Management Fee. For-profit as well as not-for-profit organizations may negotiate their management fees, but they shall not exceed 7% of total estimated direct costs (Federal plus non-Federal) for the proposed award.

• Program Income. Many of MBDA's business development services programs allow their awardees to charge a fee for services rendered to clients. Where applicable, fees are considered program income and shall be accounted for and used to finance the non-Federal cost-share of the project. Any excess fee income shall be used to further the program purpose in accordance with the terms and conditions of the award.

Selection Procedures: Prior to the formal paneling process, each application will receive an initial screening to ensure that all required forms, signatures and documentation are present. Each application will receive an independent, objective review by a panel qualified to evaluate the applications submitted. MBDA anticipates that the review panel will be made up of at least three independent

reviewers who are Federal employees who will review all applications based on the above evaluation criteria. Each reviewer will evaluate and provide a score for each proposal. The Director of MBDA makes the final recommendation to the Department of Commerce Grants Officer regarding the funding of applications, taking into account the following selection criteria:

1. The evaluations and rankings of the independent review panel;

2. The following funding priorities: (1) Identifying and working to eliminate barriers which limit the access of minority businesses to markets and capital; (2) Identifying and working to meet the special needs of minority businesses seeking to obtain large-scale contracts (in excess of $500,000) with institutional customers; and (3) Promoting the understanding and use of Electronic Commerce by the minority business community. The National Director or his designee reserves the right to conduct a site visit (subject to the availability of funding) to applicant organizations receiving at least 70% of the total points available for each evaluation criterion, in order to make a better assessment of the organization's capability to achieve the three funding priorities.

3. The availability of funding.

Unsuccessful Competition

On occasion, competitive solicitations or competitive panels may produce less than optimum results, such as competition resulting in the receipt of no applications or competition resulting in all unresponsive applications received. If the competition results in the receipt of only one application, it may or may not require additional action from MBDA depending upon the competitive history of the area, the quality of the application received, and the time and cost limits involved. In the event that any or all of these conditions arise, MBDA shall take the most time and cost-effective approach available that is in the best interest of the Government. This includes, but is not limited to: (1) Re-competition or (2) Re-Paneling or (3) Negotiation.

Universal Identifier

Applicants should be aware that they may be required to provide a Dun and Bradstreet Data Universal Numbering System (DUNS) number during the application process. See the June 27, 2003 (68 FR 38402) **Federal Register** notice for additional information. Organizations can receive a DUNS number at no cost by calling the dedicated toll-free DUNS Number request line at 1–866–705–5711 or on MBDA's website at *http://www.mbda.gov.*

Intergovernmental Review

Applications under this program are not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of October 1, 2001 (66 FR 49917), as amended by the **Federal Register** notice published on October 30, 2002 (67 FR 66109), are applicable to this solicitation.

Executive Order 12866

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

Administrative Procedure Act/ Regulatory Flexibility Act

Prior notice and an opportunity for public comment are not required by the Administrative Procedure Act for rules concerning public property, loans, grants, benefits, and contracts (5 U.S.C. 553(a)(2)). Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis is not required and has not been prepared.

Paperwork Reduction Act

This document contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The use of Standard Forms 424, 424A, 424B, CD 346, and SF–LLL have been approved by OMB under the respective control numbers 0348–0043, 0348–0044, 0348–0040, 0605–0001, and 0348–0046.

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the Paperwork Reduction Act unless that collection displays a currently valid OMB Control Number.

Dated: August 25, 2003.

Ronald N. Langston,

National Director, Minority Business Development Agency.

[FR Doc. 03–22131 Filed 8–28–03; 8:45 am]

BILLING CODE 3510–21–P

DEPARTMENT OF COMMERCE

Minority Business Development Agency

[Docket No. 000724218–3211–06]

Solicitation of Applications for the Native American Business Development Center (NABDC) Program

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625 and 15 U.S.C. 1512, the Minority Business Development Agency (MBDA) is soliciting competitive applications from organizations to operate Native American Business Development Centers (NABDCs) under its Native American Development Center (NABDC) Program.

In order to receive consideration, applicants must comply with all information and requirements contained in this Notice. For-profit entities (including sole-proprietorships, partnerships and corporations), non-profit organizations, state and local government entities, American Indian Tribes and educational institutions are eligible to operate NABDCs.

The NABDC Program has been in operation since 1982. The NABDCs provide generalized management and technical assistance and business development services to Native American business enterprises within their designated geographic service areas.

The NABDC Program requirements further increase the impact of the NABDC projects by requiring that project operators deploy standardized business assistance services to the Native American business public directly, develop a network of strategic partnerships and provide strategic business consulting within the geographic service area. These requirements will be used to generate increased results with respect to financing and contracts awarded to Native American and minority-owed firms and thus, are a key component of this program.

DATES: The closing date for applications for each NABDC project is October 10, 2003. Anticipated time for processing of applications is one hundred twenty (120) days from the date of the publication of this notice.

MBDA anticipates that awards for the NABDC program will be made with a start date of January 1, 2004. Completed applications for the NABDC program must be (1) mailed (USPS postmark) to the address below; or (2) received by

MBDA no later than 5:00 p.m. Eastern Daylight Time. Applications postmarked later than the closing date or received after the closing date and time will not be considered.

ADDRESSES: Applicants must submit one signed original plus two (2) copies of the application. Completed application packages must be submitted to: Office of Business Development, Native American Business Development Center Program Office, Office of Executive Secretariat, HCHB, Room 5063, Minority Business Development Agency, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

If the application is hand-delivered by the applicant or his/her representative, one signed original plus two (2) copies of the application must be delivered to Room 1874, which is located at Entrance #10, 15th Street, NW., between Pennsylvania and Constitution Avenues.

FOR FURTHER INFORMATION CONTACT: For further information or to obtain an application package, contact the MBDA National Enterprise Center (NEC) for the geographic service area in which the project will be located or visit MBDA's Minority Business Internet Portal (MBDA Portal) at *http://www.mbda.gov.*

SUPPLEMENTARY INFORMATION:

Electronic Access

Applicants are encouraged to submit their proposal electronically via the Internet *and* mail or hand-deliver the original proposal with original signatures by the closing date and time stated above. Applicants may submit their applications on MBDA's website: *www.mbda.gov.* All required forms are located at this web address. However, the following paper forms must be submitted with original signatures in conjunction with any electronic submissions by the closing date and time stated above: (1) SF–424, Application for Federal Assistance; (2) the SF–424B, Assurances-Non-Construction Programs; (3) the SF-LLL (Rev. 7–97) (if applicable), Disclosure of Lobbying Activities; (4) Department of Commerce Form CD–346 (if applicable), Applicant for Funding Assistance; and (5) the CD–511, Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying.

Pre-Application Conference: A pre-application conference will be held for the NABDC project solicitation. Contact the MBDA Regional Office for the geographic service area in which the project will be located to receive further information. Proper identification is required for entrance into any Federal building. Notice of the pre-application conference will be available on the MBDA Portal at *http://www.mbda.gov.*

Authority: Executive Order 11625 and 15 U.S.C. 1512.

Catalog of Federal Domestic Assistance (CFDA): 11.801 Native American Business Development Center Program.

Program Description

MBDA is soliciting applications for the following geographic service areas: North Carolina Cherokee/Ashville, Minnesota Statewide, New Mexico Statewide, North/South Dakota Statewide, Oklahoma Statewide, California Statewide, Arizona Statewide, Northwest (Washington, Oregon, and Idaho).

Through this NABDC Program, MBDA is improving the traditional NABDC Program, by leveraging the full benefit of telecommunications technology, including the Internet, and a variety of online computer-based resources to dramatically increase the level of service that the Centers can provide to Native American and minority-owned firms.

This Program shall also incorporate an entrepreneurial approach to building market stability and improving quality of services delivered. This strategy expands the reach of the Centers by requiring project operators to develop and build upon strategic alliances with public and private sector partners, as a means of reaching out and serving Native American and minority-owned firms with rapid growth potential within the project's geographic service area. In addition, MBDA will establish specialized advanced programs for growth assistance to clients with the capacity to grow and expand. These programs are designed to foster growth assistance to its clients. The NABDC will also encourage collaboration and referrals of clients and non-clients that meet the requirements of these specialized programs and other MBDA sponsored networks. This will provide a comprehensive approach to serving the emerging sector of the Native American business community.

The NABDC will operate through the use of trained professional business consultants who will assist minority entrepreneurs through direct client engagements.

Entreprenuers eligible for assistance under the NABDC Program are Native Americans, Eskimos, African Americans, Puerto Ricans, Spanish-speaking Americans, Aleuts, Asian Pacific Americans, Asian Indians and Hasidic Jews. References throughout this Notice to provide assistance to Native Americans also include the eligible non-Native Americans listed in the preceding sentence. No service will be denied to any member of all eligible groups listed above.

MBDA's new strategic growth initiative is focused on serving emerging minority and Native American firms capable of impacting economic growth and employment. MBDA wants to ensure that NABDC clients are receiving a consistent level of service throughout its funded network. To that end, MBDA will require NABDC consultants to attend a series of training courses designed to achieve standardized services and quality expectations. Further information about the training is provided in this document under the heading of Work Requirements.

Background

Under the NABDC Program, MBDA has selected locations for the establishment of Centers based on the size of the population in those markets and the density of Native American-owned companies, as established by U.S. Census Bureau. While this approach to site selection continues, MBDA shall fund a consistent level of projects from prior years. The NABDC Program stands to gain from the increased use of technology, training and strategic partnering in support of its prescribed performance measures.

The NABDC Program is a mainstay of MBDA's overall business development efforts. The NABDC Program is at the core of the Agency's comprehensive strategy for addressing the needs of growing Native American firms. Under this strategy, the NABDC will be expected to provide the following four types of client services:

1. *Client Assessment*—This new activity requires the NABDC to conduct a standardized client assessment, which includes identifying the client's immediate and long-term needs, and establishes a projected growth track. MBDA shall provide a new and innovative electronic tool to support this function (see Business Needs Analyzer under the heading of Enhancing the NABDCs through Technology for more details). This activity shall be conducted three times for each client on an annual basis: one at the onset of service delivery, one prior to the end of the second quarter and one prior to the end of the funding year. This process may also include referring the client to any of MBDA's other funded projects that specialize in specific growth assistance and/or strategic partners that are capable of continuing client growth. The referral

process may occur in conjunction with NABDC direct assistance.

2. *Strategic Business Consulting*—This involves providing intensive business consulting services that can be delivered by two methods:

• *Personalized Consulting*—defined as one-on-one business consulting services utilizing an integrative systems approach to foster the growth of minority firms (see Integrative Systems Approach under the heading Client Services).

• *Group Consulting*—seminars that provide education and training to Native American entrepreneurs on important business topics. The consulting should be hands-on, practical, and streamlined in order to reflect the time constraints of the typical entrepreneur. In addition, given the proliferation of online resources from MBDA as well as others, this training should be designed to educate clients in the use of the Agency's electronic business assistance tools and in the use of electronic commerce generally to better access suppliers, customers and information.

3. *Access to Capital*—This involves assisting clients to secure the financial capital necessary to start-up, and thereafter to fuel growth and expansion of their businesses. Undercapitalization has been a major contributor to the failure of business ventures in the minority community over the years. The goal of this activity is to help the entrepreneur obtain the amount of financing appropriate to the scope of the proposed business, thereby helping to ensure the greatest likelihood of success for the client in the marketplace.

4. *Access to Markets*—This involves assisting clients to identify and access opportunities for increased sales and revenue. Activities include conducting market analysis, identifying sales leads, bid preparation assistance, creating market promotions, and assisting in the development of joint ventures and strategic alliances.

Enhancing the NABDCs Through Technology

Over the last several years, MBDA has developed a variety of new technology tools designed to leverage the benefits of information technology to assist the minority business community. The Agency uses a high-speed network strategy that links all of its funded projects into a single virtual organization. The goal of MBDA is to allow all funded projects to have access to this technology through the MBDA Portal.

The technology tools that will be available to the NABDCs include but are not limited to the following:

• *Business Needs Analyzer*—a software package designed to standardize and electronically record the Client Assessment process. This tool assists NABDC consultants to interview and benchmark the status, needs and potential growth of its clients. The program is designed and maintained by MBDA and operated by the NABDC.

• *Phoenix/Opportunity*—an electronic bid-matching system that alerts participating Native American and minority-owned firms of contract and teaming opportunities directly via e-mail. Procurement leads are transmitted to registered firms on a targeted basis according to the company's industry classification and geographic market.

• *Resource Locator*—a software application that allows MBEs to search for business resources interactively on the Internet. Resource Locator can help Native American and minority-owned firms identify trade associations representing their industries, government licensing and permit offices, management and technical assistance providers, and a host of other resources quickly and efficiently.

• *Capital Locator*—an Internet-based tool that allows NABDC consultants to inquire about, identify and locate potential financiers nearest them. This tool shall provide basic financing criteria for each identified capital resource. The tool is designed to give users the benefit of a nationwide market for identifying financing needs and products.

• *Business and Market Planning*—a software package designed to streamline and enhance the development of business plans, marketing plans and other strategic business documents.

• *Business Analyst GIS*—a software operated at an individual computer workstation that provides strategic business data through geographic-based information system. This software will be awarded to select NABDCs, based on availability of funds and competition.

These electronic tools will help streamline the process of delivering client assistance to Native American and other minority business enterprises, free up time so that the NABDC can implement MBDA's strategic goals and generate critical outcomes as described under the heading Performance Measures.

In addition, MBDA strongly encourages the NABDC to use these electronic tools daily because of the significant value they add to the NABDC and to Native American and other minority businesses. These tools are designed to reinforce the standardization of services received throughout the MBDA extended networks.

Work Requirements

The work requirements specify the duties and responsibilities of each recipient operating a NABDC.

Although it is not necessary for the applicant to have an office in the geographic service area at the time of application, one must be opened and be fully operational within thirty (30) days after receipt of the award. Fully operational means that all staff are hired, all signs are up, all items of furniture and equipment (*e.g.*, hardware, software, Internet services, phones, faxes, *etc.*) are in place, and the NABDC's doors have been fully opened to the public for service

The NABDC must be accessible to disabled persons and strategically located in the geographic service area (as defined in this Notice) to ensure that it is: (1) Close to the available public and private sector resources, and (2) within a reasonable commuting distance to the Native American business community.

The NABDC operator must provide services to eligible clients within its specified geographic service area. Each NABDC operator must contribute its efforts to help support MBDA's online business assistance network as established by Agency policies.

All NABDC consultants and its project director shall be required to attend a one-time five (5) day mandatory training session on ''Implementing a System for High-Quality Service.'' This training will be held three (3) times during the first year of program operation; in the east, in the west, and in the middle of the country (exact locations and dates will be announced). The training sessions may be conducted in the second and third year of operation based on availability of funding. The costs of tuition, materials, conference facilities and amenities for the training program will be covered by MBDA. However, the NABDC shall budget lodging, food and travel expenditures for its attending staff. The program will be conducted approximately forty-five (45) days after receipt of the award. The training shall focus on:

• Orientation to the MBDA strategy;

• Instilling the entrepreneurial mindset;

• Standardization of client intake services; and

• Skills and information needed to provide high-quality services to emerging firms.

Successful completion of this program, which involves a competency examination, will result in certification of the NABDC staff member by MBDA. In the event that one or more NABDC staff members should fail the competency examination, the NABDC shall lose two (2) points from the assessment score during the evaluation of the project. This training may be provided a second time by the MBDA after mid-year review. The second training session will require the attendance of NABDC staff not previously trained, and/or those who failed to successfully complete the initial training program.

In addition to the initial training, the NABDC is required to have one staff member attend a one-time five (5) day advanced program, held in a Midwest location during the second quarter of 2004. This training session will teach NABDC staff how to transform high-potential minority businesses and put them on a high-growth trajectory. The purpose of this program is to ensure that at least one staff member in each NABDC will have the skills to nurture the growth of clients to become larger companies, thereby helping to fulfill MBDA's strategic priority. Successful completion of this program, which involves a competency examination, will result in certification of the NABDC staff member by MBDA.

The NABDC shall budget for one staff member's lodging, food and travel expenditures, probably to the Chicago area. The costs of tuition, materials, and registration for the advanced training program will be covered by MBDA.

The NABDC is required to perform work in four (4) basic areas. These elements are designed to increase the exposure and visibility of Native American firms and MBEs (as defined in this notice). NABDC efforts in these activities should provide quantifiable results.

1. *Market Development*—is designed to facilitate the identification of potential clients, methods to solicit potential clients and to identify, develop and leverage public and private sector resources and business opportunities for their clients:

(a) *Market Research and Development:* Systematically investigate the service area market to see what business and capital opportunities exist for client development, and search for sources of capital, sales opportunities, business buy-outs and new start possibilities. As market research is conducted, the NABDC will make optimum use of the MBDA network to ensure that the information is made available to fellow NABDC operators, and to Native American firms throughout the country.

(b) *Market Promotion:* Promote Native American business development in the local business community by obtaining support from the community for the utilization of Native American firms.

The NABDC will promote Native American firms to the public and private sectors to build market awareness of the capability, talent and capacity of its clients. The NABDC may utilize public service announcements and paid advertising. The NABDC may promote its clients locally to entities such as: Chambers of Commerce, business and trade associations, corporations and company trade fairs and meetings, state and local government agency purchasing departments, economic development and planning offices and business events.

The NABDC shall carry out a plan-of-action that will include, but is not limited to the following actions: (1) Develop an NABDC brochure for mail-out and distribution to the public; (2) Develop an NABDC program description for inclusion on the MBDA Portal and the NABDC web site; (3) Adhere to MBDA's communication plan (see Operational Quality, item (j) under this section).

The NABDC shall promote and participate in one regional NEC and one national Minority Enterprise Development (MED) Week activities. MED Week is an annual event, coordinated through MBDA that celebrates the success of minority businesses. Participation is defined as follows:

(1) NEC MED Week—This event is held annually in late summer or early fall, in or near the MBDA NEC. It involves full participation and collaboration with the designated MBDA NEC. The NABDC shall participate in MBDA's process of nominating their outstanding clients for various awards. The NABDC may be asked to coordinate/host panel discussions and support its MBDA NEC. At a minimum, travel expenditures for the NABDC's program director and (at least) one staff must be included in the proposal.

(2) National MED Week—This event is held annually in the fall in Washington, DC. It shall require at a minimum, travel expenditures for the NABDC's project director and (at least) one staff. During the 2004 National MED Week program, optional training in accounting and finance will be offered to NABDC staff. There will be no charge for tuition or materials. Successful completion of this program, which involves a competency examination, will result in certification of the staff member by MBDA.

(c) *Resource Development* requires the NABDC to identify and electronically record on the MBDA Portal likely sources of the following:

(1) *Market Opportunities—e.g.*, public (Federal, state and local government) and private (domestic and foreign) sector contracting opportunities;

(2) *Capital Resources—e.g.*, standard commercial and alternative debt (loans, lines of credit, etc.), equity (venture capital, angel, etc.), and mezzanine (near equity, subordinated debt, etc.) financing, bonds (performance and surety), and trade credit opportunities;

(3) *Business Ownership Opportunities—e.g.*, franchises, licensing arrangements, mergers and buy-outs;

(4) *Education and Training Resources—e.g.*, educational institution programs and other training resources; and,

(5) *Registration of MBEs—e.g.*, register eligible local Native American firms in MBDA's Phoenix system, which is a national electronic inventory of minority firms capable of selling their goods and services to the public and private sector. The identified and recorded resources shall be verified by MBDA prior to publishing on the MBDA Portal.

(d) *Develop and Maintain a Network of Strategic Partners and Intra-Strategic Relationships*—The work requirements for an award recipient under the NABDC Program include the development of key networks. The purpose for establishing strategic partners is to: assist the NABDC to achieve its goals for assisting Native American and minority businesses (as defined in this solicitation, see Performance Measures); synchronize outreach efforts between the NABDC and MBDA; and, foster collaboration among the MBDA funded network as established under the terms of the award. Each Strategic Partnership shall be documented by a written Memorandum of Understanding (MOU) that shall document the terms and conditions of the partnership. The terms and conditions should assist the NABDC in achieving its goals for assisting MBEs.

A minimum of five (5) strategic partners between the NABDC and key local entities selected by the recipient must be established within one hundred-twenty (120) days after receipt of the award. The NABDC is required to

maintain these partnerships throughout the life of the award. The NABDC must replace a Strategic Partner within forty-five (45) days after termination of a previously established partnership. The NABDC shall consult with its MBDA National Enterprise Center prior to completing the MOU. The MBDA shall have no relationship with or responsibility to the NABDC's Strategic Partners.

The Strategic Partners shall be public or private sector organizations located within the project's geographic service area. Strategic Partners may include:

- Native American and Minority Business Enterprise (MBE) programs operated by state, county or city governments;
- Chambers of Commerce or trade associations focused on the needs of the minority business community;
- Small Business Development Centers, or other college and university entrepreneurial development programs;
- Community Development Corporations (CDCs);
- Banks and financial institutions; and
- Faith-based organizations having economic development components, whose activities are *not* used for sectarian purposes.

Also, the NABDC shall establish Intra-Strategic Relationships with other MBDA funded programs in support of their goals for assisting Native American businesses as defined under the terms of the award. The NABDC is required to meet with other MBDA-funded programs in the NEC (in person or by phone conference) at quarterly meetings conducted by MBDA staff. The NABDC is encouraged to refer and/or accept clients from these Relationships. The Intra-Strategic Partnerships shall *not* be counted towards the NABDC goal of obtaining Strategic Partnerships as described above.

(e) *Facilitate Matches* which identify and refer eligible Native American and minority business enterprises with specific viable businesses, market and/or capital opportunities.

This function contributes to a NABDC's financing and/or procurement performance goals, and is the *only* NABDC market development function outside of the standard client business assistance in which a portion of a NABDC's time can be directly associated to *individual* clients and resource customers. This client specific time, no matter how small, is considered client assistance and may be subject to client fees. Under this function, the NABDC shall match qualified Native American entrepreneurs with identified opportunities and resources by: (1) Accessing vendor information systems, including the Phoenix/Opportunity system; (2) Providing follow-up communication to Phoenix-registered clients that receive Opportunity matches within the NABDC geographic area; (3) Maintaining a constant awareness of the Native American firms that operate within the geographic service area and their capabilities; (4) Maintaining direct contact with purchasing executives, government procurement officials, banking officials and others so that representatives of the NABDC are in a position to learn about available business opportunities, both formally and informally; (5) Engaging in relationship brokering between purchasing organizations and individual clients capable of fulfilling their requirements; and, (6) Assisting in direct negotiations between purchasing organizations and individual clients, in appropriate cases, in order to help resolve issues, serve as an advocate for the client firm, or otherwise assist in bringing the transaction to closure.

2. *Client Services*—Provides direct client assistance to Native American and minority business enterprises on the basis of individualized professional engagements. Under these duties, the NABDC shall assist clients and individuals, which have written agreements to become clients, in establishing, improving and/or successfully maintaining their businesses. *All new clients* shall be entered into the Performance system and registered in the Phoenix system. The NABDC is *required* to enter clients and service hours into the Performance system within seventy-two (72) hours from the time of service. Clients assisted more than once during the funding period may only be counted once in that funding period.

The NABDC shall operate a systems-integrated approach (as described below) to assist in Native American and minority business growth and development.

A systems-integrated approach—which is defined as a customer-based service model supported by the following functions:

- Strategy—*e.g.*, plans for achieving sustainable competitive advantage and creating customer value
- Processes—*e.g.*, efficient, effective ways of manufacturing products or delivering services
- Architecture—*e.g.*, organizational and value chain (outsourcing) structure to implement the strategy and key processes
- Resources—*e.g.*, the acquisition and management of financial, human, and technical assets
- Systems—*e.g.*, mechanisms for control and communication, including management information systems (MIS)
- Empowerment—*e.g.*, delegation in a way that encourages staff to pursue strategic initiatives and continuous improvement.

The NABDC shall be responsible for providing business consulting to MBEs based on these principles. Business consulting services are (as defined under this section) provided by the NABDC to eligible Native American, minority-owned firms and individuals (as referenced in Executive Orders 11625 and 12432) seeking assistance from the NABDC, including 8(a) certified and graduate firms. These client services are segments to the systems-integrated approach. They are designed to assist client firms to bridge operational and strategic gaps. They cannot provide long-term business viability without aligning all aspects of the business and its environment. Client services include, but are not limited to, the following types of assistance:

(a) *Client Assessment*—Provides the NABDC client with a fundamental business evaluation. This process is designed to standardize services and to facilitate the client referral process among the MBDA funded network. It requires an interview to be conducted between client and NABDC consultant. This service is designed to provide—

- Background and contact information on the client;
- Client business analysis with respect to its core competency, organizational structure, market and industry placement, production of products/delivery of services, marketing plan, resources and financial viability;
- Analysis and benchmarking of the client;
- Development of an intervention plan utilizing a systems-integrated approach (as defined under Client Services) & client report; and,
- Identification of resources and referrals.

(b) *Functional Assistance*—Provides the NABDC client with detailed business consulting services including but not limited to:

(1) *Marketing, e.g.*, market research, promotion, advertising and sales, sales forecasting, market feasibility studies, pricing, product and customer service, brochure design (excludes mass printing);

(2) *Financial Management, e.g.*, capital budgeting, general accounting, break-even analysis, cost accounting, financial planning and analysis

budgeting, tax planning, business consulting (excludes bookkeeping, tax preparation, and audits);

(3) *Financial Assistance, e.g.*, identification, preparation and packaging of standard commercial and alternative debt (loans, lines of credit, etc.), equity (venture capital, angel, etc.), and mezzanine (near equity, subordinated debt, etc.) financing and trade credit opportunities;

(4) *Procurement Assistance, e.g.*, preparation and planning for the identification of private and public-sector contracting opportunities;

(5) *Operations & Quality Management, e.g.*,

• Manufacturing—plant location and site selection, plant management, materials handling and distribution, total quality management, metrication for world market, and business consulting;

• Construction—estimating, bid preparation, bonding, take-offs, and business consulting;

• International Trade Assistance—exporting, importing, letters of credit, bank draft, dealerships, agencies, distributorship, exporting trading companies, joint ventures, business consulting, and freight forwarding and handling;

• Specialized Certification—ISO 9000 knowledge of program and standards, how to implement standards, how to report and properly apply for ISO 9000 Quality Systems certification;

• Total Quality Management—process engineering, inventory control, purchasing, continuous improvement programs;

• Technology & Systems—automation design, development and integration of technology to support infrastructure, knowledge management, data mining, performance based reporting;

(6) *Organization & Administration, e.g.*, human resource management, job evaluation and rating system, employee stock option programs, training, business consulting; and,

(7) *General Management, e.g.*, organization and structure, formulating corporate policy, feasibility studies, reports and controls, public relations, staff scheduling, legal services (excludes litigation), business planning, organizational development, bid preparation, and business consulting.

The NABDC shall not perform or engage in the day-to-day operations or make decisions for its clients.

Group training sessions are considered a form of business development services that can be provided to clients. This function may be subject to client fees and directly contributes to an NABDC's performance goals.

3. *Operational Quality*—Maintains the efficiency and effectiveness of its overall operations as well as the quality of its client services. These duties are the means by which the NABDC manages its overall operations as well as the quality of its client services. The function directly contributes to the NABDC's overall qualitative evaluation and rating as well as the successful completion of all work requirements. Under this function, the NABDC shall: (a) Execute signed work plan agreements and engagement letters with clients; (b) Formally describe the methodology that will be used in achieving the work plan objectives for each client; (c) Input progress/results to the performance database within seventy-two (72) hours from the time of service; (d) Establish procedures for collecting and accounting for all fees charged to clients; (e) Maintain records/files for all work charged to the program and clients; (f) Obtain *written* acceptance and verification (with client signatures) of services provided to its clients and any financings/contracts obtained. For services reported, documentation must be in the NABDC's client files within thirty (30) days after the end of every quarter in which a client receives services; (g) Comply with all reporting requirements provided upon award; (h) Cooperate with MBDA in maintaining content for the Phoenix/Opportunity system, Resource Locator, and other online tools located at *http://www.mbda.gov;* and, (i) Promote and utilize the services and resources of other MBDA programs, sponsored efforts and/or voluntary activities. (j) The NABDC shall adhere to MBDA's trademark and licensing requirements for all forms of communication including but not limited to signage, stationary and other NABDC-related publications. Such requirements shall be provided at the time of award. These requirements include but are not limited to specific size, location, and font of the MBDA logo.

• Signage—Signs should be highly visible to the NABDC clients and general public. They should be prominently displayed on entrances or doors.

• Printed Materials—These items shall include the name of MBDA on all stationery, letterhead, brochures, etc.

• Telephonic Communication—Identify the NABDC immediately upon answering the telephone. If the recipient also requires that its organization's name be given, it should be provided only *after* the NABDC has been verbally identified to a caller. Refer to MBDA in all advocacy and outreach efforts such as speaking engagements, news conferences, etc.

The NABDC is *not* authorized to use either the Department of Commerce's (DOC) official seal or the MBDA logo in any of its publications, documents or materials without specific written approval from the Department of Commerce.

The term *Native American Business Development Center (NABDC)* is a trademark of the Federal Government, and the Government reserves exclusive rights in the term. Permission to use the term is granted to the award recipient for the sole purpose of representing the activities of the award recipient in the fulfillment of the terms of the financial assistance award. The Minority Business Development Agency reserves the right to control the quality of the use of the term by the award recipient. Whenever possible, for example in promotional literature and stationery, use the ™ designation as in *Native American Business Development Center*™.

Computer Requirements

MBDA requires that all award recipients meet certain requirements related to the acquisition, installation, configuration, maintenance and security of information technology (IT) assets in order to ensure seamless and productive interface between and among all grant recipients, Native American and other minority-owned businesses, the MBDA Federal IT system and the public. These required assets and their configuration are hereinafter referred to as the ''enterprise.'' The basic components of the enterprise are the desktop workstations, the server, local area network (LAN) components and a connection to the Internet.

At a minimum, each grantee shall provide one (1) desktop computer for the exclusive use of each employee delivering minority business assistance to the public under an award from MBDA. All desktop computers shall be inter-connected with a Server computer using an Ethernet protocol enabling communication with all workstations on the network. The Server shall have a constant, high-speed Internet connection, active during all business hours, preferably through a DSL or cable modem connection. The recipient shall ensure that each of his/her employees, to include management, administrative personnel, contractors, full-time, part-time, and non-paid (volunteer) staff have a unique electronic mail (email) address available to the public. Each grantee shall design, develop and maintain, in accordance with the

computer requirements, a presence on the Internet's World Wide Web and shall maintain appropriate computer and network security precautions during all periods of funding by MBDA. All IT requirements, as described herein, shall be met within thirty (30) calendar days after the award.

1. *Network Design:* At all locations where services are delivered to the eligible public as defined by Executive Order 11625, the recipient shall operate a ''Client-Server'' configured local area network (LAN) enabling each staff person delivering services to the eligible public exclusive access to a personal computer workstation during all business hours. MBDA shall, from time to time, designate certain configurations of the enterprise hardware and software to meet interface requirements.

Currently, MBDA recommends servers using an operating system that is *fully compatible* with Microsoft Windows 2000 with a service pack three (3) or greater. Domain Controller (DC) servers or any server providing principal service to the desktops shall contain 18 or more gigabytes (GB) of hard drive space using two or more 9 GB+ disks configured appropriately to ensure data retention should one disk fail. At least one (1) Pentium IV central processing unit (CPU), or a CPU ensuring similar speed, shall be used in the DC server or any other server providing principal service to the desktops. Web servers, mail servers and/or servers maintained by a third party such as an Internet Service Provider (ISP) shall meet the minimum server specifications as stated herein. A ''trusted'' relationship, as appropriate, shall be established and maintained between the MBDA DC server and those operated by, or operated for, the recipient to ensure access by MBDA system administration personnel during normal business hours. (In a network that consists of two or more domains, each domain acts as a separate network with its own accounts database. Even in the most rigidly stratified organizations, some users in one domain will need to use some or all of the resources in another domain. The usual solution to confirming user access levels among domains is what's called a trust relationship.) From time to time, MBDA will require access to servers and desktop workstations after business hours and on holidays and weekends. For this purpose, the recipient shall ensure appropriate communications links are active and appropriate personnel on station, upon 24-hour notice from MBDA.

2. *Desktop Workstations:* All desktop systems shall not be more than two (2) calendar years old at time of award and shall contain a Pentium IV central processing unit (CPU), or a CPU ensuring similar speed, operating at speeds not less than 2+ Gigahertz (GHz). Each desktop system shall contain a hard drive with a storage capacity of at least twenty (20) GB and 512 Megabytes of RAM. All desktop systems shall have installed an operating system fully compatible with Microsoft Windows 2000 with MS Office 2000 Professional (SP1) or higher, Microsoft Internet Explorer 6.x as well as some form of regularly updated antivirus protection software. Additionally, it is suggested that at least one workstation have installed both a full page scanner and feed, along with software fully compatible with Adobe Acrobat software for the production of electronic document submissions.

Since workstations may be linked to a live, two-way conference connection with potential clients, at least 50% of all employee workstations shall be fully operational with a qualified staff person positioned at the keyboard during all business hours to include lunch and break periods.

3. *Maintenance and Security:* A network map (''as-built'') reflecting adherence to the computer and networking requirements set forth herein shall be maintained by the recipient for review by MBDA at any time. Each recipient shall designate and train one administrative person competent in the operation of an operations system fully compatible with Windows 2000 network and local area network (LAN) technology as described herein. If a firewall, proxy server or similar security component is used, MBDA's server shall be ''trusted'' for full access to all files relevant for network and administrative operations. From time to time, MBDA may require certain software be loaded on servers and desktops. In any given year, the cost of this additional software may be $200.00 per workstation and $500.00 per server, such additional cost may be borne by MBDA. Every employee of the NABDC shall be assigned a unique username and password to access the system. Every employee shall be required to sign a written computer security agreement. (A suggested format for the computer security agreement will be provided at the time of award.) Every manager, employee, and contractor and any other person given access to the computer system shall sign the security agreement and an original copy of the signed agreement shall be kept in the NABDC's files. A photocopy of the agreement shall be sent by fax to MBDA at: (202) 482–2693 no later than thirty (30) days after receipt of the award. All subsequent new hires and associations requiring access to the NABDC or MBDA systems shall read, understand and sign the security agreement prior to issuance of a password. No employee shall have access to the MBDA system without a signed security agreement on file at MBDA.

4. *Web site:* Each recipient shall create and maintain a public web site using a unique address (*e.g.*, *http://www.center-name.com*). The first page (Index page) of the web site shall clearly identify the recipient as a Native American Business Development Center funded by the U.S. Department of Commerce's Minority Business Development Agency. The Index page of the web site shall load on software fully compatible with Windows Internet Explorer 6.x browser software using a normal home computer with 56Kb/s analog phone line connection in less than ten (10) seconds. The web site shall contain the names of all managers and employees, the business and mailing address of the Center, business phone and fax numbers and email addresses of the NABDC and employees, a statement referencing the services available at the NABDC, the hours under which the NABDC operates and a link to the MBDA homepage (*http://www.mbda.gov*). For purpose of electronically directing clients to the appropriate NABDC staff, the web site shall also contain a short biographical statement for each employee of the NABDC including management, contractors, part-time, full-time, and non-paid (volunteer) personnel, providing services directly to the eligible public under an award from MBDA. This biographical statement shall contain: the full name of the employee, and a brief description of the expertise of the employee to include academic degrees, certifications and any other pertinent information with respect to that employee's qualifications to deliver minority business assistance services to eligible members of the public.

No third party advertising of commercial goods and services shall be permitted on the site. All links from the site to other than federal, state or local government agencies and non-profit educational institutions must be requested, in advance and in writing, through the Chief Information Officer, MBDA Office of Information Technology Services to the Grants Office for written approval. Such approval shall not be unreasonably withheld but approval is subject to withdrawal if MBDA determines the linked site unsuitable. No employee of

the NABDC, nor any other person, shall use the NABDC web site for any purpose other than that approved under the terms of the agreement between the recipient and MBDA. Every page of the web site shall comply with Federal standards of the American With Disabilities Act, Section 508, and be reviewed by the recipient for accuracy, current, and appropriateness every three (3) months. Appropriate privacy notices and handicapped accessibility will be predominately featured. From time to time, MBDA shall audit the recipient's web site and recommend changes in accordance with the guidelines set forth herein.

5. *Time for Compliance:* Within thirty (30) days after receipt of the award, the recipient shall report via email to the Chief Information Officer, MBDA Office of Information Technology Services and the MBDA Office of Business Development that he/she has complied with all technical requirements as specified herein. Within thirty (30) days after receipt of the award, the recipient shall report the name, contact telephone number and email address of the Project Director, Network or System Administrator. As appropriate, the recipient shall also provide the telephone number and email address for the Technical Contact at the Internet Service Provider (ISP) providing Internet access for the grantee, the IP number of the Domain Name Server (DNS) and/or Domain Control (DC) server, and any other technical information as specified in the Technology Requirements.

6. *Performance System:* All required performance reporting to MBDA shall be conducted via the Internet using the Performance system to be found at a secure web site (*http://www.mbda.gov*). Within thirty (30) days after the receipt of award, each NABDC business consultant and/or anyone providing business assistance to the public under the award shall have satisfactorily completed the Performance System Training Course (PSTC). This course is available on-line from the Performance web site (*www.mbda.gov*). Only those persons giving direct assistance to the eligible public shall be given passwords and access to enter Performance data into the system. Only trained staff shall enter data into the Performance system. There shall be no ''sharing'' of passwords on the Performance system. MBDA encourages input of information on a daily basis.

7. *Data Integrity:* The recipient shall take the necessary steps to ensure that all data entered into MBDA systems, and systems operated by the recipient in support of the award, or by any employee of the recipient is accurate and timely.

Performance Measures

In accordance with 15 CFR Parts 14 and 24, applicants selected will be responsible for the effective management of all functions and activities supported by the financial assistance award. Award recipients will be required to use program performance measures in a performance report due thirty (30) days after the end of the second quarter and to provide an end-of-year assessment of the accomplishments of the project using these measures. The end-of-year or final performance report is due ninety (90) days after the end of the funding year. Once the project is awarded, the evaluation criteria, along with the assigned weight value, to be used for measuring the MBDC project performance on an ongoing basis are:

1. The dollar value of transactions (65);
2. Number of jobs created (10);
3. Number of new clients (5);
4. Administrative Management & Operational Quality (20);

- Client satisfaction (5);
- Management assessment (5);
- Market promotion (1);
- Resource entries (5);
- Establish strategic partners (2);
- Facilitate matches (2).

The *minimum* performance goals required for the above listed performance measures for each of the solicited geographic service areas are outlined under the Funding Availability sub-heading for each geographic service area. The *minimum* performance goals are listed on an annual basis by MBDA and will be broken out into quarterly increments by the applicant and submitted as part of their proposal.

The NABDC is required to utilize, in a good faith effort, all of its resources to achieve the stated goals. Should the NABDC exceed its performance requirements prior to the end of a funding year, the NABDC is expected to *maintain operations at full strength and continue to provide services and reach greater performance outcomes.* MBDA views the NABDC as a designated cooperative partner and an envoy to the greater Native American business community. Thus, high achievement in one performance measure cannot excuse failure to reach other goals as stated in this Notice.

Definitions

1. *Dollar Value of Transactions*—The *dollar value of transactions* are defined as:

(a) *Dollar Value of Completed Financial Transactions* which represent the total principal value of approved loans, equity financings, bonds, or other binding financial agreements secured by clients of the project, with the assistance of NABDC staff. For purposes of this performance element, eligible financial transactions are those which have a specific dollar value, and which expand its capital base/operations, or produce some other direct commercial benefit for client firms. In order to be deemed complete, a financial transaction must be documented by an executed and binding agreement between the NABDC client (firm) and a party (financier) capable of performing its obligations under the terms of the agreement.

(b) *Dollar Value of Gross Receipts* which represent the total dollar value of successfully awarded contracts and/or the total principal value of executed sales/delivery contracts of services/products/intellectual rights and/or increase in sales and/or completed Mergers and Acquisitions or other binding financial considerations secured by clients of the project, with the assistance of project staff. For purposes of this performance element, Dollar Value of Gross Receipts are those transactions which have a specific dollar value, and which produce some other direct commercial benefit for client firms. In order to be deemed complete, successfully awarded contracts or mergers and acquisitions must be documented by an executed and binding agreement between the client firm and a party capable of performing its obligations under the terms of the agreement. Increase in sales must be documented through an initial, a midyear and a year-end client assessment (*see* Client Assessment under the heading Client Services) supported by client submitted financial documentation.

MBDA recognizes that the financial obligations evidenced by these transactions may be long-term, and require performance over an extended period. Consequently it is not necessary that the funds or other financial value specified under the agreements have actually changed hands for the project to receive credit under this performance element, so long as the agreement of the parties is documented and binding.

2. *Number of Jobs Created*—This is defined as the number of new full time and/or part time employment opportunities reported on the client's payroll during the funding year. Persons on paid sick leave, paid holiday and paid vacations are included as employees as are salaried officers and executives of corporations. However, proprietors and partners of unincorporated businesses are not

considered employees under this definition.

3. *Number of New Clients*—This represents the actual number of new clients in a funding year. New clients are defined as those Native American and other minority business enterprises that complete a written engagement with the NABDC for specific services and registered with the NABDC.

4. *Administrative Management & Operational Quality*—Operational quality refers to the quality and effectiveness of the project operator's delivery of client services and project scope, as evidenced by the following performance elements relating to the day-to-day management of the project:

a. *Client Satisfaction*—An MBDA consultation process with clients of the NABDC used to verify and rate the qualitative level of services rendered by the NABDC.

b. *Management Assessment*—The management assessment reflects MBDA's own evaluation of the overall management of the NABDC project, based on the Agency's internal review of the project's operations. The management assessment reflects such areas as the development of written engagement letters and work plans, proper staffing, adherence to scheduled work hours, recordkeeping, successful completion of Agency training, and any other areas which MBDA may deem to be relevant in determining the overall quality of the project's operations.

c. *Market Promotion*—This represents the total number of successfully completed activities (per reporting period) as proposed in the applicant's response to this notice.

d. *Resource Entries*—This is defined as the total quantity of accurate and timely records entered into MBDA's Portal tools (*e.g.*, Phoenix, Opportunity, Capital Locator, Resource Locator, *etc.*) in support of its efforts to disseminate information electronically.

e. *Establish Strategic Partners*—This represents formalized memoranda of understanding between the NABDC and its strategic partners.

f. *Facilitated Matches*—This represents the number of minority firms directed by the NABDC to strategic partners, the MBDA funded network, and other business resources that result in a financial transaction (as described above under Dollar Value of Transactions).

Extraordinary Performance—Support of MBDA's Strategic Initiative

An element of MBDA's overall mission is to advocate on behalf of all Native American and minority firms. In part, MBDA recognizes successful efforts of NABDC operators to establish new opportunities for all Native American and minority firms. *Extraordinary performance* by a NABDC or the NABDC operator may result in bonus points for the NABDC. The NABDC may receive up to five (5) performance bonus points (one (1) point for each fully completed initiative as defined below) in any funding period for the successful execution of the following four items:

(a) The NABDC and/or the NABDC operator may develop and maintain a maximum of five (5) *strategic initiatives designed to benefit the Native American and minority business community* within the NABDC geographic area.

(b) The strategic initiative(s) should be framed to expand market and financing opportunities for Native American and minority business enterprises in areas not previously established by MBDA or the MBDA funded network.

(c) A desired and measurable economic impact that benefits Native American and minority business enterprises must be established and accounted for at the end of the NABDC funding year. Economic impact can be formulated by identifying the dollar value of transactions (financings, contracts/procurements) and/or other means of economic opportunities.

(d) The strategic initiative(s) should be documented in writing and should include

—the name(s) and contact information of the collaborating entities;

—responsibilities and duties of the collaborating entities;

—the resources which each party agrees to commit to the relationship; and

—the goals which the initiative is to accomplish.

Performance Standards

The year-to-date performance of an NABDC for Year One of the award will be based on the following rating system:

Minimum required percent of goals needed for each rating category	Minimum required points needed for each rating category	Rating categories
100% and above*	100** and above	Outstanding
At least 90	90–99	Commendable
At least 80	80–89	Good
At least 75	75–79	Satisfactory
Below 75	Below 75	Unsatisfactory

*Not to exceed 110%
**Not to exceed 110 Points

The year-to-date performance of an NABDC for Year Two of the award will be based on the following rating system:

Minimum required percent of goals needed for each rating category	Minimum required points needed for each rating category	Rating categories
100% and above*	100** and above	Outstanding
At least 90	90–99	Commendable
At least 80	80–89	Good
At least 77	77–79	Satisfactory
Below 77.	Below 77	Unsatisfactory

*Not to exceed 110%
**Not to exceed 110 Points

The year-to-date performance of an NABDC for Year Three of the award will be based on the following rating system:

Minimum required percent of goals needed for each rating category	Minimum required points needed for each rating category	Rating categories
100% and above*	100** and above	Outstanding
At least 90	90–99	Commendable
At least 85	85–89	Good
At least 80	80–84	Satisfactory
Below 80	Below 80	Unsatisfactory

*Not to exceed 110%
**Not to exceed 110 Points

Funding Availability

MBDA anticipates that a total of approximately $1.6 million will be available in FY 2004 for Federal assistance under this program. Applicants are hereby given notice that funds have not yet been appropriated for this program. In no event will MBDA or the Department of Commerce be responsible for proposal preparation costs if this program fails to receive funding or is canceled because of other agency priorities.

Financial assistance awards under this program may range from $155,000 to $287,500 in Federal funding per year based upon minority population, the size of the market and its need for MBDA resources. Applicants must submit project plans and budgets for each of the three years. Projects will be funded for no more than one year at a time. Funding for subsequent years will be at the sole discretion of the Department of Commerce and will depend on satisfactory performance by the recipient, the availability of funds to support the continuation of the project and Agency priorities.

Geographic Service Areas

An operator must provide services to eligible clients within its specified geographic service area. MBDA has defined the service area for each award below. To determine its geographic service areas, MBDA uses States, counties, Metropolitan Areas (MA), which comprise metropolitan statistical areas (MSA), consolidated metropolitan statistical areas (CMSA), and primary metropolitan statistical areas (PMSA) as defined by the OMB Committee on MAs (*http://www.whitehouse.gov/omb/bulletins*), and other demographic boundaries as specified herein. Services to eligible clients outside of an operator's specified service area may be requested, on a case-by-case basis, through the appropriate MBDA Regional Director and granted by the Grants Officer.

1. NABDC Application: North Carolina/Cherokee/Ashville

Geographic Service Area: Cherokee/Ashville, North Carolina MA.

Award Number: 04–10–04005–01.

The recipient is required to maintain the primary NABDC on the Cherokee reservation and a satellite office in the Ashville, North Carolina MA.

Contingent upon the availability of Federal funds, the cost of performance for each of three 12-month funding periods from January 1, 2004, to December 31, 2006, is estimated at $188,000. The total Federal amount is $188,000.

The minimum cost share of 15% is not required.

The minimum performance goals for the MBDC are:

Dollar Value of Transactions: $13,976,471.

Number of Jobs Created: 64.

Number of New Clients: 146.

Resource Entries: 285.

Facilitated Matches: 7.

Pre-Application Conference: For the exact date, time and place, contact the Atlanta National Enterprise Center at (404) 730–3300 or visit MBDA's website at *http://www.mbda.gov.*

For Further Information and a copy of the application kit, contact Robert Henderson, Regional Director.

2. NABDC Application: Minnesota Statewide

Geographic Service Area: State of Minnesota.

Award Number: 05–10–04004–01

The recipient is required to maintain its NABDC in Cass Lake, Minnesota.

Contingent upon the availability of Federal funds, the cost of performance for each of three 12-month funding periods from January 1, 2004, to December 31, 2006, is estimated at $160,000. The total Federal amount is $160,000.

The minimum cost share of 15% is not required.

The minimum performance goals for the NABDC are:

Dollar Value of Transactions: $12,000,000.

Number of Jobs Created: 55.

Number of New Clients: 125.

Resource Entries: 243.

Facilitated Matches: 6.

Pre-Application Conference: For the exact date, time and place, contact the Chicago National Enterprise Center at (312) 353–0182 or visit MBDA's website at *http://www.mbda.gov.*

For Further Information and a copy of the application kit, contact Carlos Guzman, Acting Regional Director.

3. NABDC Application: New Mexico Statewide

Geographic Service Area: State of New Mexico.

Award Number: 06–10–04005–01.

The recipient is required to maintain its NABDC in Albuquerque, New Mexico. Contingent upon the availability of Federal funds, the cost of performance for each of three 12-month funding periods from January 1, 2004, to December 31, 2006, is estimated at $188,000. The total Federal amount is $188,000.

The minimum cost share of 15% is not required.

The minimum performance goals for the NABDC are:

Dollar Value of Transactions: $13,976,471.

Number of Jobs Created: 64.

Number of New Clients: 146.

Resource Entries: 285.

Facilitated Matches: 7.

Pre-Application Conference: For the exact date, time and place, contact the Dallas National Enterprise Center at (214) 767–8001 or visit MBDA's website at *http://www.mbda.gov.*

For Further Information and a copy of the application kit, contact John F. Iglehart, Regional Director.

4. NABDC Application: Oklahoma Statewide

Geographic Service Area: State of Oklahoma.

Award Number: 06–10–04007–01.

The recipient is required to maintain its NABDC in Tulsa, Oklahoma.

Contingent upon the availability of Federal funds, the cost of performance for each of three 12-month funding periods from January 1, 2004 to December 31, 2006, is estimated at $235,000. The total Federal amount is $235,000.

The minimum cost share of 15% is not required.

The minimum performance goals for the NABDC are:

Dollar Value of Transactions: $20,117,647.

Number of Jobs Created: 93.

Number of New Clients: 210.

Resource Entries: 356.

Facilitated Matches: 11.

Pre-Application Conference: For the exact date, time and place, contact the Dallas National Enterprise Center at (214) 767–8001 or visit MBDA's website at *http://www.mbda.gov.*

For Further Information and a copy of the application kit, contact John F. Iglehart, Regional Director.

5. NABDC Application: North/South Dakota Statewide

Geographic Service Area: States of North and South Dakota.

Award Number: 06–10–04006–01.

The recipient is required to maintain its NABDC in Bismarck, North Dakota. Contingent upon the availability of Federal funds, the cost of performance for each of three 12-month funding periods from January 1, 2004 to December 31, 2006, is estimated at $155,000. The total Federal amount is $155,000.

The minimum cost share of 15% is not required.

The minimum performance goals for the NABDC are:

Dollar Value of Transactions: $12,000,000.

Number of Jobs Created: 55.

Number of New Clients: 125.

Resource Entries: 235.

Facilitated Matches: 6.

Pre-Application Conference: For the exact date, time and place, contact the Dallas National Enterprise Center at (214) 767–8001 or visit MBDA's website at *http://www.mbda.gov.*

For Further Information and a copy of the application kit, contact John F. Iglehart, Regional Director.

6. NABDC Application: Arizona Statewide

Geographic Service Area: State of Arizona.

Award Number: 09–10–04007–01.

The recipient is required to maintain its NABDC in Mesa, Arizona. Contingent upon the availability of Federal funds, the cost of performance for each of three 12-month funding periods from January 1, 2004 to December 31, 2006, is estimated at $188,000. The total Federal amount is $180,000.

The minimum cost share of 15% is not required.

The minimum performance goals for the NABDC are:

Dollar Value of Transactions: $13,411,765.

Number of Jobs Created: 62.

Number of New Clients: 140.

Resource Entries: 273.

Facilitated Matches: 7.

Pre-Application Conference: For the exact date, time and place, contact the San Francisco National Enterprise Center at (415) 744–3001 or visit MBDA's website at *http://www.mbda.gov.*

For Further Information and a copy of the application kit, contact Linda Marmolejo, Deputy Regional Director.

7. MBDC Application: California Statewide

Geographic Service Area: State of California.

Award Number: 09–10–04008–01.

The recipient is required to maintain its NABDC in greater Los Angeles, California. Contingent upon the availability of Federal funds, the cost of performance for each of three 12-month funding periods from January 1, 2004 to December 31, 2006, is estimated at $287,500. The total Federal amount is $287,500.

The minimum cost share of 15% is not required.

The minimum performance goals for the NABDC are:

Dollar Value of Transactions: $21,176,471.

Number of Jobs Created: 97.

Number of New Clients: 221.

Resource Entries: 436.

Facilitated Matches: 11.

Pre-Application Conference: For the exact date, time and place, contact the San Francisco National Enterprise Center at (415) 744–3001 or visit MBDA's website at *http://www.mbda.gov.*

For Further Information and a copy of the application kit, contact Linda Marmolejo, Deputy Regional Director.

8. NABDC Application: Northwest

Geographic Service Area: States of Washington, Oregon and Idaho.

Award Number: 09–10–04007–01.

Contingent upon the availability of Federal funds, the cost of performance for each of three 12-month funding periods from January 1, 2004 to December 31, 2006, is estimated at $190,000. The total Federal amount is $190,000.

The minimum cost share of 15% is not required.

The minimum performance goals for the NABDC are:

Dollar Value of Transactions: $14,117,647.

Number of Jobs Created: 65.

Number of New Clients: 147.

Resource Entries: 288.

Facilitated Matches: 7.

Pre-Application Conference: For the exact date, time and place, contact the San Francisco National Enterprise Center at (415) 744–3001 or visit MBDA's website at *http://www.mbda.gov.*

For Further Information and a copy of the application kit, contact Linda Marmolejo, Deputy Regional Director.

Matching Requirements

It is not required that an applicant for an award to operate an NABDC propose a cost-share contribution. Cost sharing is the portion of the project cost not borne by the Federal Government. However, an applicant may propose a cost-share contribution in any of the following four means or a combination thereof: (1) cash contributions; (2) non-cash applicant contributions; (3) third party in-kind contributions, and (4) client fees.

The NABDC may charge client fees for services rendered. The fees may range from $10 to $60 per hour based on the gross receipts of the client's business ranging from $0 to $5 million and above. The NABDC must comply with the following policy restrictions when charging client service fees: (1) client fees charged for one-on-one assistance must be based on a rate of $100 per hour; (2) the NABDC must set fee rates based on the following chart:

Gross receipts of client	Base rate for services rendered	Percent of cost borne by client	Client fee per hour
$0–99,999	$100.00	10	$10.00
100,000–299,999	100.00	20	20.00

Gross receipts of client	Base rate for services rendered	Percent of cost borne by client	Client fee per hour
300,000–999,999	100.00	30	30.00
1 Million–2,999,999	100.00	40	40.00
3 Million–4,999,999	100.00	50	50.00
5 Million and Above	100.00	60	60.00

(3) if the NABDC chooses to contribute a cost-share amount, it must contribute cash for uncollected fees that were included as part of the cost sharing contribution committed for this award; (4) if the NABDC chooses to contribute a cost-share amount, client fees applied directly to the award's cost sharing requirement must be used in furtherance of the program objectives; and (5) fees must be charged to all eligible clients, regardless of minority group identification.

Type of Funding Instrument

Financial assistance awards in the form of cooperative agreements will be used to fund this program. MBDA's substantial involvement with recipients will include performing the following duties to further the NABDC's objectives:

Post-Award Conferences

MBDA shall conduct post-award conferences for all new NABDC awards to ensure that each NABDC has a clear understanding of the program and its components. The conference will: (1) Provide an MBDA Directory for Business Resources; (2) orient NABDC program officers; (3) explain program reporting requirements and procedures; (4) identify available resources that can enhance the capabilities of the NABDC; and (5) provide detailed information about MBDA's business and other information systems.

Training

MBDA shall conduct various qualitative training sessions for the NABDC staff. The training sessions are designed (in part) to improve communications, understandings, client service delivery, performance and reporting. The following training sessions are designated for the 2004 funding year:

(1) A systems integrated approach to client services, including client assessment and functional assistance (initial 5-day training), and subsequent advanced training (5-day follow-up training), and

(2) MBDA Portal tools including (but not limited to) Performance, Resource Locator, Capital Locator, Business Plan, Phoenix and Opportunity System. We anticipate that the training will be provided at MBDA's annual National conference.

Networking, Promotion and Information Exchange

MBDA shall provide the following: (1) Access to business information systems, which support the work of the NABDC as described in the Enhancing the NABDCs Through Technology section. This information will be provided by MBDA's Office of Information Technology. The specific information systems and access to them will be provided at the time of the award for a particular NABDC. (2) Sponsor one national and at least one NEC conference. (3) Expand the Phoenix data bank of Native American and minority-owned firms by requiring other MBDA-funded programs to provide additional entries. (4) Promote the exchange of business opportunity information within the MBDA funded system using the Capital Locator, Resource Locator, Phoenix and Opportunity system on the MBDA Portal located at *http://www.mbda.gov.* (5) Work closely with the NABDC to establish a system in which procurement and contract opportunities can be shared with the network of NABDCs. This system will include opportunities identified throughout the MBDA network using the Phoenix and Opportunity system located at *http://www.mbda.gov.* (6) Help promote special events to be scheduled at the local community, state and national levels in celebration of MED Week, which occurs annually, and (7) Identify Federal, state and local governments, and private sector market opportunities to the NABDCs using the Capital Locator, Resource Locator, Phoenix and Opportunity system on the MBDA Portal located at *http://www.mbda.gov.*

Project Monitoring

MBDA will systematically monitor the performance of the NABDC. This monitoring includes regular review of data input to the performance system, assessment of the end of the second quarter progress report, an on-site review of the center's client files to verify NABDC performance, reported assistance and interviews with clients assisted. In consultation with clients of the individual NABDC, MBDA will assess the Center's effectiveness in providing business development services to their respective minority business communities. MBDA will then provide a report of findings and recommendations for improvement as a result of evaluations and monitoring visits. MBDA will also assess the NABDC's performance for the first and third quarters of performance data (as recorded in the Performance System) and provide a written report of findings. MBDA will approve qualifications of key NABDC staff and respond in a timely manner to correspondence requesting MBDA action.

Eligibility Criteria

For-profit entities (including sole-proprietorships, partnerships, and corporations), non-profit organizations, state and local government entities, American Indian Tribes, and educational institutions are eligible to operate NABDCs.

Award Period

The total award period is three (3) years. Funding will be provided annually at the discretion of MBDA and DoC, and will depend upon satisfactory performance by the award recipient, availability of funds to continue the project, and Agency priorities. Project proposals accepted for funding will not compete for funding in subsequent budget periods within the approved award period. Publication of this Notice does not obligate MBDA or DoC to award any specific cooperative agreement or to obligate all or any part of available funds.

Indirect Costs

The total dollar amount of the indirect costs proposed in an application under this program must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award or 100 percent of the total proposed direct costs dollar amount in the application, whichever is less.

Proposal Format

The structure of the proposal should contain the following headings and information, in the following order:

I. Table of Contents
II. Program Narrative
a. Applicant Capability—Include a resume setting forth the qualifications of the project director as part of the application, along with a copy of a college transcript, as appropriate. Position descriptions and qualification standards for all staff should be included as part of the application. Applicants must provide a copy of their Articles of Incorporation, by-laws and IRS 501(c)(3) non-profit letter or other evidence of non-profit status.
b. Resources—Include original commitment letters from those resources listed and indicate their willingness to work with the applicant. These resources can include such items as facilities, equipment, voluntary staff time and space, and financial resources. One to two letters of support (with contact information) from prior assisted larger minority firms *and* community organizations should be included from those resources willing to work with the applicant.
c. Techniques and Methodologies—The applicant's proposal shall include a specific plan-of-action detailing *how* the work requirements will be met and how those techniques will be implemented. MBDA requires the applicant to provide a quarterly breakdown of the goals.
d. Costs
III. Forms

Note: Pages of the proposal should be numbered consecutively.

Application Forms and Package

One (1) original and two (2) signed copies of the application must consist of: Standard Forms 424, Application for Federal Assistance; 424A, Budget Information-Non-Construction Programs; and 424B, Assurances-Non-Construction Programs, SF-LLL (Rev. 7–97); Department of Commerce forms, CD–436, Applicant for Funding Assistance, CD–511, Certifications Regarding Debarment, Suspension and Other Responsibility matters: Drug-Free Workplace Requirements and Lobbying, CD–512, Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying. These forms may be obtained by (1) contacting MBDA as described in the **FOR FURTHER INFORMATION CONTACT** section above; (2) by downloading Standard forms at *http://www.whitehouse.gov/omb/grants* and Department of Commerce at *http://www.doc.gov/forms,* or (3) by applying on-line via the World Wide Web at MBDA's web site located at *http://www.mbda.gov.*

Failure to submit a signed, original SF–424 with the application, or separately in conjunction with submitting a proposal electronically, by the deadline will result in the application being rejected and returned to the applicant. Failure to sign and submit with the application, or separately in conjunction with submitting a proposal electronically, the forms identified above by the deadline will automatically cause an application to lose two (2) points. Failure to submit other documents or information may adversely affect an applicant's overall score. MBDA shall not accept any changes, additions, revisions or deletions to competitive applications after the closing date for receiving applications, except through a formal negotiation process.

Evaluation Criteria

Proposals will be evaluated and applicants will be selected based on the following criteria. An application must receive at least 70% of the total points available for each evaluation criterion, in order for the application to be considered for funding.

1. Applicant Capability (45 points)

The applicant's proposal will be evaluated with respect to the applicant firm's experience and expertise in providing the work requirements listed. Specifically, the proposals will be evaluated as follows:

- Native American Community—experience in and knowledge of the minority business sector and strategies for enhancing its growth and expansion (5 points);
- Business Consulting—experience in and knowledge of business consulting of Native American and minority firms (10 points);
- Financing—experience in and knowledge of the preparation and formulation of successful financial transactions (5 points);
- Procurements and Contracting—experience in and knowledge of the public and private sector contracting opportunities for Native American and minority businesses (5 points);
- Financing Networks—resources and professional relationships within the corporate, banking and investment community that may be beneficial to Native American and minority-owned firms (5 points);
- Native American Advocacy—experience and expertise in advocating on behalf of minority businesses, both as to specific transactions in which a Native American business seeks to engage, and as to broad market advocacy for the benefit of the Native American community at large (5 points); and
- Key Staff—assessment of the qualifications, experience and proposed role of staff who will operate the NABDC. In particular, an assessment will be made to determine whether proposed staff possess the expertise in utilizing information systems as contemplated under the heading entitled, ''Computer Requirements'' (10 points).

2. Resources (20 points)

The applicant's proposal will be evaluated according to the following criteria:

- Resources—discuss those resources (not included as part of the cost-sharing arrangement) that will be used. (10 points);
- Partners—discuss how you plan to establish and maintain the network of five (5) Strategic Partners (5 points);
- Equipment—discuss how you plan to accomplish the computer hardware and software requirements (5 points).

3. Techniques and Methodologies (25 points)

The applicant's proposal will be evaluated as follows:

- Performance Measures—each performance measure should be related to the financial and market resources available and other information, as appropriate, in the geographic service area to the applicant and how the goals will be met. Specific attention should be placed on the Dollar Value of Transactions (as described under Definitions). This goal represents the sum of (a) Dollar Value of Financial Transactions and (b) Dollar Value for Gross Receipts. When proposing the minimum goal under Dollar Value of Transactions, the applicant is given the flexibility to address the percentage breakdown for items (a) and (b) within a specific range—not more than 60% and not less than 40%. The applicant should consider existing market conditions and its strategy to achieve the goal. The applicant may vary the percentage breakdown for items (a) and (b) as long as the sum meets the required goal as provided by MBDA in this Notice (as described under Geographic Service Areas). (15 points);
- Plan of Action—provide specific detail on how the applicant will start operations. NABDCs have thirty (30) days to become fully operational after an award is made. Fully operational means that all staff are hired, all signs are up, all items of furniture and equipment are in place and operational, all necessary forms are developed (*e.g.*,

client engagement letters, other standard correspondence, etc.), and the center is ready to open its doors to the public (5 points);

• Work Requirement Execution Plan—The applicant will be evaluated on how effectively and efficiently all staff time will be used to achieve the work requirements (5 points).

4. Proposed Budget and Supporting Budget Narrative (10 points).

The applicant's proposal will be evaluated on the following criteria:

• Reasonableness, allowability and allocability of costs (10 points).

Bonus Points

Proposed cost sharing, although not a requirement for NABDC application will be awarded bonus points on the following scale: more than 0–5%—1 point; 6–10%—2 points; 11–15%—3 points; 16–20%—4 points; and over 20%—5 points.

Key Points to Remember

• The Federal amount is not negotiable! The full amount of Federal funds designated for the award *must* be used in its entirety in the proposal.

• All proposed costs must be accompanied by written narrative. Read the budget narrative requirements in the application kit carefully. All costs must be explained in writing.

• Indirect Costs. The indirect cost policies contained in OMB Circulars A–21, A–87 and A–122 will apply to MBDA awards for its business development programs. Indirect costs are those costs proposed for *common* or *joint* objectives and which cannot be readily identified with a particular cost objective. Therefore, if the MBDA award is to be the sole source of support for the applicant organization, all costs are direct costs and no indirect costs should be proposed.

Organizations with indirect costs that do not have an established indirect cost rate negotiated and approved by a cognizant Federal agency may still propose indirect costs. For the recipient to recover indirect costs, however, the proposed budget must include a line item for such costs. Also, the recipient must prepare and submit a cost allocation plan and indirect cost rate proposal as required by applicable OMB circulars (A–21, A–87 and A–122). The allocation plan and the rate proposal must be submitted to the Department's Office of Acquisition Management within 90 days from the effective date of the proposed award.

• Audit Costs. Audits shall be performed in accordance with audit requirements contained in Office of Management and Budget Circular A–133, Audits of States, Local Governments, and Non-Profit Organizations, revised June 27, 2003. OMB Circular A–133 requires that non-profit organizations, government agencies, Indian tribes and educational institutions expending $500,000 or more in federal funds during a one-year period conduct a single audit in accordance with guidelines outlined in the circular. Applicants are reminded that other audits may be conducted by the Office of Inspector General.

• Management Fee. For-profit as well as not-for-profit organizations may negotiate their management fees, but they shall not exceed 7% of *total* estimated direct costs (Federal plus non-Federal) for the proposed award.

• Program Income. Many of MBDA's business development services programs allow their awardees to charge a fee for services rendered to clients. Where applicable, fees are considered program income and shall be accounted for and may be used to finance the non-Federal cost-share of the project. Any excess fee income shall be used to further the program purpose in accordance with the terms and conditions of the award.

Selection Procedures

Prior to the formal paneling process, each application will receive an initial screening to ensure that all required forms, signatures and documentation are present. Each application will receive an independent, objective review by a panel qualified to evaluate the applications submitted. MBDA anticipates that the review panel will be made up of at least three independent reviewers who are Federal employees who will review all applications based on the above evaluation criteria. Each reviewer will evaluate and provide a score for each proposal. The Director of MBDA makes the final recommendation to the Department of Commerce Grants Officer regarding the funding of applications, taking into account the following selection criteria:

1. The evaluations and rankings of the independent review panel;

2. The following funding priorities: (1) Identifying and working to eliminate barriers which limit the access of minority businesses to markets and capital; (2) Identifying and working to meet the special needs of minority businesses seeking to obtain large-scale contracts (in excess of $500,000) with institutional customers; and (3) Promoting the understanding and use of Electronic Commerce by the minority business community. The National Director or his designee reserves the right to conduct a site visit (subject to the availability of funding) to applicant organizations receiving at least 70% of the total points available for each evaluation criterion, in order to make a better assessment of the organization's capability to achieve the three funding priorities.

3. The availability of funding.

Unsuccessful Competition

On occasion, competitive solicitations or competitive panels may produce less than optimum results, such as competition resulting in the receipt of no applications or competition resulting in all unresponsive applications received. If the competition results in the receipt of only one application, it may or may not require additional action from MBDA depending upon the competitive history of the area, the quality of the application received, and the time and cost limits involved. In the event that any or all of these conditions arise, MBDA shall take the most time and cost-effective approach available that is in the best interest of the Government. This includes, but is not limited to: (1) Re-competition or (2) Re-Paneling or (3) Negotiation.

Universal Identifier

Applicants should be aware that they may be required to provide a Dun and Bradstreet Data Universal Numbering System (DUNS) number during the application process. See the June 27, 2003 (68 FR 38402) **Federal Register** notice for additional information. Organizations can receive a DUNS number at no cost by calling the dedicated toll-free DUNS Number request line at 1–866–705–5711 or on MBDA's website at *http://www.mbda.gov.*

Intergovernmental Review

Applications under this program are not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of October 1, 2001 (66 FR 49917), as amended by the **Federal Register** notice published on October 30, 2002 (67 FR 66109), are applicable to this solicitation.

Executive Order 12866

This notice was determined to be not significant for purposes of E.O. 12866.

Administrative Procedure Act/ Regulatory Flexibility Act

Prior notice and an opportunity for public comment are not required by the Administrative Procedure Act for rules concerning public property, loans, grants, benefits, and contracts (5 U.S.C. 553(a)(2)). Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis is not required and has not been prepared.

Paperwork Reduction Act

This document contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The use of Standard Forms 424, 424A, 424B, CD–346, and SF–LLL have been approved by OMB under the respective control numbers 0348–0043, 0348–0044, 0348–0040, 0605–0001, and 0348–0046.

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the Paperwork Reduction Act unless that collection displays a currently valid OMB Control Number.

Dated: August 25, 2003.

Ronald N. Langston,

National Director, Minority Business Development Agency.

[FR Doc. 03–22132 Filed 8–28–03; 8:45 am]

BILLING CODE 3510–21–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 082103B]

Endangered and Threatened Species; Take of Anadromous Fish

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

ACTION: Notice of availability and request for comment.

SUMMARY: Notice is hereby given that the Oregon Department of Fish and Wildlife (ODFW) has submitted a Fisheries Management and Evaluation Plan (FMEP) pursuant to the protective regulations promulgated for Oregon Coast coho salmon under the Endangered Species Act (ESA). The FMEP proposes a fishery for coho salmon in Siltcoos and Tahkenitch Lakes, located along the Oregon Coast. This document serves to notify the public of the availability of the FMEP for review and comment before a final approval or disapproval is made by NMFS.

DATES: Written comments on the draft FMEPs must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 p.m. Pacific daylight time on September 29, 2003.

ADDRESSES: Written comments and requests for copies of the draft FMEP should be addressed to Lance Kruzic, NMFS, 2900 NW Stewart Parkway, Roseburg, OR 97470 or faxed to (541) 957–3386. The document is also available on the internet at http://www.nwr.noaa.gov/. Comments will not be accepted if submitted via e-mail or the internet.

FOR FURTHER INFORMATION CONTACT: Lance Kruzic, Roseburg, OR, at phone number (541) 957–3381, or e-mail: *lance.kruzic@noaa.gov*.

SUPPLEMENTARY INFORMATION: This notice is relevant to the Oregon Coast coho salmon (*Oncorhynchus kisutch*) Evolutionarily Significant Unit (ESU).

Background

ODFW has submitted to NMFS an FMEP for a recreational fishery for coho salmon returning to Siltcoos and Tahkenitch Lakes, located south of Florence, Oregon, in years when returns of coho salmon are high and expected to exceed specified spawning escapement guidelines. The objectives of the FMEP are to provide some fishing opportunity in years when coho salmon returns are high and in a manner that does not affect the viability of the local coho population and the Oregon Coast ESU as a whole. The FMEP specifies the monitoring and evaluation tasks for the proposed fishery.

Authority

Under section 4 of the ESA, the Secretary of Commerce is required to adopt such regulations as he deems necessary and advisable for the conservation of species listed as threatened. The ESA salmon and steelhead 4(d) rule specifies categories of activities that contribute to the conservation of listed salmonids and sets out the criteria for such activities. The rule further provides that the prohibitions of paragraph (a) of the rule will not apply to activities associated with fishery harvest provided that those fisheries are managed in accordance with an FMEP that has been approved by NMFS and implemented in accordance with a letter of concurrence from NMFS.

As specified in § 223.203 (b)(4) of the ESA 4(d) Rule, NMFS may approve an FMEP if it ¶meets criteria set forth in § 223.203 (b)(4)(i)(A) through (I). Prior to final approval of an FMEP, NMFS must publish notification announcing its availability for public review and comment.

Dated: August 26, 2003.

Susan Pultz,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–22184 Filed 8–28–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 082503I]

New England 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 New England Fishery Management Council (Council) is scheduling a public meeting of its Social Sciences Advisory Committee in September, 2003 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meeting will be held on Monday, September 15, 2003 at 10 a.m.

ADDRESSES: The meeting will be held at the Holiday Inn Express, 110 Middle Street, Fairhaven, MA 02719; telephone: (508) 997–1281.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The Social Science Advisory Committee will review the analyses of economic and social impacts, including community impacts in the Draft Environmental Impact Statement for Amendment 2 to the Monkfish Fishery Management Plan. The Committee will also discuss progress on developing a clearinghouse for social and economic data and a workshop to further the development of social and economic analyses of fishery management actions.

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 listed in this notice 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 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 Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: August 25, 2003.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–22186 Filed 8–28–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 082503G]

New England Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Red Crab Oversight Committee and Advisory Panel in September, 2003. Recommendations from the committee will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meeting will held on Wednesday, September 17, 2003 at 7 p.m.

ADDRESSES: The meeting will be held at Holiday Inn Express 110 Middle Street, Fairhaven, MA 02719; telephone: (508) 997–1281.

Council address: New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The committee will review recommendations from the Red Crab Plan Development Team related to annual specifications for the Red Crab Fishery Management Plan for fishing year 2004 (March 1, 2004–February 28, 2005).

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 listed in this notice 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 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 Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: August 25, 2003.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–22188 Filed 8–28–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 082503E]

Pacific 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 Groundfish Stock Assessment Review (STAR) Panel for cabezon and lingcod will hold a work session which is open to the public.

DATES: The cabezon and lingcod STAR Panel will meet beginning at 1 p.m., September 15, 2003. The meeting will continue on September 16, 2003 beginning at 8 a.m. through September 19, 2003. The meetings will end at 5 p.m. each day, or as necessary to complete business.

ADDRESSES: The cabezon and lingcod STAR Panel meeting will be held at the National Marine Fisheries Service, Northwest Fisheries Science Center, Auditorium, 2725 Montlake Blvd. E, Seattle, WA 98112; telephone: 206–860–3200.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Mr. John DeVore, Groundfish Staff Officer; telephone: 503–820–2280.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review draft stock assessment documents and any other pertinent information, work with the Stock Assessment Team to make necessary revisions, and produce a STAR Panel report for use by the Council family and other interested persons.

Entry to the Northwest Fisheries Science Center requires identification with photograph (such as a student ID, state drivers license, etc.) A security guard will review the identification and issue a Visitor's Badge valid only for the date of the meeting. Since parking is at a premium at the Northwest Fisheries Science Center, car pooling and mass transit are encouraged.

Although non-emergency issues not contained in STAR Panel agendas may come before the STAR Panel for discussion, those issues may not be the subject of formal Panel action during this meeting. STAR Panel action will be restricted to those issues specifically listed 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 Panel's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at 503–820–2280 at least 5 days prior to the meeting date.

Dated: August 25, 2003.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–22190 Filed 8–28–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 082503F]

South Atlantic Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold meetings of its Snapper Grouper Committee, Highly Migratory Species Committee, Information and Education Committee and a joint meeting of its Executive Committee and Finance Committee. In addition, a public comment period will be held regarding Snapper Grouper Amendment 13A addressing the Oculina Experimental Closed Area. There will also be a full Council Session.

DATES: The meetings will be held Tuesday, September 16, 2003 through Thursday, September 18, 2003. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held at Pawleys Plantation, 70 Tanglewood Drive, Pawleys Island, SC, 29585; telephone: (1–800) 267–9959 or (843) 237–6100.

Copies of documents are available from Kim Iverson, Public Information Officer, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407–4699.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer; telephone: 843–571–4366 or toll free at 866/SAFMC–10; fax: 843–769–4520; email: *kim.iverson@safmc.net*.

SUPPLEMENTARY INFORMATION:

Meeting Dates

1. *Snapper Grouper Committee Meeting: September 16, 2003, 8:30 a.m.- 5 p.m. and September 17 from 8:30 a.m. until 10:30 a.m.*

The Snapper Grouper Committee will receive a report on the Southeastern Data, Assessment and Review (SEDAR) process for yellowtail snapper and goliath grouper, and an update on the overall SEDAR process. The Committee will review the final version of Amendment 13A to the Snapper Grouper Fishery Management Plan (FMP) and develop recommendations for Council. In addition, the Committee will review a draft of Amendment 13B to the Snapper Grouper FMP and develop recommendations for staff. The Committee will also receive a report on the status of Amendment 14 to the Snapper Grouper FMP addressing the use of marine protected areas as a management tool.

2. *Highly Migratory Species Committee and SSC Meeting: September 17, 2003, 10:30 a.m. until 12 noon.*

The Highly Migratory Species Committee will receive a presentation from NOAA Fisheries on the proposed rule for Atlantic sharks and Amendment 1 to the Highly Migratory FMP and provide comment.

3. Information & Education Committee: September 17, 2003, 1:30 p.m.- 3:30 p.m.

The Committee will review and develop recommendations regarding options for the Council's web site hosting and design. The Committee will also review and comment on a draft publication about the Council and discuss outreach/education plans for the Oculina Experimental Closed Area and Habitat Area of Particular Concern off the coast of Florida.

4. *Joint Executive Committee and Finance Committee Meeting: September 17, 2003, 3:30 p.m. until 5:30 p.m.*

The Executive Committee will meet jointly with the Finance Committee and receive an update on the Calendar Year (CY) 2003 budget and the status of the Fiscal Year 2004 Congressional budget. The Committees will develop recommendations for CY 2004 Fishery Management Plan, Plan Amendment and Framework timelines as well as approve the CY 2004 budget.

5. *Council Session: September 18, 2003, 8:30 a.m. 12 noon and September 19, 2003 from 8:30 a.m. until 12 noon.*

September 18, 2003

From 8:30 a.m. - 8:45 a.m., the Council will have a Call to Order, introductions and roll call, adoption of the agenda, and approval of the June 2003 meeting minutes.

From 8:45 a.m. - 9:15 a.m., the Council will conduct an election for Chairman and Vice-Chairman.

From 9:15 a.m. - 10:15 a.m., the Council will hear a report from the Snapper Grouper Committee. Beginning at 9:15 a.m., a public comment period will be held for Snapper Grouper Amendment 13A. Following public comment, the Council will approve Amendment 13A for submission to the Secretary of Commerce.

From 10:15 a.m. - 10:45 a.m., the Council will hear a report from the Highly Migratory Species Committee and provide comment of the proposed rule for Atlantic sharks and Amendment 1 to the Highly Migratory Species FMP.

From 10:45 a.m. - 12 noon, the Council will receive a briefing on litigation and other legal issues affecting the Council (CLOSED SESSION).

September 19, 2003

From 8:30 a.m. - 9 a.m., the Council will receive a report from the Information and Education Committee.

From 9 a.m. - 9:30 a.m., the Council will receive a joint report from the Executive and Finance Committees and take action to approve the 2004 Activities Schedule and timelines. The Council will also approve the 2004 Administrative Budget.

From 9:30 a.m. - 10 a.m., the Council will receive an update on the status of the Federal Fisheries Managers Conference.

From 10 a.m. - 11 a.m., the Council will receive NOAA Fisheries status reports on the Sargassum FMP final rule, the Dolphin Wahoo FMP and implementation of the Atlantic Coast Cooperative Statistics Program (ACCSP) in the Southeast Region. NOAA Fisheries will also give status reports on landings for Atlantic king mackerel, Gulf king mackerel (eastern zone), Atlantic Spanish mackerel, snowy grouper, golden tilefish, wreckfish, greater amberjack and south Atlantic octocorals.

From 11 a.m. - 12 noon, the Council will hear agency and liaison reports, discuss other business and upcoming meetings.

Documents regarding these issues are available from the Council office (see **ADDRESSES**).

Although non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subjects of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice 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 final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) by September 11, 2003.

Dated: August 25, 2003.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–22187 Filed 8–28–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Defense Policy Board Advisory Committee

AGENCY: Department of Defense, Defense Policy Board Advisory Committee.

ACTION: Notice.

SUMMARY: The Defense Policy Board Advisory Committee will meet in closed session at the Pentagon on September 18, 2003 from 1000 to 2100 and September 19, 2003 from 0900 to 1500.

The purpose of the meeting is to provide the Secretary of Defense, Deputy Secretary of Defense and Under Secretary of Defense for Policy with independent, informed advice on major matters on defense policy. the Board will hold classified discussions on national security matters.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (15 U.S.C. App. II (1982)), it has been determined that this meeting concerns matters listed in 5 U.S.C. 552B(c)(1)(1982), and that accordingly this meeting will be closed to the public.

Dated: August 22, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–22118 Filed 8–28–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

United States Marine Corps; Privacy Act of 1974; System of Records

AGENCY: United States Marine Corps, DoD.

ACTION: Notice to delete a records system.

SUMMARY: The U.S. Marine Corps is deleting one system of records notice from its inventory of records systems subject to the Privacy Act of 1974, as amended (5 U.S.C. 552a).

DATES: The deletion will be effective on September 29, 2003 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to Headquarters, U.S. Marine Corps, FOIA/PA Section (CMC–ARSE), 2 Navy Annex, Room 1005, Washington, DC 20380–1775.

FOR FURTHER INFORMATION CONTACT: Ms. Tracy D. Ross at (703) 614–4008.

SUPPLEMENTARY INFORMATION: The U.S. Marine Corps' records system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The U.S. Marine Corps proposes to delete a system of records notice from its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The changes to the system of records are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of new or altered systems reports. The records system being amended is set forth below, as amended, published in its entirety.

Dated: August 25, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

MFD00002

SYSTEM NAME:

Primary Management Efforts (PRIME)/Operations Subsystem (February 22, 1993, 58 FR 10630).

Reason: Records being maintained under this system of records notice are now covered by an umbrella system for 'all organizational elements of the Department of the Navy' to include the U.S. Marine Corps. The system of records notice is identified as N05000–2, entitled 'Administrative Personnel Management System'.

[FR Doc. 03–22117 Filed 8–28–03; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to Amend Systems of Records.

SUMMARY: The Department of the Air Force is amending eight systems of records notices in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

Six of the amendments being made are to alert the users of these systems of records of the additional requirements of the Health Insurance Portability and Accountability Act (HIPAA) of 1996, as implemented by DoD 6025.18–R, DoD Health Information Privacy Regulation. Language being added under the ''Routine Use'' category is as follows:

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

DATES: This proposed action will be effective without further notice on September 29, 2003 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the Air Force Privacy Act Manager, Office of the Chief Information Officer, AF–CIO/P, 1155 Air Force Pentagon, Washington, DC 20330–1155.

FOR FURTHER INFORMATION CONTACT: Mrs. Anne Rollins at (703) 601–4043.

SUPPLEMENTARY INFORMATION: The Department of the Air Force systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records systems being amended are set forth below followed by the notices, as amended, published in their entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: August 22, 2003.

Patricia Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F031 AF SP A

SYSTEM NAME:

Correction and Rehabilitation Records (June 11, 1997, 62 FR 31793).

Changes

SYSTEM IDENTIFIER:

Delete entry and replace with 'F031 AF SF A'.

* * * * *

CATEGORIES OF RECORDS:

Replace ''prisoner'' with ''inmate'' throughout notice. In the second paragraph, delete 'from escaped'.

* * * * *

PURPOSE(S):

Delete Historical records in microfilm are used as a research data base' from entry.

* * * * *

SAFEGUARDS:

Add to entry 'Those in computer storage devices are protected by computer system software.'

RETENTION AND DISPOSAL:

Add at end ''63132–2001. Some records pertaining to clemency/parole actions are retained for five years after final action.''

* * * * *

F031 AF SF A

SYSTEM NAME:

Correction and Rehabilitation Records.

SYSTEM LOCATION:

Headquarters, Air Force Security Forces Center, 1517 Billy Mitchell Boulevard, Lackland Air Force Base, TX 78236–5226, and elements; the Air Force Clemency and Parole Board, Office of the Secretary of the Air Force Personnel Council, 1535 Command Drive, EE–Wing, Third Floor, Andrews Air Force Base MD 20762–7002.

Chief of Security Forces at local installation where individual is assigned. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices. Records may also be at the National Personnel Records Center, Military Personnel Records, 9700 Page Boulevard, St. Louis, MO 63132–2001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals placed in confinement at an installation or federal prison as the result of military criminal conviction.

Individuals placed in confinement or rehabilitation and assigned to Headquarters, Air Force Security Forces Center (AFSFC) or any element of operating location.

CATEGORIES OF RECORDS IN THE SYSTEM:

Inmate personnel records consisting of confinement orders, release orders, personal history records, medical examiners report, request and receipt for health and comfort supplies, recommendations for disciplinary action, inspection records, inmate classification summaries and records pertaining to any clemency/parole actions.

Corrections officers records including personal deposit fund records and related documents, disciplinary books, correction facility blotters and visitor registers; requests for interview and evaluation reports; inmate records consisting of daily strength records and reports of escaped and returned inmates.

Psychological or rehabilitation test records.

Clemency and Parole Board decisional documents and related records reflecting the action of the Board, the Board's recommendations to the Secretary and the rationale for actions taken or proposed.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force; Air Force Instruction 31–205, Air Force Corrections System, and E.O. 9397 (SSN).

PURPOSE(S):

To maintain a life file on the individual as an inmate on an Air Force installation, or as an Air Force inmate serving a sentence in a federal prison.

The records are used to establish background for either disciplinary or good conduct action as well as general administration uses of the records concerning health and welfare of the individual, as well as clemency and parole actions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records, or information contained therein, may specifically be disclosed outside the DOD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Information may also be disclosed Federal, state, and local law enforcement and investigation agencies for investigation and possible criminal prosecution, civil court actions or regulatory orders, confinement/correctional agencies for use in the administration of correctional programs, including custody classification, employment, training and educational assignments, treatment programs, clemency, restoration to duty or parole actions, verification of offender's criminal records, employment records, and social histories.

The DoD ''Blanket Routine Uses'' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders, in notebooks/binders, in card files, on computer and computer output products, and as photographs.

RETRIEVABILITY:

Retrieved by any or a combination of name, Social Security Number and fingerprint classification, or by date of board hearing.

SAFEGUARDS:

Records are accessed by custodian of the record system and by person(s) responsible for servicing the record system in performance of their official duties. Records are stored in locked cabinets or rooms and controlled by visitor registers. Those in computer storage devices are protected by computer system software.

RETENTION AND DISPOSAL:

Depending on the type of record within the system, it is either destroyed after release of the inmate, maintained for one year after the release of the individual, or retained in the files at the facility in which the individual was confined for three months, after which time the record is forwarded to Headquarters, Air Force Security Forces Agency, Corrections Division, 1517 Billy Mitchell Boulevard, Lackland Air Force Base, TX 78236–5226. Within two years after receipt, records are sent to the National Personnel Records Center, Military Personnel Records, 9700 Page Boulevard, St. Louis, MO 63132–2001. Some records pertaining to clemency/parole actions are retained for five years after final action.

SYSTEM MANAGER(S) AND ADDRESS:

Director, AF Corrections, Headquarters, Air Force Security Forces Center, Corrections Division, 1517 Billy Mitchell Boulevard, Lackland Air Force Base, TX 78236–5226.

Executive Secretary, Air Force Clemency and Parole Board, Office of the Secretary of the Air Force Personnel Council, 1535 Command Drive, EE–Wing, Third Floor, Andrews Air Force Base, MD 20762–7002.

Chief of Security Forces at local installation where individual is assigned. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains

information on themselves should address written inquiries to the Director, AF Corrections, Corrections Division, Headquarters, Air Force Security Forces Center, 1517 Billy Mitchell Boulevard, Lackland Air Force Base, TX 78236–5226; Executive Secretary, Air Force Clemency and Parole Boulevard, Office of the Secretary of the Air Force Personnel Council, 1535 Command Drive, EE–Wing, Third Floor, Andrews Air Force Base, MD 20762–7002; or Chief of Security Forces at local installation where individual was last assigned. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system should address written requests to the Director, AF Corrections, Corrections Division, Headquarters, Air Force Security Forces Center, 1517 Billy Mitchell Boulevard, Lackland Air Force Base, TX 78236–5226; Executive Secretary, Air Force Clemency and Parole Boulevard, Office of the Secretary of the Air Force Personnel Council, 1535 Command Drive, EE–Wing, Third Floor, Andrews Air Force Base, MD 20762–7002; or Chief of Security Forces at local installation where individual was last assigned. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Financial and medical institutions, police and investigative officers, state or local government, witnesses or source documents.

Installation level confinement facilities, courts-martial, and court-martial reviews, and submissions received directly from, or in behalf of the inmate.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Parts of this system may be exempt pursuant to 5 U.S.C. 552a(j)(2) if the information is compiled and maintained by a component of the agency, which performs as its principle function any activity pertaining to the enforcement of criminal laws.

An exemption rule for this record system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 806b. For additional information contact the system manager.

F031 AF SP E

SYSTEM NAME:

Security Forces Management Information System (SFMIS) (August 21, 2001, 66 FR 43843).

Changes

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Replace '1720 Patrick Street, Lackland Air Force Base, TX 78236–5226' with '1517 Billy Mitchell Boulevard, Lackland Air Force Base, TX 78236–0119.'

* * * * *

F031 AF SP E

SYSTEM NAME:

Security Forces Management Information System (SFMIS).

SYSTEM LOCATION:

DISA MegaCenter, Building 857, 401 E. Drive, Maxwell Air Force Base—Gunter Annex, AL 36114–3001; security forces units at all levels can access the system.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals involved in incidents and accidents occurring on Air Force (AF) installations, or reportable incidents occurring off base, including all active duty military personnel, reserve and guard; DoD civilians and other civilians; and retirees, who may be victims, witnesses, complainants, offenders, suspects, drivers; individuals who have had tickets issued on base, or had their license suspended or revoked; those persons barred from the installation; and persons possessing a licensed firearm.

CATEGORIES OF RECORDS IN THE SYSTEM:

Data on individuals (victims, witnesses, complainants, offenders, suspects, and drivers) involved in incidents may include, but is not limited to, name; Social Security Number; date of birth; place of birth; home address and phone; alias; race; ethnicity; sex; marital status; identifying marks (tattoos, scars, etc.); height; weight; eye and hair color; date, location, nature and details of the incident/offense to include whether alcohol, drugs and/or weapons were involved; driver's license information; tickets issued; vehicle information; suspension/revocation or barment records; whether bias against any particular group was involved; if offense involved sexual harassment; actions taken by military commanders (*e.g.*, administrative and/or non-judicial measures, to include sanctions imposed); referral actions; court-martial results and punishments imposed; confinement information, to include location of correctional facility, gang/cult affiliation if applicable; and release/parole/clemency eligibility dates.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force; DoD Directive 7730.47, Defense Incident Based Reporting System (DIBRS); Air Force Instruction 31–203, Security Forces Management Information System; 18 U.S.C. 922 note, Brady Handgun Violence Prevention Act; 28 U.S.C. 534 note, Uniform Federal Crime Reporting Act; 42 U.S.C. 10601 et seq., Victims Rights and Restitution Act of 1990; and E.O. 9397 (SSN).

PURPOSE(S):

Serves as a repository of criminal and specified other non-criminal incidents used to satisfy statutory and regulatory reporting requirements, specifically to provide crime statistics required by the Department of Justice (DoJ) under the Uniform Federal Crime Reporting Act; to provide personal information required by the DoJ under the Brady Handgun Violence Prevention Act; and statistical information required by DoD under the Victim's Rights and Restitution Act; and to enhance AF's capability to analyze trends and to respond to executive, legislative, and oversight requests for statistical crime data relating to criminal and other high-interest incidents.

Security Forces commanders will use criminal/statistical data for local law enforcement purposes. The system generates reports for use by the Air Force Security Forces at all levels of command, provides security forces commanders the ability to view criminal statistics and apply whatever actions are necessary for enforcement.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Department of Justice for criminal reporting purposes and as

required by the Brady Handgun Violence Prevention Act.

To courts and state, local, and foreign law enforcement agencies for valid judicial proceedings.

To victims and witnesses to comply with the Victim and Witness Assistance Program, the Sexual Assault Prevention and Response Program, and the Victims' Rights and Restitution Act of 1990.

The DoD ''Blanket Routine Uses'' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on computers and computer output products; some paper reports are generated.

RETRIEVABILITY:

Records are retrieved by name or Social Security Number.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties, and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in computer storage devices which are protected by computer system software.

RETENTION AND DISPOSAL:

Disposition pending. No records will be destroyed until authorization is granted from the National Archives and Records Administration. All records will be retained until approval is granted.

SYSTEM MANAGER(S) AND ADDRESS:

Reports and Analysis Program Manager, Police Services Branch, Headquarters Air Force Security Forces Center (HQ AFSFC/SFOP), 1517 Billy Mitchell Boulevard, Lackland Air Force Base, TX 78236–0119.

NOTIFICATION PROCEDURE:

Individuals seeking to access records about themselves contained in the system should address written requests to their servicing Security Forces Administrative Reports Section (SFAR) or visit the system manager at HQ Air Force Security Forces Center, Police Services Branch (HQ AFSFC/SFOP), 1517 Billy Mitchell Boulevard, Lackland Air Force Base, TX 78236–0119.

Individuals must identify themselves by full name, rank, home address, Social Security Number and present a military ID, valid driver's license, or some other form of identification when appearing in person.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in the system should address written requests to their servicing Security Forces Administrative Reports Section (SFAR) or visit the system manager at HQ Air Force Security Forces Center, Police Services Branch (HQ AFSFC/SFOP), 1517 Billy Mitchell Boulevard, Lackland Air Force Base, TX 78236–0119.

Individuals must identify themselves by full name, rank, home address, and Social Security Number.

CONTESTING RECORDS PROCEDURES:

The Air Force rules for accessing records, for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information obtained from individuals; DoD and civilian law enforcement authorities, security flight personnel, desk sergeants, operations personnel, staff judge advocates, courts-martial, correctional institutions and facilities, and administrative reports branch personnel.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Parts of this system may be exempt pursuant to 5 U.S.C. 552a(j)(2) if the information is compiled and maintained by a component of the agency, which performs as its principle function any activity pertaining to the enforcement of criminal laws.

An exemption rule for this exemption has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 806b. For additional information contact the system manager.

F044 AFPC A

SYSTEM NAME:

Medical Assignment Limitation Record System (June 11, 1997, 62 FR 31793).

Changes

* * * * *

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Add a new paragraph to the end of the entry '**Note:** This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.'

* * * * *

F044 AFPC A

SYSTEM NAME:

Medical Assignment Limitation Record System.

SYSTEM LOCATION:

Headquarters Air Force Personnel Center, Medical Service Officer Utilization Division, 550 C Street W, Randolph Air Force Base, TX 78150–4703.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Air Force members whose cases have been presented to a Medical Evaluation Board and were returned to duty by Medical Evaluation Board or Physical Evaluation Board action and have been assigned an Assignment limitation Code ''C''.

CATEGORIES OF RECORDS IN THE SYSTEM:

Medical Evaluation Board, Report of Medical Examination, Report of Medical History, Narrative Summary, Clinical Record Consultation Sheet, Electrocardiographic Record, etc.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force; Air Force Instruction 36–2902, Physical Evaluation for Retention, Retirement and Separation; and Air Force Instruction 36–2110.

PURPOSE(S):

To determine if previous action has been taken by the system manager, and what the previous disposition was.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records, or information contained therein, may specifically be disclosed outside the DOD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may

place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders.

RETRIEVABILITY:

Retrieved by name.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties. Records are stored in locked rooms and cabinets.

RETENTION AND DISPOSAL:

Retained in office files for two years or no longer needed for reference, then destroyed by tearing into pieces, shredding, pulping, macerating, or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters Air Force Personnel Center, Chief, Medical Service Officer Utilization Division, Randolph Air Force Base, TX 78150–4703.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on themselves should address written inquiries to Headquarters Air Force Personnel Center, Chief, Medical Service Officer Utilization Division, Randolph Air Force Base, TX 78150–4703.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address written requests to Headquarters Air Force Personnel Center, Chief, Medical Service Officer Utilization Division, Randolph Air Force Base, TX 78150–4703.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information obtained from medical institutions.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F044 AF SG D

SYSTEM NAME:

Automated Medical/Dental Record System (June 11, 1997, 62 FR 31793).

Changes

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete from entry ''Subsystems of the Automated Medical/Dental Data System include: Air Force Clinical Laboratory Automation System (AFCLAS); Automated Cardiac Catheterization Laboratory System (ACCLS); Computer Assisted Practice of Cardiology (CAPOC) System; DATA STAT Pharmacy System (formerly PROHECA); Occupational Health and Safety System; Patient Appointment and Scheduling System (PAS); Tri-Laboratory System (TRILAB); Tri-Pharmacy System; Tri-Radiology System (TRIRAD); Health Evaluation and Risk Tabulation (HEART).''

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add a new paragraph to the end of the entry ''**Note:** This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.''

* * * * *

STORAGE:

Delete entry and replace with ''Data maintained primarily on magnetic or optical media.''

* * * * *

RECORD SOURCE CATEGORIES:

After ''when the patient is a child,'' add ''deemed incompetent''.

* * * * *

F044 AF SG D

SYSTEM NAME:

Automated Medical/Dental Record System.

SYSTEM LOCATION:

At Air Force medical centers, hospitals and clinics, major command headquarters and field operating agencies. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any individual who is hospitalized in, is dead on arrival at, or has received medical or dental care at an Air Force medical treatment facility.

Individuals who have received medical care at other DOD or civilian medical facilities but whose records are maintained at or processed by Air Force medical facilities.

Any military active duty member who is on an excused-from-duty status, on quarters, or subsistence elsewhere, on convalescent leave, meets Medical Evaluation Board (MEB), or a Physical Evaluation Board (PEB), on an outpatient basis or who is hospitalized in a non-federal hospital and for whom an Air Force medical facility has assumed administrative responsibility.

Any individual who has undergone medical or dental examinations at any Air Force medical facility (or whose records are maintained or processed by the Air Force), *e.g.*, pre-employment examinations and food handlers examinations, or who has otherwise had medical or dental tests performed at any Air Force medical facility.

CATEGORIES OF RECORDS IN THE SYSTEM:

Files consist of automated records of treatment received and medical/dental tests performed on an inpatient/outpatient basis in military medical treatment facilities and of military members treated in civilian facilities. These records may include radiographic images and reports, Electrocardiographic tracings and reports, laboratory test results and reports, blood gas analysis reports, occupational health records, dental radiographic reports and records, automated cardiac catheterization data and reports, physical examination reports, patient administration and scheduling reports, pharmacy prescriptions and reports, food service reports, hearing conservation tests, cardiovascular fitness examinations and reports, reports of medical waivers granted for flight duty, and other inpatient and outpatient data and reports. They may contain information relating to medical/dental examinations and treatments, inoculations, appointment and scheduling information, and other medical and/or dental information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 55, Medical and Dental Care, and E.O. 9397 (SSN).

PURPOSE(S):

Used as a record of patient's medical/dental health, diagnosis, and treatment and disposition while authorized care.

Used to help determine individual's qualification for duty, for security clearances and for assignments.

Used by an individual or his legal representative for further medical care, legal purposes, or other uses such as insurance requests or compensation and other health care providers for further care of the patient, research teaching, and legal purposes.

Used by medical treatment facility staff for evaluation of staff performance in the care rendered; for preparation of statistical reports; for reporting communicable diseases and other conditions required by law to federal and state agencies.

Used by Army, Navy, Department of Veterans Affairs, Public Health Service or civilian hospitals for continued medical care of the patient.

Used by insurance companies (only with the patient's written consent for release, except as authorized in 10 U.S.C. 1095) for arbitrating insurance claims.

Used by other federal agencies such as Department of Veterans Affairs and Department of Labor (workmen's compensation) for adjudication of claims; for reporting communicable diseases or other conditions required by law.

Used to provide input to other DoD medical records systems including the Medical Record System, the Dental Personnel Actions, and other DoD agencies (*e.g.,* Army, Navy) when such agency is normally the primary source or repository of medical information about the individual.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Information from the inpatient or outpatient medical records of retirees and dependents may be disclosed to third party payers in accordance with 10 U.S.C. 1095 as amended by Pub. L. 99–272, for the purpose of collecting reasonable inpatient/outpatient hospital care costs incurred on behalf of retirees or dependents. In addition, records may be disclosed to:

(1) Officials and employees of the Department of Veterans Affairs in the performance of their official duties relating to the adjudication of veterans claims and in providing medical care to members of the Air Force.

(2) Officials and employees of other departments and agencies of the Executive Branch of government upon request in the performance of their official duties relating to review of the official qualifications and medical history of applicants and employees who are covered by this record system and for the conduct of research studies.

(3) Private organizations (including educational institutions) and individuals for authorized health research in the interest of the Federal government and the public. When not considered mandatory, patient identification data shall be eliminated from records used for research studies.

(4) Officials and employees of the National Research Council in cooperative studies of the National History of Disease; of prognosis and of epidemiology. Each study in which the records of members and former members of the Air Force are used must be approved by the Surgeon General of the Air Force.

(5) Officials and employees of local and state governments and agencies in the performance of their official duties pursuant to the laws and regulations governing local control of communicable diseases, preventive medicine and safety programs, child abuse and other public health and welfare programs.

(6) Authorized surveying bodies for professional certification and accreditation.

(7) The individual's organization or government agency as necessary when required by Federal statute, Executive Order, or by treaty.

(8) Public Health Service or civilian hospitals for continued medical care of the patient.

(9) Other federal agencies such as Department of Labor (workman's compensation) for adjudication of claims; for reporting communicable diseases of other conditions required by law.

The DoD 'Blanket Routine Uses' published at the beginning of the agency's compilation of record system notices apply to this system, except as stipulated in 'Note' below.

Note: Records of identity, diagnosis, prognosis or treatment of any client/patient, irrespective of whether or when he/she ceases to be a client/patient, maintained in connection with the performance of any alcohol/drug abuse treatment function conducted, requested, or directly or indirectly assisted by any department or agency of the United States, shall, except as provided herein, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized in 42 U.S.C. 290dd–2, and 5 U.S.C. 552. These statutes take precedence over the Privacy Act of 1974 in regard to accessibility of such records except to the individual to whom the record pertains. The DoD ''Blanket Routine Uses'' do not apply to these records.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Data maintained primarily on magnetic or optical media.

RETRIEVABILITY:

Retrieved by Social Security Number. May also be retrieved by sponsor's Social Security Number in combination with the family member prefix; by name, or by inpatient register number, laboratory accession number, or pharmacy prescription number.

RETENTION AND DISPOSAL:

Computer files are retained for variable lengths of time depending upon the type of information involved and the size and mission of the medical treatment facility. Retention time may vary from one day to ten years. Records are disposed of by erasure of the magnetic computer records and destruction of the computer related worksheets on paper, film, or other media by tearing, shredding, pulping, burning or other destructive methods. Identical medical/dental information may be retained for longer periods of time in other medical records systems (such as inpatient or outpatient charts), including the Medical Record System (F168 AF SG C) and Dental Personnel Actions (SG 162 SG A).

SYSTEM MANAGER(S) AND ADDRESS:

Major command and field operating agencies; commanders of United States Air Force medical treatment facilities. Official mailing addresses are published as an appendix to the Air Force's compilation of systems notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should

address inquires to the appropriate system manager. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system should address requests to the appropriate system manager. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

Requests should include complete name (including maiden name), sponsor's name, Social Security Number or Service Number of person through whom eligibility is established, category of record desired, year in which treatment was provided, whether treatment was inpatient or outpatient. If the individual establishes eligibility through a sponsor other than self, the request should include the relationship to the sponsor, *e.g.,* spouse, second oldest child, parent, *etc.*

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information is obtained directly from the individual whenever practical and possible; from other individuals when necessary, e.g., when the patient is a child deemed incompetent or is in coma; from other medical institutions; from automated systems interfaces; from medical records, and from patient interactions with physicians and other health care providers.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F044 AF SG E

SYSTEM NAME:

Medical Record System (June 11, 1997, 62 FR 31793).

Changes

* * * * *

CATEGORY OF RECORDS IN THE SYSTEM:

Replace first sentence with 'Inpatient, outpatient, and ambulatory procedure visit (APV) records of care received in Air Force medical facilities.'

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Replace first sentence in second paragraph to read 'Information from the inpatient, outpatient, or APV medical records of retirees and dependents may be disclosed to third party payers in accordance with 10 U.S.C. 1095 as amended by Public Law 99–272, for the purpose of collecting reasonable inpatient/outpatient/APV hospital care costs incurred on behalf of retirees or dependents.'

Add a new paragraph to the end of the entry '**Note:** This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.'

* * * * *

F044 AF SG E

SYSTEM NAME:

Medical Record System.

SYSTEM LOCATION:

Headquarters, United States Air Force, Surgeon General (HQ USAF/SG), medical centers, hospitals and clinics, medical aid stations, National Personnel Record Centers, Air National Guard activities, and Air Force Reserve units. Official mailing addresses are published as an appendix to the Air Force compilation of systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons treated in an Air Force medical facility and active duty members for whom primary care is provided.

CATEGORIES OF RECORDS IN THE SYSTEM:

Inpatient, outpatient, and ambulatory procedure visit (APV) records of care received in Air Force medical facilities. Documentation includes, but is not limited to, patient's medical history; physical examination; treatment received; supporting documentation such as laboratory and x-ray reports; cover sheets and summaries of hospitalization; diagnoses; procedures or surgery performed; administrative forms which concern medical conditions such as Line of Duty Determinations; physical profiles, and medical recommendations for flying duty. Secondary files are maintained such as patient registers, nominal indices, x-ray and laboratory files, indices and registers

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 55, Medical and Dental Care; 10 U.S.C. 8013, Secretary of the Air Force; and E.O. 9397 (SSN).

PURPOSE(S):

Used to document, plan, and coordinate the health care of patients; aid in preventative health and communicable disease control programs; determine eligibility and suitability for benefits for various programs; adjudicate claims; evaluate care rendered; teach compile statistical data, and conduct research.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Information from the inpatient, outpatient, or APV medical records of retirees and dependents may be disclosed to third party payers in accordance with 10 U.S.C. 1095 as amended by Public Law 99–272, for the purpose of collecting reasonable inpatient/outpatient/APV hospital care costs incurred on behalf of retirees or dependents. Records are used and reviewed by health care providers in the performance of their duties. Health care providers include military and civilian providers assigned to the medical facility where care is being provided. Students participating in a training affiliation program with a USAF medical facility may also use and review records as part of their training program. In addition, records may be disclosed to:

(1) Officials and employees of the Department of Veterans Affairs in the performance of their official duties relating to the adjudication of veterans claims and in providing medical care to members of the Air Force.

(2) Officials and employees of other departments and agencies of the Executive Branch of government upon request in the performance of their official duties relating to review of the official qualifications and medical history of applicants and employees who are covered by this record system and for the conduct of research studies.

(3) Private organizations (including educational institutions) and

individuals for authorized health research in the interest of the Federal government and the public. When not considered mandatory, patient identification data shall be eliminated from records used for research studies.

(4) Officials and employees of the National Research Council in cooperative studies of the National History of Disease; of prognosis and of epidemiology. Each study in which the records of members and former members of the Air Force are used must be approved by the Surgeon General of the Air Force.

(5) Officials and employees of local and state governments and agencies in the performance of their official duties pursuant to the laws and regulations governing local control of communicable diseases, preventive medicine and safety programs, child abuse and other public health and welfare programs.

(6) Authorized surveying bodies for professional certification and accreditations.

(7) The individual's organization or government agency as necessary when required by Federal statute, E.O., or by treaty.

The DoD 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of record system notices apply to this system, except as stipulated in ''Note'' below.

Note: Records of identity, diagnosis, prognosis or treatment of any client/patient, irrespective of whether or when he/she ceases to be a client/patient, maintained in connection with the performance of any alcohol/drug abuse treatment function conducted, requested, or directly or indirectly assisted by any department or agency of the United States, shall, except as provided herein, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized in 42 U.S.C. 290dd–2. These statutes take precedence over the Privacy Act of 1974 in regard to accessibility of such records except to the individual to whom the record pertains. The DoD 'Blanket Routine Uses' do not apply to these types of records.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in paper and machine-readable form.

RETRIEVABILITY:

By name, Social Security Number, or by Military Service Number.

SAFEGUARDS:

Records are accessed by commanders of medical centers, hospitals, and clinics; by custodian of the record system, and by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets, and access to automated records is controlled and limited.

RETENTION AND DISPOSAL:

While on active duty, the Health Record of a U.S. military member is maintained at the medical unit at which the person receives treatment. On separation or retirement, records are forwarded to National Personnel Records Center/Military Personnel Records (NPRC/MPR) or other designated depository, such as Commandant, U.S. Coast Guard for that agency's personnel, to appropriate Department of Veterans Affairs (DVA) Regional Office if a DVA claim has been filed. Records of non-active duty personnel may be hand carried or mailed to the next military medical facility at which treatment will be received or the records are retained at the treating facility for a minimum of 1 year after date of last treatment then retire to NPRC or other designated depository, such as, but not limited to, Medical Director, American Red Cross, Washington, DC 20037–1898 for Red Cross personnel. At NPRC records for military personnel are retained for 50 years after date of last document, for all others 25 years.

SYSTEM MANAGER(S) AND ADDRESS:

The Surgeon General, Headquarters United States Air Force.

Chief of Air Force Reserve, Headquarters United States Air Force.

Director of Air National Guard, Headquarters United States Air Force.

Commanders of medical centers, hospitals, clinics, medical aid stations; Commander, Air Force Personnel Center. Official mailing addresses are published as an appendix to the Air Force's compilation of system notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contain information about themselves should address inquiries to or visit the system manager. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system should address requests to the system manager. Official mailing addresses are published as an appendix to the Air Force's compilation of systems notices.

Requester must submit full name; Social Security Number (or Military Service Number) through whom eligibility for care is established; date (at least year) treatment was provided; name of facility providing treatment, and whether treatment was as inpatient or outpatient.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 1806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Physicians and other patient care providers such as nurses, dietitians, and physicians assistants. Administrative forms are completed by appropriate military or civilian officials.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F044 AF SG F

SYSTEM NAME:

Medical Service Accounts (June 11, 1997, 62 FR 31793).

Changes

* * * * *

SYSTEM NAME:

Delete entry and replace with 'Uniform Business Office Records'.

* * * * *

CATEGORIES OF RECORDS COVERED BY THE SYSTEM:

Add to the end of the entry 'and information required for billing third party insurers.'

PURPOSE(S):

Delete entry and replace with 'Used by the Uniform Business Office Manager to keep a record of billing, receipts, and an instrument for cash posting. Used by

Food Service Officer as a receipt for cash collected and turned in to the Medical Service Account officer.'

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add a new paragraph to the end of the entry '**NOTE:** This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.'

* * * * *

F044 AF SG F

SYSTEM NAME:

Uniform Business Office Records.

SYSTEM LOCATION:

Air Force hospitals, medical centers and clinics.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty military personnel, retired military personnel, dependents of active duty, retired and deceased military personnel, and civilians treated in emergencies.

CATEGORIES OF RECORDS IN THE SYSTEM:

Hospital Invoice/Receipt/Accounts Receivable Records showing charges for subsistence and medical service and information required for billing third party insurers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force and Air Force Instruction 41–120, Medical Resource Operations.

PURPOSE(S):

Used by the Uniform Business Office Manager to keep a record of billing, receipts, and an instrument for cash posting. Used by Food Service Officer as a receipt for cash collected and turned in to the Medical Service Account officer.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained electronically and in file folders at Clinics, Hospitals, and Medical Centers.

RETRIEVABILITY:

Retrieved by name and invoice receipt or voucher number.

SAFEGUARDS:

Records are accessed by custodian of the record system, by person(s) responsible for servicing the record system in performance of their official duties and Air Force auditors.

RETENTION AND DISPOSAL:

Retained in office files for one year after annual cut-off, then destroyed by tearing into pieces, shredding, pulping, macerating, or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Uniform Business Office Managers at all Clinics, Hospitals, Medical Centers. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to or visit the Uniform Business Office Managers at all Clinics, Hospitals, and Medical Centers. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to or visit the Uniform Business Office Managers at all Clinics, Hospitals, and Medical Centers. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information obtained from source documents such as records, reports and accounts maintained by medical facilities.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F044 AF SG G

SYSTEM NAME:

Nursing Service Records (June 11, 1997, 62 FR 31793).

Changes

* * * * *

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Add a new paragraph to the end of the entry '**NOTE:** This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.'

* * * * *

F044 AF SG G

SYSTEM NAME:

Nursing Service Records.

SYSTEM LOCATION:

Air Force hospitals, medical centers and clinics. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty and retired military personnel; Air Force civilian employees; Air Force Reserve and National Guard personnel; Air Force Academy cadets; dependents of military personnel; Foreign Nationals residing in the United States; American Red Cross personnel,

Peace Corps, and State Department personnel; Exchange officers, anyone admitted to inpatient status in Air Force medical facilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains 24-hour nursing reports, listings of ward patients and registers containing information on operations performed.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 55, Medical and dental care, and 10 U.S.C. 8067(e), Designation: Officers to perform certain professional functions, as implemented by Air Force Instruction 46–102, Nursing Care.

PURPOSE(S):

Used by Chief Nurse and other management personnel to determine nursing care work loads and allocate resources.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Records are used and reviewed by health care providers in the performance of their duties. Health care providers include military and civilian providers assigned to the medical facility where care is being provided. Students participating in a training affiliation program with a USAF medical facility may also use and review records as part of their training program.

The DoD 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of record system notices apply to this system.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders, notebooks and binders.

RETRIEVABILITY:

Retrieved by name, dates of admission and discharge from medical facility, date of operation.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets.

RETENTION AND DISPOSAL:

Retained in office files for three months after monthly cutoff, then destroyed by tearing into pieces, shredding, pulping, macerating, or burning. Operation registers are destroyed after five years.

SYSTEM MANAGER(S) AND ADDRESS:

The Surgeon General, Headquarters, United States Air Force. Chief Nurses of medical centers and hospitals. Official mailing addresses are published as an appendix to the Air Force's compilation of system notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on them should address inquiries to or visit the system manager. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address requests to the system manager.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From medical records and personal observations of Nursing Service personnel.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F044 AF SG M

SYSTEM NAME:

Compression Chamber Operations (June 11, 1997, 62 FR 31793).

Changes

* * * * *

SYSTEM NAME:

Delete entry and replace with 'Hyperbaric Medical Operations'.

SYSTEM LOCATION:

Delete entry and replace with 'Treatment records (original) are retained in individual health record at United States Air Force or other DoD medical treatment facilities or at the National Personnel Records Center, Civilian Personnel Records, 111 Winnebago Street, St. Louis, MO 63118–4126. A copy is retained at USAF School of Aerospace Medicine, Hyperbaric Medicine Division (USAFSAM/FEH), 2601 Louis Bauer Drive, Brooks City-Base TX 78235–5130. If Hyperbaric medical treatment is provided at system locations other than USAFSAM/FEH, a copy of emergency Hyperbaric treatment records, *i.e.*, treatment records generated for decompression sickness (DCS), arterial gas embolism (AGE), carbon monoxide poisoning (CO-poisoning) or gas gangrene will be sent to USAFSAM/FEH. Compression Chamber Reactor Case Report (AF Form 361; original) is retained indefinitely at USAFSAM/FEH, Brooks City-Base and for 3 years at individual Aerospace Physiology Training Units.'

CATEGORY OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with 'Personnel performing treatments; patients who are active duty military personnel, retired Air Force military personnel, dependents of military personnel, dependents of retired military, selected international students, and civilians treated on an emergency basis.'

CATEGORY OF RECORDS IN THE SYSTEM:

Delete entry and replace with 'Treatment records of patient and records of personnel conducting treatment. Records of training dives are maintained on officers and technicians performing treatment dives.'

* * * * *

PURPOSE(S):

Delete entry and replace with 'Provide an exact record for a patient treated by recompression therapy and documents patient's response to treatment.

Records are maintained on persons performing treatments because they are exposed to the same treatment profiles as their patients and to insure their capability of performing treatment. Records are used for research and statistical analysis by the Air Force Medical Operations Agency.

Records are maintained on technicians/officers conducting

procedures at treatment site to determine professional adequacy to participate in treatment dives.'

* * * * *

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Add a new paragraph to the end of the entry '**Note:** This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.'

* * * * *

SAFEGUARDS:

Delete entry and replace with 'Records are accessed by patient's medical care provider(s) and by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel conducting IRB-approved research protocols. Records are stored in locked rooms and cabinets.'

* * * * *

F044 AF SG M

SYSTEM NAME:

Hyperbaric Medical Operations.

SYSTEM LOCATION:

Treatment records (original) are retained in individual health record at United States Air Force or other DoD medical treatment facilities or at the National Personnel Records Center, Civilian Personnel Records, 111 Winnebago Street, St. Louis, MO 63118–4126. A copy is retained at USAF School of Aerospace Medicine, Hyperbaric Medicine Division (USAFSAM/FEH), 2601 Louis Bauer Drive, Brooks City-Base TX 78235–5130. If Hyperbaric medical treatment is provided at system locations other than USAFSAM/FEH, a copy of emergency Hyperbaric treatment records, *i.e.*, treatment records generated for decompression sickness (DCS), arterial gas embolism (AGE), carbon monoxide poisoning (CO-poisoning) or gas gangrene will be sent to USAFSAM/FEH. Compression Chamber Reactor Case Report (AF Form 361; original) is retained indefinitely at USAFSAM/FEH, Brooks City-Base and for 3 years at individual Aerospace Physiology Training Units.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Personnel performing treatments; patients who are active duty military personnel, retired Air Force military personnel, dependents of military personnel, dependents of retired military, selected international students, and civilians treated on an emergency basis.

CATEGORIES OF RECORDS IN THE SYSTEM:

Treatment records of patient and records of personnel conducting treatment. Records of training dives are maintained on officers and technicians performing treatment dives.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force; 10 U.S.C. 55, Medical and Dental Care, as implemented by Air Force Instruction 48–104, Aerospace Medicine; and Air Force Instruction 48–112, Hyperbaric Chamber Program.

PURPOSE(S):

Provide an exact record for a patient treated by recompression therapy and documents patient's response to treatment.

Records are maintained on persons performing treatments because they are exposed to the same treatment profiles as their patients and to insure their capability of performing treatment. Records are used for research and statistical analysis by the Air Force Medical Operations Agency.

Records are maintained on technicians/officers conducting procedures at treatment site to determine professional adequacy to participate in treatment dives.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records, or information contained therein, may specifically be disclosed outside the DOD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders and visible file binders/cabinets.

RETRIEVABILITY:

Retrieved by name.

SAFEGUARDS:

Records are accessed by patient's medical care provider(s) and by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel conducting IRB-approved research protocols. Records are stored in locked rooms and cabinets.

RETENTION AND DISPOSAL:

Treatment Records (original) retained in individual health record for fifty years after date of latest document and then destroyed. First copy and other copies at Armstrong Laboratory, Air Force Medical Operations Agency and major commands are retained in office files until superseded, obsolete, no longer needed for reference, or on inactivation, then destroyed. Copies at Physiological Training Units are destroyed after 3 years; Compression Chamber Operation Record at Physiological Training Units are retained in office files until superseded, obsolete, no longer needed for reference, or on inactivation, then destroyed. Compression Chamber Reaction Case Report (original) retained in individual health record for fifty years after date of latest document, then destroyed. First copy at Armstrong Laboratory and other copies at Headquarters Air Force Medical Operations Agency and major commands are retained in office files until superseded, obsolete, no longer needed for reference, or on inactivation, then destroyed. Copies at Physiological Training Units retained in office files until superseded, obsolete, no longer needed for reference, or on inactivation, then destroyed. Oxygen Sensitivity Tolerance/Pressure Test retained in individual health record for fifty years after date of latest document, then destroyed. All records are destroyed by tearing into pieces, shredding, pulping, macerating or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Headquarters Air Force Medical Operation Agency, 170 Luke Avenue, Suite 400, Bolling Air Force Base, DC 20332–5113.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on themselves should apply to the Medical Records Section of the relevant medical treatment facility for access.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system of records should apply to the Medical Records Section of the relevant medical treatment facility for access.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Physicians regarding diagnosis/ treatment.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 03–22113 Filed 8–29–03; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to delete a system of records.

SUMMARY: The Department of the Air Force is deleting one system of records notice from its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on September 29, 2003, unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the Air Force Privacy Act Manager, Office of the Chief Information Officer, AF–CIO/P, 1155 Air Force Pentagon, Washington, DC 20330–1155.

FOR FURTHER INFORMATION CONTACT: Mrs. Anne Rollins at (703) 601–4043.

SUPPLEMENTARY INFORMATION: The Department of the Air Force systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records systems being amended are set forth below followed by the notices, as amended, published in their entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: August 22, 2003.

Patricia Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F036 AETC H

SYSTEM NAME:

Processing and Classification of Enlistees (PACE) (June 11, 1997, 62 FR 31793).

Reason: These records have been incorporated into the Air Force system of records identified as F036 AF PC Q, entitled 'Personnel Data System (PDS)'.

[FR Doc. 03–22115 Filed 8–28–03; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to amend a system of records.

SUMMARY: The Department of the Army is amending a system of records notice in its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on September 29, 2003, unless comments are received which result in a contrary determination.

ADDRESSES: Department of the Army, Freedom of Information/ Privacy Act Office, U.S. Army Records Management and Declassification Agency, ATTN: TAPC–PDD–FP, 7798 Cissna Road, Suite 205, Springfield, VA 22153–3166.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806–7137/DSN 656–7137.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: August 25, 2003.

Patricia Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0608–18 DASG

SYSTEM NAME:

Army Family Advocacy Program Files (April 4, 2003, 68 FR 16484).

Changes

* * * * *

SYSTEM LOCATION:

Delete first paragraph and replace with ''Primary location: Commander, U.S. Army Medical Command, ATTN: MCHO–CL–H(ACR), 2050 Worth Road, Fort Sam Houston, TX 78234–6010.''

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with ''Records are destroyed 25 years after case is closed.''

* * * * *

A0608–18 DASG

SYSTEM NAME:

Army Family Advocacy Program Files.

SYSTEM LOCATION:

Primary location: Commander, U.S. Army Medical Command, ATTN: MCHO-CL-H(ACR), 2050 Worth Road, Fort Sam Houston, TX 78234–6010.

Secondary location: Any Army medical treatment facility that supports the Family Advocacy Program (FAP). Official mailing addresses are published as an appendix to the Army's compilation of record systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Eligible military members and their family, and DoD civilians who participate in the Family Advocacy Program (FAP).

CATEGORIES OF RECORDS IN THE SYSTEM:

Family Advocacy Case Review Committee (CRC) records of established cases of child/spouse abuse or neglect to include those occurring in Army sanctioned or operated activities.

Files may contain extracts of law enforcement investigative reports, correspondence, Case Review

Committee reports, treatment plans and documentation of treatment, follow-up and evaluative reports, supportive data relevant to individual family advocacy Case Review Committee files, summary statistical data reports and similar relevant files.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; 42 U.S.C. 10606 *et seq.*, Victims' Rights, as implemented by Department of Defense Instruction 1030.2, Victim and Witness Assistance Program; Army Regulation 608–18, The Family Advocacy Program; and E.O. 9397 (SSN).

PURPOSE(S):

To maintain records that identify, monitor, track and provide treatment to alleged offenders, eligible victims and their families of substantiated spouse/child abuse, and neglect. To manage prevention programs to reduce the incidence of abuse throughout the Army military communities.

To perform research studies and compile statistical data.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Information may be disclosed to departments and agencies of the Executive Branch of government in performance of their official duties relating to coordination of family advocacy programs, medical care and research concerning child abuse and neglect, and spouse abuse.

The Attorney General of the United States or his authorized representatives in connection with litigation or other matters under the direct jurisdiction of the Department of Justice or carried out as the legal representative of the Executive Branch agencies.

To federal, state, or local governmental agencies when it is deemed appropriate to use civilian resources in counseling and treating individuals or families involved in child abuse or neglect or spouse abuse; or when appropriate or necessary to refer a case to civilian authorities for civil or criminal law enforcement; or when a state, county, or municipal child protective service agency inquires about a prior record of substantiated abuse for the purpose of investigating a suspected case of abuse.

To the National Academy of Sciences, private organizations and individuals for health research in the interest of the Federal government and the public and authorized surveying bodies for professional certification and accreditation such as Joint Commission on the Accreditation of Health Care Organizations.

To victims and witnesses of a crime for purposes of providing information consistent with the requirements of the Victim and Witness Assistance Program, regarding the investigation and disposition of an offense.

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and on electronic storage media.

RETRIEVABILITY:

By the sponsor's Social Security Number of an abused victim.

SAFEGUARDS:

Records are maintained in various kinds of filing equipment in specified monitored or controlled areas. Public access is not permitted. Records are accessible only to authorized personnel who are properly screened and trained, and have an official need-to-know. Computer terminals are located in supervised areas with access controlled by password or other user code system.

RETENTION AND DISPOSAL:

Records are destroyed 25 years after case is closed.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Army Medical Command, ATTN: MCHO–CL–H(ACR), 2050 Worth Road, Fort Sam Houston, TX 78234–6010.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the local Patient Administration Division Office; to the commander of the medical center or hospital where treatment was received; or to the Commander, U.S. Army Medical Command, ATTN: MCHO–CL–H(ACR), 2050 Worth Road, Fort Sam Houston, TX 78234–6010. Official mailing addresses are published as an appendix to the Army's compilation of record systems notices.

For verification purposes, the individual should provide the full name, Social Security Number of the patient's sponsor, and current address, date and location of treatment, and any details that will assist in locating the record, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking to access information about themselves contained in this record system should address written inquiries to the local Patient Administration Division Office; to the commander of the medical center or hospital where treatment was received; or to the Commander, U.S. Army Medical Command, ATTN: MCHO–CL–H(ACR), 2050 Worth Road, Fort Sam Houston, TX 78234–6010. Official mailing addresses are published as an appendix to the Army's compilation of record systems notices.

For verification purposes, the individual should provide the full name, Social Security Number of the patient's sponsor, and current address, date and location of treatment, and any details that will assist in locating the record, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations by the concerned individual are published in the Department of the Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, educational institutions, medical institutions, police and investigating officers, state and local government agencies, witnesses, and records and reports prepared on behalf of the Army by boards, committees, panels, auditors, etc. Information may also derive from interviews, personal history statements, and observations of behavior by professional persons (*i.e.*, social workers, physicians, including psychiatrists and pediatricians, psychologists, nurses, and lawyers).

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Investigatory material compiled for law enforcement purposes may be

exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c), and (e) and published in 32 CFR part 505. For additional information contact the system manager.

[FR Doc. 03–22116 Filed 8–28–03; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF EDUCATION

Privacy Act of 1974; Computer Matching Program

AGENCY: Department of Education.

ACTION: Notice—computer matching between the U.S. Department of Education and the Social Security Administration.

SUMMARY: Pursuant to the Computer Matching and Privacy Protection Act of 1988, Public Law 100–503, and the Office of Management and Budget (OMB) Guidelines on the Conduct of Matching Programs, notice is hereby given of the renewal of the computer matching program between the U.S. Department of Education (ED)(recipient agency), and the Social Security Administration (SSA) (the source agency). This renewal of the computer matching program between SSA and ED will become effective as explained below.

In accordance with the Privacy Act of 1974 (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100–503), the OMB Final Guidelines on the Conduct of Matching Programs (see 54 FR 25818, June 19, 1989), and OMB Circular A–130, we provide the following information:

1. Names of Participating Agencies

The U.S. Department of Education and the Social Security Administration.

2. Purpose of the Match

The purpose of this matching program between ED and SSA is to assist the Secretary of Education in his obligation to verify immigration status and social security numbers (SSN) under 20 U.S.C. 1091(g) and (p). The SSA will verify the issuance of an SSN to, and the citizenship status of, those students and parents who provide their SSNs in the course of applying for aid under a student financial assistance program authorized under Title IV of the Higher Education Act of 1965, as amended (HEA). Verification of this information by SSA will help ED satisfy its obligation to ensure that individuals applying for financial assistance meet eligibility requirements imposed by the HEA.

Verification by this computer matching program effectuates the purpose of the HEA, because it provides an efficient and comprehensive method of verifying the accuracy of each individual's SSN and claim to a citizenship status that permits that individual to qualify for Title IV, HEA assistance.

3. Legal Authority for Conducting the Matching Program

ED is authorized to participate in the matching program under sections 484(p)(20 U.S.C. 1091(p)); 484(g)(20 U.S.C. 1091(g)); 483(a)(7)(20 U.S.C. 1090(a)(7)); and 428B(f)(2)(20 U.S.C. 1078–2(f)(2)) of the HEA.

The SSA is authorized to participate in the matching program under section 1106(a) of the Social Security Act, (42 U.S.C. 1306(a)), and the regulations promulgated pursuant to that section (20 CFR part 401).

4. Categories of Records and Individuals Covered by the Match

The Federal Student Aid Application File (18–11–01), which contains the applicant information on authority from ED and the ED PIN Registration System of Records (18–11–12), which contains the applicant's information to receive an ED PIN, will be matched against SSA's Master Files of Social Security Numbers Holders and SSN Applications System, SSA/OEEAS, 60–0058, which maintains records about each individual who has applied for and obtained an SSN.

5. Privacy Impact Assessment

Section 208 of the E-Government Act of 2002 (44 U.S.C. 3501 *note*) requires ED to conduct the following privacy impact assessment of this information collection:

The information collected by ED under this computer matching agreement is the verification of SSNs and citizenship by SSA, for the purpose of assisting ED to satisfy its obligation to ensure that an individual applying for financial assistance meets the requirements imposed under the HEA. This verification is mandated by the HEA. The information obtained from SSA by ED will only be used as provided for under Section X of the agreement. Notice that ED verifies an individual's SSN through a computer matching agreement with agencies such as SSA is provided to individuals in the Privacy and Security section of the Free Application for Federal Student Aid (FAFSA), and in Federal student loan program forms; submission of a FAFSA and participation in the Federal student loan programs is voluntary. The information obtained from SSA under this computer matching agreement will be secured pursuant to the procedures described in Section IX of the agreement. No new system of records is being created for this collection because, as noted above, the verification of SSNs is already included as a routine use in the System of Records for Federal student aid programs. Thus, this collection comports with applicable Privacy Act standards and Section 208.

6. Effective Date of the Matching Program

This matching program must be approved by the Data Integrity Board of each agency. This matching agreement will become effective on: (1) October 10, 2003; (2) 40 days after the approved agreement is sent to Congress and OMB (or later if OMB objects to some or all of the agreement); or (3) 30 days after publication of this notice in the **Federal Register**, whichever date is last.

The matching agreement will continue for 18 months after the effective date and may be extended for an additional 12 months thereafter, if the conditions specified in 5 U.S.C. 552(o)(2)(D) have been met.

7. Address for Receipt of Public Comments or Inquiries

Individuals wishing to comment on this matching program, or to obtain additional information about the program, including a copy of the computer matching agreement between ED and SSA, should contact Ms. Edith Bell, Management and Program Analyst, Union Center Plaza, 830 First Street, NE., Washington, DC 20002–5454. Telephone: (202) 377–3231. If you use a telecommunications device for the deaf

(TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape or computer diskette) on request to the contact person listed in the preceding paragraph.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/legislation/FedRegister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

Dated: August 26, 2003.

Theresa S. Shaw,

Chief Operating Officer, Federal Student Aid.

[FR Doc. 03–22179 Filed 8–28–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP02–74–000 and RP03–90–000]

Enbridge Pipelines (KPC); Notice of Motion To Terminate Proceedings

August 22, 2003.

Take notice that on July 16, 2003, pursuant to Rule 212 of the Commission's Rules of Practice and Procedure, 18 CFR 385.212, Enbridge Pipelines (KPC) and Kansas Gas Service, a division of ONEOK, Inc. (KGS) tendered for filing a request that the Commission terminate the above-referenced proceeding. In support of the motion, Enbridge KPC and KGS state the following.

Pending in these unconsolidated cases is a disputed issue concerning the level of refunds attributed to IT transportation revenues which Enbridge KPC is obligated to provide to KGS pursuant to Section 24.5 of the General Terms and Conditions of Enbridge KPC's tariff.

Enbridge KPC states that on May 1, 2003, Enbridge KPC and KGS, along with the Staff of the Kansas Corporation Commission (KCC), executed a settlement agreement which resolved all pending litigation between and among Enbridge KPC, KGS and the KCC, including the proceedings in Docket Nos. RP02–74–000 and RP03–90–000. The settlement agreement permits Enbridge KPC to retain the IT revenues at issue.

Enbridge KPC states that no other issues are presented in these cases and therefore no other customer or party will be affected by the termination of these dockets. In addition, Enbridge KPC and KGS are authorized to state that the KCC does not oppose this motion.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before the protest date as shown below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Protest Date: September 8, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–22112 Filed 8–28–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12462–000]

Notice of Application Tendered for Filing With the Commission, Soliciting Additional Study Requests

August 22, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Exemption.

b. *Project No.:* 12462–000.

c. *Date Filed:* July 28, 2003.

d. *Applicant:* Indian River Power Supply, LLC.

e. *Name of Project:* Indian River Project.

f. *Location:* On the Westfield River in the town of Russell, Hampden County, Massachusetts. The project does not utilize lands of the United States.

g. *Filed Pursuant to:* Public Utilities Regulatory Policies Act of 1978, 16 U.S.C. 2705, 2708.

h. *Applicant Contact:* Mr. Richard E. Lynch Sr, 22 Woodland Avenue, Westfield, Massachusetts. 01085. i. *FERC Contact:* Michael Spencer, *michael.spencer@ferc.gov,* (202) 502–6093.

j. *Cooperating Agencies:* We are asking Federal, state, and local agencies and Indian tribes with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in item k below.

k. Pursuant to section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. *Deadline for filing additional study requests and requests for cooperating agency status:* September 29, 2003.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents

with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Additional study requests and requests for cooperating agency status may be filed electronically via the internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-filing link.

m. This application is not ready for environmental analysis at this time.

n. *Description of Project:* The Indian River Project consists of: (1) The existing 30-foot-high Russell dam; (2) a small reservoir; (3) a powerhouse and; (4) appurtenant facilities.

o. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the three digits in the docket number field to access the document. For assistance, please contact FERC Online Supoort at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

p. With this notice, we are initiating consultation with the Massachusetts State Historic Preservation Officer (SHPO), as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

Note: The above paragraph initiating consultation with the SHPOs may be unnecessary if that language was included in the pre-filing notice requesting preliminary terms and conditions.

q. *Procedural schedule and final amendments:* The application should be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate.

Issue Deficiency Letter: October 2003.

Issue Acceptance Letter: January 2004.

Issue Scoping Document for Comments: February 2004.

Request Additional Information: April 2004.

Notice of application is ready for environmental analysis: August 2004.

Notice of the availability of the EA: October 2004.

Ready for Commission's decision on the Application: December 2004.

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Magalie R. Salas,

Secretary.

[FR Doc. 03–22109 Filed 8–28–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RM01–12–000 and RT01–67–000]

Remedying Undue Discrimination Through Open Access Transmission Service and Standard Electricity Market Design, GridFlorida, LLC; Notice of Technical Conference

August 22, 2003.

As announced in the Notice of Technical Conference issued on June 18, 2003, a technical conference will be held on September 15, 2003, to discuss with state commissioners and market participants in the GridFlorida region the timetables for addressing wholesale power market design issues and to explore ways to provide flexibility the region may need to meet the requirements of the final rule in this proceeding. Members of the Commission will attend and participate in the discussion.

The conference will focus on the issues identified in the agenda, which is appended to this notice as Attachment A. However, participants/stakeholders may present their views on other important issues that relate to the development of the Wholesale Power Market Platform.

The conference will begin at 9:30 a.m. Eastern Time and will adjourn at about 3:30 p.m. Eastern Time at the offices of the Florida Public Service Commission, Room 148 Betty Easley Conference Center, 4075 Esplanade Way, Tallahassee, Florida. The conference is open for the public to attend, and registration is not required; however, in-person attendees are asked to register for the conference on-line at *http://www.ferc.gov/whats-new/registration/smd_0915-form.asp*.

Transcripts of the conference will be immediately available from Ace Reporting Company (202–347–3700 or 1–800–336–6646) for a fee. They will be available for the public on the Commission's eLibrary system seven calendar days after FERC receives the transcript. Additionally, Capitol Connection offers the opportunity to remotely listen to the conference via the Internet or a Phone Bridge Connection for a fee. Interested persons should make arrangements as soon as possible by visiting the Capitol Connection Web site at *http://www.capitolconnection.gmu.edu* and clicking on ''FERC.'' If you have any questions contact David Reininger or Julia Morelli at the Capitol Connection (703–993–3100).

Questions about the conference program should be directed to:

Steve Rodgers, Director, Division of Tariffs & Market Development—South, Office of Markets, Tariffs & Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8227, *steve.rodgers@ferc.gov.*

Sarah McKinley, Manager of State Outreach, Office of External Affairs, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8368, *sarah.mckinley@ferc.gov*.

Magalie R. Salas,

Secretary.

Appendix A—Agenda

9:30–9:45 a.m. Opening Remarks.

Lila A. Jaber, Chairman, Florida Public Service Commission, Pat Wood, III, Chairman, Federal Energy Regulatory Commission.

9:45–10:30 a.m. Discussion on the State of Florida Market.

Moderator: Roberta Bass, Florida PSC Staff.

Overview of Florida's Electric System: Ken Wiley, Florida Reliability Coordinating Council (FRCC).

Florida Statutory Framework: Susan Clark, Radey, Thomas, Yon, and Clark.

History and Status of GridFlorida: Mike Naeve, Skadden, Arps, Slate, Meagher & Flom.

10:30–11:15 a.m. Regional State Committees.

Moderator: Roberta Bass, Florida PSC Staff.

GridFlorida Applicants: Mike Naeve, Skadden, Arps, Slate, Meagher & Flom.

Municipals: Ed Regan, Gainesville Regional Utilities.

Independent Power Producers: Mike Green, Partnership for Affordable Competitive Energy. (PACE)

11:15–11:30 a.m. Break.

11:30–12:15 p.m. Discussion of Participant Funding Issues.

Moderator: Jim Dean, Florida PSC Staff.

GridFlorida Applicants: Bill Ashburn, Tampa Electric Company (TECO),

Independent Power Producers, Tim Eaves, Calpine Corporation,

Transmission Dependent Utility, Bob Williams, Florida Municipal Power Agency (FMPA).

12:15–1:15 p.m. Lunch.
1:15–2:30 p.m. Discussion of Market Design Issues.
Moderator: Tom Ballinger, Florida PSC Staff.
GridFlorida Applicants: Greg Ramon, Tampa Electric Company (TECO),
Independent Power Producers, John Orr, Reliant Energy,
Transmission Dependent Utility, Tim Woodbury, Seminole Electric Cooperative.
2:30–3 p.m. Next Steps for GridFlorida.
Florida Public Service Commission: Jennifer Brubaker, Florida PSC Staff.
GridFlorida Applicants: Ken Hoffman, Rutledge, Ecenia, Purnell & Hoffman
3–3:30 p.m. Discussion and Public Input.
State and Federal Commissioners.

[FR Doc. 03–22110 Filed 8–28–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Regulations Governing Off-the-Record Communications; Public Notice

August 22, 2003.

This constitutes notice, in accordance with 18 CFR 385 § 2201(b), of the receipt of exempt and prohibited off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive an exempt or prohibited off-the-record communication relevant to the merit's of a contested on-the-record proceeding, to deliver a copy of the communication, if written, or a summary of the substance of any oral communication, to the Secretary.

Prohibited communications will be included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications will be included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of prohibited and exempt communications recently received in the Office of the Secretary. The communications listed are grouped by docket numbers. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC, Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866)208–3676, or for TTY, contact (202)502–8659.

Docket No.	Date filed	Presenter or requester
Prohibited		
1. ER03–1118–000	8–15–03	Stephen G. Kozey.
2. Project No. 2343–000	8–20–03	Chuck Simons
3. EL03–219–000	8–21–03	Mark Runquist.
4. EL03–219–000	8–21–03	Bruce Banister.
5. EL03–219–000	8–21–03	Betty Turner.
6. EL03–219–000	8–21–03	Betty Yunek.
7. EL03–219–000	8–21–03	Randy Schon.
Exempt		
1. EL02–101–001	7–31–03	Jim Sullivan.
2. CP03–33–000	8–21–03	John J. Wisniewski.
3 Project No. 2069–000	8–21–03	Frank Winchell.

Magalie R. Salas,
Secretary.

[FR Doc. 03–22111 Filed 8–28–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7551–1]

Proposed Stipulation of Settlement Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed stipulation of settlement; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended (''Act''), 42 U.S.C. 7413(g), notice is hereby given of a proposed stipulation of settlement to address a lawsuit filed by the New York Public Interest Research Group, Inc. (NYPIRG) in the United States District Court for the Southern District of New York. The lawsuit was filed pursuant to section 304(a) of the Act, 42 U.S.C. 705(a) and alleges that the Administrator failed to meet a mandatory sixty day deadline under section 505(b)(2) of the Act, 42 U.S.C. 7661d(b)(2), for granting or denying petitions seeking the Agency's objection to two Clean Air Act Title V operating permits issued by the New York State Department of Environmental Conservation (DEC). In addition, NYPIRG petitioned the Administrator seeking the Agency's objection to twelve other operating permits issued by the DEC. These fourteen petitions are addressed by the proposed stipulation of settlement, which establishes a schedule for the Administrator to respond to these petitions.

DATES: Written comments on the proposed stipulation of settlement agreement must be received by September 29, 2003.

ADDRESSES: Submit your comments, identified by docket ID number OGC–2003–0001, online at *http://www.epa.gov/edocket* (EPA's preferred method); by e-mail to *oei.docket@epa.gov*; mailed to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD-ROM should be formatted in Wordperfect or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

FOR FURTHER INFORMATION CONTACT: Apple Chapman or Padmini Singh, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Stipulation of Settlement

NYPIRG alleges that the United States Environmental Protection Agency Administrator failed to meet a mandatory sixty day deadline under section 505(b)(2) of the Act, 42 U.S.C. 7662d(b)(2), for granting or denying petitions seeking EPA's objection to a total of fourteen Title V permits (two in this case and an additional twelve pending before the Agency) issued by the New York State Department of Environmental Conservation.

The proposed stipulation establishes a schedule for EPA's responses to these petitions. The proposed stipulation of settlement requires EPA to sign orders responding to the plaintiffs' petitions for the following facilities no later than the dates specified:

(a) the Huntley Steam Generating Station petition, by July 31, 2003;

(b) the Dunkirk Steam Generating Station petition, by July 31, 2003;

(c) the Consolidated Edison Company of New York's Hudson Avenue Generating Station petition, by September 30, 2003;

(d) the Consolidated Edison Company of New York's Ravenswood Steam Plant petition, by September 30, 2003;

(e) the Al Turi Landfill petition, by January 23, 2004;

(f) the New York Organic Fertilizer Corporation petition, by May 22, 2004;

(g) the Sirmos Division of Bromante Corporation petition, by May 22, 2004;

(h) the New York City Transit Authority's East NY Bus Depot petition, by May 22, 2004;

(i) the Keyspan Generation Far Rockaway Station petition, by September 24, 2004;

(j) the North River Water Pollution Control Plant petition, by September 24, 2004;

(k) the Motiva Enterprises petition, by September 24, 2004;

(l) the Bristol Myers Squibb petition, by February 18, 2005;

(m) the Eastman Kodak Power Plant petition by February 18, 2005; and

(n) the Eastman Kodak Manufacturing Plant petition, by February 18, 2005.

The Administrator signed orders responding to (a) the Huntley Steam Generating Station petition, and (b) the Dunkirk Steam Generating Station petition on July 31, 2003.

For a period of thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed stipulation of settlement from persons who were not named as parties or interveners to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed stipulation of settlement if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determine, based on any comment which may be submitted, that consent to the stipulation of settlement should be withdrawn, the terms of the stipulation will be affirmed.

II. Additional Information About Commenting on the Proposed Stipulation of Settlement

A. How Can I Get A Copy of the Stipulation of Settlement?

EPA has established an official public docket for this action under Docket ID No. OGC–2003–0001 which contains a copy of the stipulation of settlement. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

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. Once in the system, select ''search,'' then key in the appropriate docket identification number.

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 in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in EPA's electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

B. How and to Whom Do I Submit Comments?

You may submit comments as provided in the **ADDRESSES** section. 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.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment and with any disk or CD ROM you submit. 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. 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, and made available in EPA's electronic

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.

Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket 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. In contrast to EPA's electronic public docket, EPA's electronic mail (e-mail) system is not an ''anonymous access'' system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, your e-mail address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: August 21, 2003.

Lisa K. Friedman,

Associate General Counsel.

[FR Doc. 03–22159 Filed 8–28–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0275; FRL–7324–3]

Pesticide Program Dialogue Committee; Request for Nominations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA's Office of Pesticide Programs (OPP) is inviting nominations of qualified candidates to be considered for appointment to the Pesticide Program Dialogue Committee (PPDC). EPA's current Charter for the PPDC will expire in November 2003. EPA intends to seek renewal of the PPDC Charter for another 2–year term, November 2003 to November 2005, in accordance with the Federal Advisory Committee Act.

DATES: Nominations must be postmarked no later than October 1, 2003.

ADDRESSES: Nominations should be submitted in writing to Margie Fehrenbach at the address listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: *By mail*: Margie Fehrenbach, Designated Federal Officer for PPDC, Office of Pesticide Programs, (7501C), Environmental Protection Agency, 1200 Pennsylvania Ave.,NW., Washington, DC 20460; telephone number: (703) 308–4775 or(703) 305–7090; fax number: (703) 308–4776; e-mail address:*Fehrenbach.Margie@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

This action is directed to the public in general; however, persons may be interested who work in agricultural settings or persons who are concerned about implementation of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA); the Federal Food, Drug, and Cosmetic Act (FFDCA); and the amendments to both of these major pesticide laws by the Food Quality Protection Act (FQPA), (Public Law 104–170) of 1996. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**. Potentially affected entities may include but are not limited to: Agricultural workers and farmers; pesticide industry and trade associations; environmental, consumer and farmworker groups; pesticide users and growers; pest consultants; State, local and Tribal governments; academia; public health organizations; food processors; and the public. If you have any 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 OPP–2003–0275. 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 Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

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 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. Background

EPA is entrusted with the responsibility of ensuring the safety of the American food supply, the protection and education of those who apply or are exposed to pesticides occupationally or through use of products from unreasonable risk, and general protection of the environment and special ecosystems from potential risks posed by pesticides.

The Pesticide Program Dialogue Committee (PPDC) is a federal advisory committee under the Federal Advisory Committee Act (FACA), Public Law 92–463. It was originally established in September 1995 for a 2–year term and renewed every 2 years. EPA is seeking to renew the current PPDC Charter, which expires in November 2003, for another 2–year term. PPDC provides advice and recommendations to EPA's Office of Pesticide Programs on a broad range of pesticide regulatory, policy and program implementation issues that are associated with evaluating and reducing risks from use of pesticides.

EPA intends to appoint members to 1– or 2–year terms. An important consideration in EPA's selection of members will be to maintain balance and diversity of experience and expertise. EPA also intends to seek broad geographic representation from the following sectors: Environmental/public interest and consumer groups; farm worker organizations; pesticide industry and trade associations; pesticide user, grower, and commodity groups; Federal and State/local/Tribal governments; the general public; academia; and public health organizations.

Potential candidates should submit the following information: Name, occupation, organization, position, address, telephone number and a brief resume containing their background, experience, qualifications, and other relevant information as part of the consideration process. Any interested person and/or organization may submit the name(s) of qualified persons.

Copies of the PPDC Charter are filed with appropriate committees of Congress and the Library of Congress and are available upon request.

List of Subjects

Environmental protection, Agriculture, Agricultural workers, Chemicals, Foods, Pesticides, Pests, Risk assessment, Tolerance reassessment, Public health.

Dated: August 24, 2003.

James Jones

Director, Office of Pesticide Programs.

[FR Doc. 03–22163 Filed 8–28–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7550–8]

Access to Confidential Business Information by Enrollees Under the Senior Environmental Employment Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized grantee organizations under the Senior Environmental Employment (SEE) Program, and their enrollees; access to information which has been submitted to EPA under the environmental statutes administered by the Agency. Some of this information may be claimed or determined to be confidential business information (CBI).

DATES: Comments concerning CBI access will be accepted five days from the date of publication of this document.

ADDRESSES: Comments should be submitted to: Susan Street, National Program Director, Senior Environmental Employment Program (MC 3650A), U.S. Environmental Protection Agency; Ariel Rios Building, 1200 Pennsylvania Ave. NW., Washington, DC 20460. (Telephone (202) 564–0410).

SUPPLEMENTARY INFORMATION: The Senior Environmental Employment (SEE) program is authorized by the Environmental Programs Assistance Act of 1984 (Pub. L. 98–313), which provides that the Administrator may ''make grants or enter into cooperative agreements'' for the purpose of ''providing technical assistance to: Federal, State, and local environmental agencies for projects of pollution prevention, abatement, and control.'' Cooperative agreements under the SEE program provide support for many functions in the Agency, including clerical support, staffing hot lines, providing support to Agency enforcement activities, providing library services, compiling data, and support in scientific, engineering, financial, and other areas.

In performing these tasks, grantees and cooperators under the SEE program and their enrollees may have access to potentially all documents submitted under the Resource Conservation and Recovery Act (RCRA), Clean Air Act (CAA), Clean Water Act (CWA), Safe Drinking Water Act (SDWA), Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), Emergency Planning And Community Rights to Know Act (EPCRA) and Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), to the extent that these statutes allow disclosure of confidential information to authorized representatives of the United States (or to ''contractors'' under the Federal Insecticide, Fungicide, and Rodenticide Act). Some of these documents may contain information claimed as confidential.

EPA provides confidential information to enrollees working under the following cooperative agreements:

Cooperative agreement number	Organization
	National Association for Hispanic Elderly
CQ–830600	NAHE
CQ–830835	NAHE
	National Asian Pacific Center on Aging
CQ–830804	NAPCA
	National Caucus and Center on Black Aged, Inc.
CQ–830940	NCBA
CQ–830977	NCBA
CQ–830978	NCBA
CQ–830979	NCBA
CQ–830981	NCBA
CQ–831052	NCBA
	National Council On the Aging, Inc.
NONE	
	National Older Worker Career Center
CQ–829511	NOWCC
CQ–830915	NOWCC
CQ–830916	NOWCC
CQ–830917	NOWCC
CQ–830919	NOWCC
CQ–830920	NOWCC
CQ–830967	NOWCC
CQ–830968	NOWCC
	Senior Service America, Inc.
CQ–829805	SSAI
CQ–830406	SSAI
CQ–830407	SSAI
CQ–831290	SSAI

Among the procedures established by EPA confidentiality regulations for granting access is notification to the submitters of confidential data that SEE grantee organizations and their enrollees will have access. 40 CFR 2.201(h)(2)(iii). This document is intended to fulfill that requirement.

The grantee organizations are required by the cooperative agreements to protect confidential information. SEE enrollees are required to sign confidentiality agreements and to adhere to the same security procedures as Federal employees.

Dated: August 19, 2003.

Noel R. Jamison,

Director, Human Resources Staff #1.

[FR Doc. 03–22161 Filed 8–28–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6643–4]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in the **Federal Register** dated April 4, 2003 (68 FR 16511).

Draft EISs

ERP No. D–AFS–F65040–WI Rating EC2, Programmatic EIS—Cheguamegon-Nicolet National Forests Revised Land and Resource Management Plan, Implementation, Ashland, Bayfield, Florence, Forest, Langlade, Oconto,

Oneida, Price, Sawyer, Taylor and Vilas Counties, CA.

Summary: EPA expressed environmental concerns regarding lack of management strategies for watershed protections, problem species, alternative descriptions, and unauthorized ATV traffic.

ERP No. D–AFS–J65381–SD Rating EC2, Sioux Ranger District Oil and Gas Leasing Project, Implementation, Sioux Ranger District, Custer National Forest, Harding County, SD.

Summary: EPA expressed environmental concerns with potential adverse impacts to air quality and cultural resources. The final EIS should include information on potential air quality impacts from the fire flood oil recovery method and consideration of both direct and indirect project impacts to traditional cultural properties.

ERP No. D–AFS–J65386–MT Rating EC2, Programmatic EIS—Winter Motorized Recreation Amendment 24, Proposal to Change the Flathead National Land and Resource Management Plan, Flathead National Forest, Flathead, Lake and Lincoln Counties, MT.

Summary: EPA expressed environmental concerns with potential impacts to air quality and human health in areas of concentrated use. Also, EPA expressed environmental concerns with the preferred alternative which potentially reduces protection to grizzly bear security.

ERP No. DC–AFS–L65155–00 Rating EC2, Northern Spotted Owl Management Plans, Removal or Modification of the Survey and Manage Mitigation Measure Standards and Guidelines in the Final Supplemental EIS (1994) and Final Supplement EIS (2002) for Amendments, Northwest Forest Plan, WA, CA and OR.

Summary: EPA expressed environmental concerns about the protection of high risk species. An alternative limiting Survey and Manage requirements to a smaller number of species at high risk should be considered. More detail is needed on implementing special species programs, including a detailed implementation and proposed mitigation plan and for species removed from Survey and Manage.

Final EISs

ERP No. F–AFS–F65037–MI, Interior Wetlands Project, Timber Harvest, White Pine Trees Pruning, Growth System Adjustment, Wildlife Openings Creation and Maintenance and Transportation System Improvements, Hiawatha National Forest, Eastside Administrative Unit, Chippewa County, MI.

Summary: EPA continues to have no objections to the project, since no major changes have been made. The preferred alternative was also the alternative favored by EPA.

ERP No. F–AFS–J65342–00, Wasatch-Cache National Forest Revised Land and Resource Management Plan, Implementation, several counties, UT and Uinta County, WY.

Summary: EPA has remaining environmental concerns regarding protection of the watershed and ecological values. Implementation of the monitoring plan is critical to assuring that environmental improvements targets are met.

ERP No. F–AFS–K65417–CA, Blue Fire Forest Recovery Project, Proposal to Move the Existing Condition Caused by the Blue Fire of 2001 Towards the Desired Condition, Modoc National Forest, Warner Mountain Ranger District, Lassen and Modoc Counties, CA.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–AFS–L65410–ID, Gaylord North Timber Sale Project, Harvesting Timber, Council Ranger District, Payette National Forest, Adam County, ID.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–AFS–L65416–ID, Upper Bear Timber Sale Project, Fuel Reduction, Forest Vegetation and Roads Management, Payette National Forest, Council Ranger District, Adams County, ID.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–COE–J28021–CO, Rueter-Hess Reservoir Project, Construction and Operation, Proposed Water Supply Reservoir and Off-Stream Dam, U.S. Army COE Section 404 Permit, Endangered Species Act (Section 7) Permit and Right-of-Way Use Permit, Located on Newlin Gulch along Cherry Creek, Town of Parker, Douglas County, CO.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–UAF–K11110–CA, Los Angeles Air Force Base Land Conveyance, Construction and Development Project, Transfer Portions of Private Development in Exchange for Construction of New Seismically Stable Facilities, Cities of EL Sequndo and Hawthorne, Los Angeles County, CA.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. FS–AFS–J65353–MT, Threemile Stewardship Project, Additional Information concerning the Potential Effects on the Goshawk Habitat, Ashland Ranger District, Custer National Forest, Powder and Rosebud Counties, MT.

Summary: EPA did not object to the preferred alternative to harvest and thin timber, use prescribed fire, and manage road systems. EPA continues to have environmental concerns with potential project effects to goshawk nest territories, and measures for implementing adequate oversight of the timber contractor during project implementation via stewardship contracting to adequately address environmental and ecological concerns.

ERP No. FS–COE–E36154–FL, Upper St. Johns River Basin and Related Areas, Central and Southern Florida Flood Control Project, Proposed Modifications to Project Features North of the Fellsmere Grade to Preserve and Enhance Floodplain and Aquatic Habitats, Brevard County, FL.

Summary: EPA has no objections to the proposed project modifications to improve water quality.

Dated: August 26, 2003.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 03–22164 Filed 8–28–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6643–3]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa*.

Weekly receipt of Environmental Impact Statements

Filed August 18, 2003 through August 22, 2003.

Pursuant to 40 CFR 1506.9.

EIS No. 030387, Draft EIS, AFS, AL, Forest Health and Red-Cockaded Woodpecker (RCW) Initiative, Implementation, Talladega National Forest, Talladega and Shoal Creek Ranger Districts, Calhoun, Cherokee, Clay, Clebourne and Talladega Counties, AL, Comment Period Ends: October 14, 2003, Contact: Jeff Seefeldt (265) 362–2909.

EIS No. 030388, Draft EIS, CGD, WA, Seattle Monorail Project (SMP), Construct and Operate a 14-mile Monorail Transit System called the Green Line, Reviewing Green Line's water crossing at the Lake Washington Ship Canal Bridge and Duwamish Waterway Bridge Modification, USCG

Bridge Permit, Endangered Species Act Section 7 Permit and U.S. Army COE Section 404 Permit, City of Seattle, WA, Comment Period Ends: October 14, 2003, Contact: Austin Pratt (206) 220–7282.

EIS No. 030389, Draft EIS, FHW, NC, Greensboro-High Point Road (NC–1486-NC–4121) Improvements from U.S. 311 (I–74) to Hilltop Road (NC–1424), Cities of Greensboro and High Point, the Town of Jamestown, Guilford County, NC, Comment Period Ends: October 14, 2003, Contact: John F. Sullivan (919) 856–4346.

EIS No. 030390, Final EIS, AFS, CO, Green Ridge Mountain Pine Beetle Analysis Project, Proposal to Reduce the Spread of Mountain Pine Beetle and Associated Tree Mortality, Medicine Bow-Routt National Forest and Thunder Basin National Grassland, Parks Ranger District, Jackson County, CO, Wait Period Ends: September 29, 2003, Contact: Terry De Lay (307) 326–2518. This document is available on the Internet at: *http://www.fs.fed.us/mrnf.*

EIS No. 030391, Draft EIS, NPS, MI, Pictured Rocks National Lakeshore, General Management Plan and Wilderness Study, Implementation, Lake Superior, Munising and Grand Marais, Alger County, MI, Comment Period Ends: November 23, 2003, Contact: Karen Gustin (906) 387–2607. This document is available on the Internet at: *http://www.nps.gov/PIRO.*

EIS No. 030392, Revised Draft EIS, NOA, AK, Alaska Groundfish Fisheries, New Information concerning the Ecosystem and Preferred Alternative, North Pacific Fishery Management Council, Fishery Management Plans for Groundfish Fishery. Gulf of Alaska and the Groundfish Fishery of the Bering Sea and Aleutain Islands Area, AK, Comment Period Ends: October 15, 2003, Contact: James W. Balsiger (907) 586–7221. This document is available on the Internet at: *http://www.fakr.noaa.gov/sustainablefisheries/seis/default.com.*

EIS No. 030393, Draft EIS, NOA, TX, MS, FL, LA, AL, Generic Essential Fish Habitat Amendment to the Fishery Management Plans of the Gulf of Mexico (GOM) for Shrimp Fishery; Red Drum Fishery; Spiny Lobster Fishery of the GOM and South Atlantic Coastal Migratory Pelagic Resources of GOM and South Atlantic, TX, LA, MS, FL and AL, Comment Period Ends: November 26, 2003, Contact: Roy E. Crabtree (727) 570–5301.

EIS No. 030394, Draft Supplement, NOA, ME, VT, CT, NY, DE, NH, MA, RI, NJ, MD, VA, NC, Essential Fish Habitat Components of Amendment 13 to the Northeast Multispecies Fishery Management Plan, Detailed Information on Rebuilding Overfished Stocks, Ending Overfishing and Reducing Unused Effort, New England Management Council, ME, NH, VT, MA, RI, CT, NY, NJ, DE, MD, VA and NC, Comment Period Ends: October 15, 2003, Contact: Paul Howard (978) 465–0492. This document is available on the Internet at: *http://www.nefmc.org.*

EIS No. 030395, Draft Supplement, AFS, WA, Deadman Creek Ecosystem Management Projects, Information on the Planning and Analysis of the Watershed, Three Rivers Ranger District, Colville National Forest, Ferry County, WA, Comment Period Ends: October 14, 2003, Contact: Tom Pawley (509) 738–6111.

EIS No. 030396, Final EIS, CGD, LA, Port Pelican Deepwater Port Construction and Operation, License Approval, Vermillion Lease Block 140 on the Continental Shelf in the Gulf of Mexico southwest of Freshwater City, LA, Wait Period Ends: October 2, 2003, Contact: Mark A. Prescott (202) 267–0225. This document is available on the Internet at: *http://dms.dot.gov.*

EIS No. 030397, Draft EIS, AFS, CO, Arapaho National Recreation Area Forest Health and Fuels Reduction Project, To Implement Pre-Suppression Measures on a Mountain Pine Beetle Infestation in Stands of Lodgepole Pine, Arapaho National Forest, Sulphur Ranger District, Grand County, CO, Comment Period Ends: October 14, 2003, Contact: Rick Caissie (970) 887–4112. This document is available on the Internet at: *http://www.fs.fed.us/r2/districts/srd/arapaho-national-recreation-area/forest-health/Index.htm.*

Dated: August 26, 2003.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 03–22165 Filed 8–28–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7550–9]

Proposed Administrative Order on Consent Under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 Regarding the Sav-Cote Chemical Labs. Superfund Site, Lakewood, NJ

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed Administrative Order on Consent and opportunity for public comment.

SUMMARY: The United States Environmental Protection Agency (''EPA'') is proposing to enter into an administrative settlement to resolve claims under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (''CERCLA''), 42 U.S.C. 9601 *et seq.* In accordance with EPA guidance, notice is hereby given of a proposed administrative settlement pursuant to section 122(h)(1) of CERCLA concerning the Sav-Cote Chemical Labs. Superfund Site, located in Lakewood, New Jersey. Notice is being published to inform the public of the proposed settlement and provide an opportunity to comment. This settlement is intended to resolve the civil liability of certain responsible parties for response costs incurred by EPA at the Sav-Cote Chemical Labs. Superfund Site. CERCLA provides EPA the authority to settle certain claims for response costs incurred by the United States with the approval of the Attorney General of the United States.

The proposed settlement provides that the potentially responsible parties Mr. William Moskowitz and Mrs. Joan Moskowitz will pay $67,486.11, in addition to $607,513.89 already paid by Mr. William Moskowitz, in reimbursement of response costs incurred by EPA in performing a removal action to remove the contaminants and hazardous substances from the Sav-Cote Chemical Labs. Superfund Site in return for a covenant not sue under section 107 of CERCLA from the United States.

DATES: Comments must be provided on or before September 29, 2003.

ADDRESSES: Comments should be addressed to the U.S. Environmental Protection Agency, Office of Regional Counsel, 290 Broadway—17th Floor, New York, New York 10007–1866 and should refer to: In the Matter of Sav-Cote Chemical Labs. Superfund Site, William Moskowitz and Joan

Moskowitz, Settling Parties, U.S. EPA Region II Docket No. CERCLA–02–2003–2020.

FOR FURTHER INFORMATION CONTACT: U.S. Environmental Protection Agency, Office of Regional Counsel, 290 Broadway—17th Floor, New York, New York 10007–1866, Attention: Muthu S. Sundram, Esq. (212) 637–3148.

SUPPLEMENTARY INFORMATION: A copy of the proposed administrative settlement agreement, as well as background information relating to the settlement, may be obtained in person or by mail from EPA's Region II Office of Regional Counsel, 290 Broadway—17th Floor, New York, New York 10007–1866.

Dated: August 19, 2003.

William McCabe,

Acting Director, Emergency & Remedial Response Division.

[FR Doc. 03–22160 Filed 8–28–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection(s) Requirement Submitted to OMB for Emergency Review and Approval

August 25, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before September 29, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Kim A. Johnson, Office of Management and Budget, Room 10236 NEOB, Washington, DC 20503, (202) 395–7232, or via fax at 202–395–5167, or via Internet at *Kim_A._Johnson@omb.eop.gov;* and Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554, or via Internet to *Judith-B.Herman@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Judith B. Herman at 202–418–0214 or via Internet at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION: *The Commission has requested emergency OMB processing review of this new information collection with an approval by September 5, 2003.*

OMB Control Number: 3060–XXXX.

Title: Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket Nos. 01–338, 96–98, and 98–147, Report and Order and Order on Remand and Further NPRM.

Form No.: N/A.

Type of Review: New collection.

Respondents: Business or other for-profit and not-for-profit institutions.

Number of Respondents: 2,369.

Estimated Time Per Response: 8–40 hours.

Frequency of Response: On occasion reporting requirement, third party disclosure requirement and recordkeeping requirement.

Total Annual Burden: 74,120 hours.

Total Annual Cost: $5,275,000.

Needs and Uses: In the Report and Order on Remand and Further Notice of Proposed Rulemaking, issued in FCC 03–36, the Commission adopts new rules to govern the availability of unbundled network elements to competitive local exchange carriers from incumbent local exchange carriers. The Commission amended its standard for determining which network elements must be provided on an unbundled basis and determines which network elements meet this standard. The Commission establishes eligibility criteria for certain combination of unbundled network elements. The Commission allows state regulatory commissions to initiate proceedings to make additional determinations consistent with specific Commission guidance.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 03–22171 Filed 8–28–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

August 18, 2003.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before September 29, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *Leslie.Smith@fcc.gov;* or Kim A. Johnson, Office of Management and Budget (OMB), Room 10236 NEOB, Washington, DC 20503, (202) 395–3562, or via the Internet at *Kim_A._Johnson@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copy of the information collection(s) contact Les

Smith at (202) 418–0217 or via the Internet at *Leslie.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0249.

Title: Section 74.781, Station Records.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business and other for-profit entities; Not-for-profit institutions; State, Federal or Tribal governments.

Number of Respondents: 7,400.

Estimated Time per Response: 15 to 45 minutes.

Frequency of Response: Recordkeeping

Total Annual Burden: 5,735 hours.

Total Annual Costs: $666,000.

Needs and Uses: 47 CFR 74.781 requires licensees of low power television, TV translator, and TV booster stations to maintain adequate records. FCC staff in field inspections use the records to ensure that reasonable measures are taken to maintain proper station operations and to ensure compliance with the Commission's rules.

OMB Control Number: 3060–0568.

Title: Commercial Leased Access Rates, Terms, and Conditions.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; State, local, or Tribal government.

Number of Respondents: 6,330.

Estimated Time per Response: 2 mins to 10 hrs.

Frequency of Response: Recordkeeping; Third party disclosure.

Total Annual Burden: 94,171 hours.

Total Annual Costs: $74,000.

Needs and Uses: The FCC and prospective leased access programmers use this information to verify rate calculations for leased access channels and to eliminate uncertainty negotiations for leased commercial access. The Commission's leased access requirements are designed to promote programming diversity and competition in programming delivery as required by section 612 of the Cable Television Consumer Protection and Competition Act of 1992.

OMB Control Number: 3060–0569.

Title: Section 76.975, Commercial Leased Access Dispute Resolution.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; State, local, or tribal government.

Number of Respondents: 60.

Estimated Time per Response: 4 to 40 hours.

Frequency of Response: On occasion filing requirement; Third party disclosure.

Total Annual Burden: 1,320 hours.

Total Annual Costs: $69,000.

Needs and Uses: 47 CFR 76.975 permits any person aggrieved by the failure or refusal of a cable operator to make commercial channel capacity available or to charge rates for such capacity in accordance with the provisions of Title VI of the Communications Act of 1934 may file a petition for relief with the Commission. The Commission reviews the information to resolve leased access disputes.

OMB Control Number: 3060–0912.

Title: Cable Attribution Rules.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business and other for-profit entities; Individuals or households.

Number of Respondents: 20.

Estimated Time per Response: 4 hours.

Frequency of Response: On occasion reporting requirements.

Total Annual Burden: 80 hours.

Total Annual Costs: None.

Needs and Uses: The FCC uses filings required under 47 CFR 76.501, 76.503, and 76.504 of Commission rules to determine the nature of the corporate, financial, partnership, ownership and other business relationships that confer on their holders a degree of ownership or other economic interest, or influence or control over an entity engaged in the provision of communications services such that the holders are subject to the Commission's regulations.

OMB Control Number: 3060–0938.

Title: Application for a Low Power FM Broadcast Station License, FCC Form 319.

Form Number: FCC Form 319.

Type of Review: Extension of a currently approved collection.

Respondents: Not-for-profit institutions; State, local, or Tribal government.

Number of Respondents: 1,200.

Estimated Time per Response: 1.0 hours.

Frequency of Response: On occasion filing requirements.

Total Annual Burden: 1,800 hours.

Total Annual Costs: $105,000.

Needs and Uses: The FCC Form 319 is required to apply for a new or modified low power FM broadcast station. The data are used by FCC staff to determine whether an applicant has constructed its station in accordance with the outstanding construction permit and to update FCC station files. Data are extracted from the FCC Form 319 for inclusion in the subsequent license to operate the station.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 03–22172 Filed 8–28–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

August 20, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before September 29, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments regarding this Paperwork Reduction Act submission to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street., SW., DC 20554,

or via the Internet to *Judith-B.Herman@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214, or via the Internet at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0921.

Title: Petitions for LATA Boundary Modification for the Deployment of Advanced Services.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 5 respondents; 20 responses.

Estimated Time Per Response: 8 hours.

Frequency of Response: On occasion reporting requirement and third party disclosure requirement.

Total Annual Burden: 160 hours.

Total Annual Cost: N/A.

Needs and Uses: Bell Operating Companies (BOCs) that petition for LATA boundary modifications to encourage the deployment of advanced service on a reasonable and timely basis are requested to include information in accordance with specified criteria. The criteria will serve to ease the petition process on Bell Operating Companies by providing guidelines that will serve to narrow the scope of their petitions to the issues and facts that the Commission is primarily concerned with. In addition, the request will also expedite the petition process by ensuring that petitioners will provide all the information the Commission needs to properly review their requests.

OMB Control No.: 3060–0710.

Title: Policy and Rules Concerning the Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96–98.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 12,250 respondents; 1,052,693 responses.

Estimated Time Per Response: .50–2,880 hours.

Frequency of Response: On occasion reporting requirement, third party disclosure requirement, and recordkeeping requirement.

Total Annual Burden: 1,134,050 hours.

Total Annual Cost: $469,000.

Needs and Uses: The Commission rules and regulations implement parts of sections 251 and 252 that affect local competition. Incumbent local exchange carriers (LECs) are required to offer interconnection, unbundled network elements, transport and termination, and wholesale rates for certain services to new entrants. Incumbent LECs must price such services at rates that are cost-based and just and reasonable and provide access to right-of-way as well as establish reciprocal compensation arrangements for the transport and termination of telecommunications traffic.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 03–22173 Filed 8–28–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

August 22, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before October 28, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *Judith-B.Herman@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214, or via the Internet at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–1007.

Title: Streamlining and Other Revisions of Part 25 of the Commission's Rules.

Form No.: FCC Form 312, Schedule S.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 180 respondents; 1,001 responses.

Estimated Time Per Response: 2 hours.

Frequency of Response: On occasion, annual and other reporting requirements, and third party disclosure requirement.

Total Annual Burden: 9,746 hours.

Total Annual Cost: $107,194,000.

Needs and Uses: On June 20, 2003, the Commission released a Second Report and Order in IB Docket Nos. 02–34 and 00–248, and a Declaratory Order in IB Docket No. 96–111, FCC 03–128, hereinafter referred to as the ''Fleet Management Order.'' The Fleet Management Order adopts a procedure that will give operators the flexibility to operate satellites in their fleets at any one of their orbit locations assigned to their fleet without individual prior Commission approval. In addition, the Order adopts a rule that permits receive-only earth stations to access foreign-licensed satellites on the ''Permitted List.'' The Order adopts a streamlined procedure for minor modifications of space station licenses in section 25.118(e) of the Commission's rules and it eliminates a licensing requirement for certain receive-only stations. The Commission's adoption of a streamlined procedure for minor modifications of space station licenses expedites the grant of applications that do not involve increase interference potential and facilitates service to the public. Under this new streamlined procedure, a space station operator may modify its license without prior authorization, but upon 30 days prior notice to the Commission and any potentially affected licensed

spectrum user, provided that the operator meets the certain technical requirements. The Commission uses this information to determine the technical, legal and financial qualifications of applicants or licensees to operate a station, transfer or assign a license, and to determine whether the authorization is in the public interest, convenience and necessity.

OMB Control No.: 3060–1022.

Title: Section 101.1403, Broadcast Carriage Requirements.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 214.

Estimated Time Per Response: 1 hour.

Frequency of Response: On occasion reporting requirement, and third party disclosure requirement.

Total Annual Burden: 214 hours.

Total Annual Cost: N/A.

Needs and Uses: On July 7, 2003, the FCC released a Third Report and Order in ET Docket No. 98–206, FCC 03–152, which requires Multichannel Video Distribution and Data Service (MVDDS) respondents that meet the statutory definition of Multiple Video Programming Distributor (MVPD) to comply with the broadcast carriage requirements located at 47 U.S.C. 325(b)(1). Any MVDDS licensee that is an MVPD must obtain the prior express authority of a broadcast station before retransmitting that station's signal, subject to the exceptions contained in Section 325(b)(2) of the Communications Act of 1934, as amended. Additionally, the Commission decided to change from the original Component Economic Areas (CEAs) to Designated Market Areas (DMAs) to allow for advanced wireless services.

OMB Control No.: 3060–1023.

Title: Section 101.103, Frequency Coordination Procedures.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 214.

Estimated Time Per Response: .50 hours.

Frequency of Response: On occasion reporting requirement, and third party disclosure requirement.

Total Annual Burden: 107 hours.

Total Annual Cost: N/A.

Needs and Uses: On July 7, 2003, the FCC released a Third Report and Order in ET Docket No. 98–206, FCC 03–152, which requires Multichannel Video Distribution and Data Service (MVDDS) licensees to provide notice of intent to construct a proposed antenna to NGSO FSS licensing operating in the 12.2–12.7 GHz frequency band and to maintain an Internet web site of all existing transmitting sites and transmitting antennas that are scheduled for operation within one year including the ''in service'' dates. Additionally, the Commission decided to change from the original Component Economic Areas (CEAs) to Designated Market Areas (DMAs) to allow for advanced wireless services.

OMB Control No.: 3060–1024.

Title: Section 101.1413, License Term and Renewal Expectancy; Section 101.1421, Coordination of Adjacent Area MVDDS Stations and Incumbent Public Safety POFS Stations.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 214.

Estimated Time Per Response: .50 hours.

Frequency of Response: On occasion reporting and 10 year reporting requirements, and third party disclosure requirement.

Total Annual Burden: 107 hours.

Total Annual Cost: $8,900.

Needs and Uses: On July 7, 2003, the FCC released a Third Report and Order in ET Docket No. 98–206, FCC 03–152, which requires Multichannel Video Distribution and Data Service (MVDDS) renewal applicants to comply with the requirements to provide substantial service by the end of the ten year initial license term. Additionally, the Commission decided to change from the original Component Economic Areas (CEAs) to Designated Market Areas (DMAs) to allow for advanced wireless services.

OMB Control No.: 3060–1025.

Title: Section 101.1440, MVDDS Protection of Direct Broadcast Satellites (DBS).

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 214.

Estimated Time Per Response: 40 hours.

Frequency of Response: On occasion reporting requirement, and third party disclosure requirement.

Total Annual Burden: 8,560 hours.

Total Annual Cost: N/A.

Needs and Uses: On July 7, 2003, the FCC released a Third Report and Order in ET Docket No. 98–206, FCC 03–152, which requires Multichannel Video Distribution and Data Service (MVDDS) licensees to conduct a survey of the area around its proposed transmitting antenna site to determine the location of all DBS customers that may potentially be effected by the introduction of its MVDDS service. The MO&O and Second Report and Order will ensure that MVDDS signal will not be in excess of the appropriate Equivalent Power Flux Density (EPFD) limits as written in 47 CFR 101.105(a)(4)(ii)(B) is causing interference to DBS customers. If the MVDDS licensee determines that its signal level will exceed the EPFD limit at any DBS customer site, it shall take whatever steps are necessary, up to and including finding a new transmission site. Additionally, the Commission decided to change from the original Component Economic Areas (CEAs) to Designated Market Areas (DMAs) to allow for advanced wireless services.

OMB Control No.: 3060–1026.

Title: Section 101.1417, Annual Report.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 214.

Estimated Time Per Response: 1 hour.

Frequency of Response: Annual reporting requirement.

Total Annual Burden: 214 hours.

Total Annual Cost: N/A.

Needs and Uses: On July 7, 2003, the FCC released a Third Report and Order in ET Docket No. 98–206, FCC 03–152, which requires Multichannel Video Distribution and Data Service (MVDDS) licensees to file two copies of a ''licensee information report'' by March 1st of each year with the Commission, for the preceding calendar year. This report must include the name and address of the licensee, station(s) call letters and primary geographic service area(s), and statistical data for the licensee's station(s). This report enables the Commission to keep track of the number of MVDDS licensee stations. Additionally, the Commission decided to change from the original Component Economic Areas (CEAs) to Designated Market Areas (DMAs) to allow for advanced wireless services.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 03–22174 Filed 8–28–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

[Docket No. OP–1158]

Anti-Tying Restrictions of Section 106 of the Bank Holding Company Act Amendments of 1970

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed interpretation and supervisory guidance with request for public comment.

SUMMARY: The Board proposes to adopt an interpretation of the anti-tying restrictions of section 106 of the Bank Holding Company Act Amendments of 1970 and related supervisory guidance. The interpretation describes the scope and purposes of section 106, the elements of a tying arrangement prohibited by section 106, and the statutory and regulatory exceptions to the prohibitions of section 106. The interpretation also includes examples of the types of conduct, actions and arrangements by banks that are prohibited and permissible under section 106. The Board believes that adoption of the interpretation will assist banks and their customers in understanding the scope of the anti-tying restrictions of the statute. The related supervisory guidance discusses the types of internal controls that should help banks comply with section 106. The proposed interpretation and guidance reflect the principles that the Board will apply in enforcing section 106 and conducting anti-tying reviews at banking organizations.

DATES: Comments must be received on or before September 30, 2003.

ADDRESSES: Comments should refer to Docket No. OP–1158 and may be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. However, because paper mail in the Washington area and at the Board of Governors is subject to delay, please consider submitting your comments by e-mail to *regs.comments@federalreserve.gov* or faxing them to the Office of the Secretary at 202–452–3819 or 202–452–3102. Members of the public may inspect comments in Room MP–500 of the Martin Building between 9 a.m. and 5 p.m. on weekdays pursuant to section 261.12, except as provided in section 261.14, of the Board's Rules Regarding Availability of Information (12 CFR 261.12 and 261.14).

FOR FURTHER INFORMATION CONTACT: Scott G. Alvarez, Associate General Counsel (202–452–3583), Kieran J. Fallon, Senior Counsel (202–452–5270), Mark E. Van Der Weide, Counsel (202–452–2263), or Andrew S. Baer, Counsel (202–452–2246), Legal Division; or Michael G. Martinson, Associate Director (202–452–3640), or Michael J. Schoenfeld, Senior Supervisory Financial Analyst (202–452–2836), Division of Banking Supervision and Regulation; Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. For users of Telecommunications Device for the Deaf (TDD) only, contact 202–263–4869.

SUPPLEMENTARY INFORMATION:

Background

Section 106 of the Bank Holding Company Act Amendments of 1970 (section 106) generally prohibits a bank from conditioning the availability or price of one product on a requirement that the customer also obtain another product from the bank or an affiliate of the bank.[1] Thus, for example, the statute prohibits a bank from conditioning the availability of a loan from the bank (or a discount on the loan) on the requirement that the customer also purchase an insurance product from the bank or an affiliate.[2]

Congress adopted section 106 in 1970 at the same time that it expanded the ability of bank holding companies to engage in nonbanking activities under section 4(c)(8) of the Bank Holding Company Act (BHC Act).[3] Congress expressed concern that banks might use their ability to offer bank products—credit in particular—in a coercive manner to gain a competitive advantage in markets for nonbanking products and services (such as insurance sales).[4] Congress therefore decided to impose the special anti-tying restrictions in section 106 on banks.

Section 106 does not apply to the nonbank affiliates of a bank or other nonbank entities.[5] The nonbank affiliates of banks, as well as banks themselves, however, are subject to the anti-tying restrictions contained in the Federal antitrust laws (the Sherman and Clayton Acts).[6]

Although section 106 prohibits banks from imposing certain types of tying arrangements on their customers, the statute also expressly permits banks to engage in other forms of tying and authorizes the Board to grant additional exceptions to the statute's restrictions by regulation or order. For example, section 106 and the Board's regulations expressly permit a bank to condition the availability or price of a product or service on a requirement that the customer also obtain a ''loan, discount, deposit, or trust service'' (a ''traditional bank product'') from the bank or an affiliate of the bank.[7]

Although the general prohibitions of section 106 can be stated fairly simply, determining whether a violation of the statute has occurred often requires a careful analysis of the facts and circumstances associated with the particular transaction (or proposed transaction) at issue. For example, as noted above, several important exceptions exist to the statute's prohibitions. Moreover, the actions, statements and policies of the bank involved in the particular transaction often play an important role in determining whether the bank has violated section 106.

The Federal banking agencies have long required that banking organizations establish and maintain appropriate policies and procedures to ensure compliance with the anti-tying restrictions of section 106,[8] and the agencies monitor these policies and procedures through the supervisory process. For example, the anti-tying policies and procedures of bank holding companies and state member banks are reviewed and evaluated by Federal Reserve examiners as part of the compliance examinations of these organizations. In addition, examiners may conduct more targeted examinations of the marketing programs, anti-tying training materials, internal reports and internal tying investigations of a banking organization.

Over the past several months, Board staff also has met with customers of

[1] 12 U.S.C. 1972. Although part of the Bank Holding Company Act Amendments of 1970, section 106 applies to a bank whether or not the bank is owned or controlled by a bank holding company.

[2] Section 106 also generally prohibits a bank from conditioning the availability or price of one product on a requirement that the customer (i) *provide* another product to the bank or an affiliate of the bank or (ii) *not obtain* another product from a competitor of the bank or a competitor of an affiliate of the bank. 12 U.S.C. 1972(1)(C), (D) and (E). The arrangements prohibited by section 106 are collectively referred to as ''tying arrangements.''

[3] 12 U.S.C. 1843(c)(8).

[4] *See* S. Rep. No. 1084, 91st Cong., 2d Sess. (1970).

[5] In 1971, the Board by regulation extended the anti-tying restrictions of section 106 to bank holding companies and their nonbank subsidiaries. In 1997, however, the Board rescinded this regulatory extension of the statute. *See* 62 FR 9290, Feb. 28, 1997.

[6] 15 U.S.C. 1 *et seq.*; 15 U.S.C. 12 *et seq.*

[7] *See* 12 U.S.C. 1972(1)(A); 12 CFR 225.7(b)(1).

[8] *See, e.g.*, Federal Reserve Board Bank Holding Company Supervision Manual 3500.0; Office of the Comptroller of the Currency Insurance Activities Handbook, Federal Prohibitions on Tying (June 2002); Office of the Comptroller of the Currency Bulletin 95–20 (April 14, 1995).

banks, professional associations representing customers of banks, competitors of banks, and banking organizations and their trade associations concerning the scope, effectiveness and impact of the anti-tying restrictions of section 106 and related issues. In addition, the Board has received inquiries from banks, competitors of banks, customers of banks and a member of Congress regarding section 106 and its application to specific situations.

In light of these events, the complexities associated with section 106, and the increasing importance of section 106 in the wake of the Gramm-Leach-Bliley Act,[9] the Board believes it would be useful and appropriate at this time to publish, and seek public comment on, an official interpretation of section 106 and supervisory guidance for banks concerning section 106. In supervising compliance by banking organizations with section 106 and this interpretation, the Board will take into account whether the manner of applying section 106 or the Board's interpretation in the context of a particular practice was unclear before this document was issued.

Outline of the Proposed Interpretation and Supervisory Guidance

The proposed statement explains the Board's interpretation of section 106. The statement also sets forth the principles that the Board will apply in enforcing the statute and in assessing the anti-tying policies, procedures and systems of banks during the supervisory process. The Board has consulted extensively with the Office of the Comptroller of the Currency in developing the interpretation and supervisory guidance.

The statement is divided into several parts. The first six parts (Parts I–VI) are a proposed Board interpretation of section 106. These parts describe the types of bank conduct that are prohibited by section 106 (Part II), explain the essential elements of a tying arrangement prohibited by section 106 (Part III), and describe the statutory and regulatory exceptions to the anti-tying prohibitions of section 106 (Part IV). The remainder of these six parts provide an introduction to the statement (Part I) and discuss the scope of the terms ''bank'' and ''affiliate'' for purposes of section 106 and the statement (Parts V and VI).

The final part of the statement (Part VII) discusses the policies, procedures and systems that should help banks ensure and monitor their compliance with section 106. This section is guidance that the Board proposes to follow in its supervision of banking organizations going forward.

The interpretation discusses a wide variety of issues related to section 106. Among other matters, the Board's interpretation addresses (i) the scope of the statutory and regulatory traditional bank product exceptions, including the types of products that would qualify as a traditional bank product (*i.e.,* a ''loan, discount, deposit, or trust service'') for purposes of the exceptions; (ii) the permissibility under section 106 of relationship banking programs that involve both traditional bank products and other products (referred to in the interpretation and guidance as ''mixed-product arrangements''); and (iii) whether tying arrangements voluntarily sought or demanded by a customer are permissible under section 106. The interpretation also includes examples of the types of conduct, actions and arrangements by banks that are prohibited and permissible under section 106. These examples, which are included for illustrative purposes, are based solely on the facts stated in the example. Because the determination of whether a violation of section 106 has occurred is fact specific, these examples by themselves do not represent a finding that any past action by a particular bank violated the statute.

The Board seeks comment on all aspects of the proposed interpretation and supervisory guidance. In addition, the Board asks commenters to identify and discuss any section 106 interpretive or compliance issues that are not addressed in the statement but that, in the view of commenters, would be of sufficient importance and general interest to address either in the Board's interpretation or supervisory guidance.

The proposed interpretation and related supervisory guidance follows.

Interpretation of the Anti-tying Restrictions of Section 106 of the Bank Holding Company Act Amendments of 1970 and Related Supervisory Guidance

I. Introduction

The anti-tying provisions of section 106 of the Bank Holding Company Act Amendments of 1970 (''section 106'' or the ''anti-tying prohibitions'') prohibit certain forms of tying by banks.[10] The statute is intended to prevent banks from using their ability to offer bank products, credit in particular, in a coercive manner to gain a competitive advantage in markets for other products and services. Although section 106 sets forth an absolute bar to certain forms of tying by banks, the statute permits other types of tying and permits the Board to grant additional exceptions to its prohibitions. Violations of section 106 may be addressed by the bank's appropriate Federal banking agency through an enforcement action, by the Department of Justice through a request for an injunction, or by a customer or other person injured by the illegal tying arrangement through a request for an injunction or an action for damages.[11]

This statement explains the Board's interpretation of the prohibitions of, and statutory and regulatory exceptions to, section 106. This statement also reflects the principles and factors that the Board will apply in conducting anti-tying reviews at banking organizations and enforcing section 106. In addition, Part VII of this statement includes supervisory guidance outlining the types of anti-tying policies, procedures and systems that the Board believes will help banks ensure compliance with section 106.

Banks and their affiliates also are subject to the tying restrictions contained in the Sherman Act and the Clayton Act that apply to all persons acting in interstate commerce.[12] This statement does not address the applicability of these general antitrust laws, which are within the jurisdiction of the Department of Justice. This statement also does not address the treatment of arrangements involving customers and banks and their affiliates under other Federal or state laws, including sections 23A and 23B of the Federal Reserve Act (12 U.S.C. 371c, 371c–1) and the Real Estate Settlement Procedures Act (12 U.S.C. 2601 *et seq.*).

II. What Conduct Is Prohibited by Section 106?

Section 106 prohibits a bank from extending credit, leasing or selling any property or furnishing any service, or fixing or varying the consideration for any of the foregoing, on the condition or requirement that the customer do any of the following:

1. Obtain some additional credit, property or service from the bank, *other than* a loan, discount, deposit or trust service;

2. Provide some additional credit, property or service to the bank, *other than* those related to and usually provided in connection with a loan, discount, deposit or trust service;

[9] Pub. L. No. 106–102, 113 Stat. 1338 (1999).

[10] 12 U.S.C. 1972(1).

[11] 12 U.S.C. 1972, 1973, 1975 and 1976.

[12] 15 U.S.C. 1 *et seq.*; 15 U.S.C. 12 *et seq.*

3. Obtain from or provide to an affiliate of the bank some additional credit, property or service; or

4. *Not* obtain some additional credit, property or service from a competitor of the bank or of an affiliate of the bank, *unless* the condition is reasonably imposed in a credit transaction to ensure the soundness of the credit.[13]

As this list illustrates, section 106 prohibits banks from imposing certain tying arrangements as well as certain reciprocity and exclusive dealing arrangements on their customers.[14] Thus, for example, section 106 prohibits a bank from imposing a condition on a prospective borrower that requires the borrower to do any of the following in order to obtain a loan from the bank—

- Purchase an insurance product from the bank or an affiliate of the bank (a prohibited tie);
- Obtain corporate debt or equity underwriting services from an affiliate of the bank (a prohibited tie);
- Sell the bank or an affiliate of the bank a piece of real estate unrelated to the requested loan (a prohibited reciprocity arrangement); or
- Refrain from obtaining insurance products or securities underwriting services from a competitor of the bank or from a competitor of an affiliate of the bank (a prohibited exclusive dealing arrangement).

For ease of reference, this statement uses the phrase ''tying arrangement'' to refer to all types of tying, reciprocity and exclusive dealing arrangements described in section 106. In addition, although section 106 generally refers to ''credit,'' ''property'' or ''service'' in describing the items sought or required to be obtained from (or provided to) the bank or an affiliate, this statement uses the term ''product'' to refer to any type of credit, property or service.

There are several noteworthy points about the anti-tying prohibitions of section 106. First, section 106 does not require a bank to extend credit or provide any other product to any customer. That is, section 106 does not prohibit a bank from declining to provide credit or any other product to a customer so long as the bank's decision is not based on the customer's failure to satisfy a condition or requirement prohibited by section 106. Thus, for example, section 106 does not prohibit a bank from denying credit to a customer on the basis of the customer's financial condition, financial resources or credit history, or because the bank does not offer (or seeks to exit the market for) the type of credit requested by the customer.

Second, section 106 applies only to tying arrangements that are imposed by a *bank.* The statute does *not* apply to tying arrangements imposed by a nonbank affiliate of a bank.[15] For example, section 106 prohibits a bank from requiring a person to purchase insurance from the bank's insurance affiliate in order to obtain a reduced interest rate on a loan from the bank. Importantly, such an arrangement is prohibited by section 106 even if the customer is informed of the bank's reduced-rate offer by the bank's insurance affiliate (for example, when the customer applies to the insurance affiliate to obtain insurance). In either case, it is the bank that is varying the price of a bank product (the loan) based on a requirement that the customer obtain another product (insurance) from an affiliate. Such action by the bank violates section 106.

On the other hand, section 106 does not apply to the insurance agency affiliate of the bank.[16] Thus, section 106 would *not* prohibit the insurance agency affiliate of a bank from offering a discount on the premiums the affiliate charges to customers that purchase more than one type of insurance (*e.g.,* homeowners and automobile insurance) from the affiliate. In addition, section 106 would *not* prohibit the insurance agency affiliate from offering discounts on premiums to customers who also have a loan from, or deposit account with, the bank. In both of these cases, it is the affiliate (and not the bank) that has imposed the condition governing the sale of its products.[17]

Third, section 106 covers some activities that are not included in the conventional notion of tying. Namely, section 106 prohibits banks from granting certain types of price discounts—that is, varying the price of a product on the condition that the customer purchase one or more other products from the bank or an affiliate. Thus, section 106 may restrict the ability of banks to provide price discounts (including rebates) on bundled products depending on what products are in the bundle and which ones are discounted. Section 106 does not, however, prohibit a bank from discounting the price of an individual product for reasons that are unrelated to another product. For example, a bank may offer a customer a discount on the purchase of an individual product in light of the amount of the individual product proposed to be purchased by the customer, the creditworthiness of the customer, or the unique features of the product or transaction.

Fourth, several important exceptions exist to the general prohibitions of section 106. For example, the statute itself expressly permits a bank to condition the availability or price of a product on a requirement that the customer also obtain a loan, discount, deposit or trust service from the bank. The statute also expressly permits a bank to condition the availability or price of a product on a requirement that the customer provide the bank some additional product that is related to and usually provided in connection with a loan, discount, deposit or trust service. The Board, acting pursuant to authority conferred by section 106, also has adopted by regulation several important exceptions to the statute's anti-tying restrictions.[18] The statutory and regulatory exceptions to section 106 are discussed in Part IV of this statement.

Because of the statute's complexity and the importance of the actions, statements and policies of the bank in analyzing whether section 106 has been violated, the determination of whether a violation of section 106 has occurred often requires a careful review of the specific facts and circumstances associated with the relevant transaction (or proposed transaction) between the bank and the customer. Banks should establish and maintain policies, procedures and systems that, in light of the nature, scope and complexity of the bank's activities, are reasonably designed to ensure that the bank's employees and representatives are trained appropriately concerning the

[13] For a discussion of the definition of the terms ''bank'' and ''affiliate,'' see Parts V and VI, respectively.

[14] ''Tying arrangements'' are arrangements that require a customer to *obtain* a product from the bank or one of its affiliates as a condition of the bank providing another product to the customer. ''Reciprocity arrangements'' are arrangements that require a customer to *provide* a product to the bank or one of its affiliates as a condition of the bank providing another product to the customer. ''Exclusive dealing arrangements'' are arrangements that require a customer *not to obtain* a product from a competitor of the bank or of an affiliate as a condition of the bank providing another product to the customer.

[15] Tying arrangements imposed by a nonbank affiliate of a bank are, however, subject to the anti-tying restrictions of the general antitrust laws.

[16] There is one exception to the general rule that affiliates of a bank are not subject to section 106. This exception is discussed in Part V.

[17] A bank, however, may not evade the prohibitions of section 106 by engaging jointly with an affiliate in a transaction in which the affiliate nominally imposes a condition on the customer that the bank is prohibited from imposing on the customer under section 106. Part VI of this statement provides some examples of situations when a tie that is nominally imposed by an affiliate of a bank will be viewed as a tie imposed by the bank for purposes of section 106.

[18] 12 U.S.C. 1972(1). The exceptions to section 106 adopted by the Board by regulation are codified in section 225.7 of the Board's Regulation Y (12 CFR 225.7).

anti-tying prohibitions of section 106 and that the bank complies with the statute. Part VII of this statement discusses the types of policies, procedures and systems that should help banks comply with the anti-tying restrictions of section 106.

Bank customers that believe they have been the object of a tying arrangement prohibited by section 106 are encouraged to contact the appropriate Federal banking agency for the bank involved. These agencies are the Office of the Comptroller of the Currency for national banks, the Board for state-chartered banks that are members of the Federal Reserve System (''state member banks''), and the Federal Deposit Insurance Corporation for state-chartered banks that are not members of the Federal Reserve System (''state non-member banks'').

Savings associations are subject to anti-tying restrictions under the Home Owners' Loan Act (HOLA) that are virtually identical to those applicable to banks under section 106.[19] Customers of a savings association that believe the savings association has violated the anti-tying restrictions of the HOLA should contact the Office of Thrift Supervision.

III. What Are the Essential Elements of an Impermissible Tying Arrangement Under Section 106?

Congress modeled section 106 on the anti-tying principles developed under the general antitrust laws (the Sherman and Clayton Acts), which apply to all companies, including banks and their affiliates, that act in interstate commerce. As a general matter, a tying arrangement violates the Sherman and Clayton Acts if:

(1) The arrangement involves two or more separate products;

(2) The seller forces a customer seeking to purchase one of the products (the ''desired product'') also to purchase the other product;

(3) The seller has sufficient economic power in the market for the desired product to enable it to restrain trade in the market for the other product;

(4) The arrangement has anti-competitive effects in the market for the other product; and

(5) The arrangement affects a ''not insubstantial'' amount of interstate commerce.[20]

Although tying arrangements by banks are subject to the general antitrust laws, Congress determined to subject tying arrangements by a *bank* to a stricter standard. As a general matter, there are only two essential elements that must be shown to establish that a tying arrangement by a bank violates section 106:

(1) The arrangement must involve two or more separate products: the customer's desired product(s) and one or more separate tied products; and

(2) The bank must force the customer to obtain (or provide) the tied product(s) from (or to) the bank or an affiliate in order to obtain the customer's desired product(s) from the bank.[21]

This Part III discusses the essential elements of any prohibited tying arrangement under section 106.[22] Part IV discusses the statutory and regulatory exceptions to these general rules, as well as special issues that arise in applying these exceptions.

A. Arrangement Must Involve Two Products—a Desired Product and a Tied Product.

In order for a tying arrangement to exist under section 106, the arrangement must involve two or more separate products. A bank does not violate section 106 by requiring a customer to obtain (or provide) two or more aspects of a single product from (or to) the bank or an affiliate, or by conditioning the availability or varying the price of a product on the basis of the characteristics or terms of that product.[23] For example, a bank does not violate section 106 by requiring—

- A prospective borrower to provide the bank specified collateral in order to obtain the loan or to obtain the loan at a favorable interest rate; or
- An existing borrower to post additional collateral, accept a higher interest rate, or provide updated or additional financial information as a condition of renewal of the loan.

In such circumstances, the bank's conditions relate to the single product sought by the customer (a loan) and do not involve separate, distinguishable products.[24]

In applying section 106, it is useful to identify which of the separate products is the ''tied product'' and which is the ''desired product.'' The ''tied product'' is the product that the customer is required to obtain (or provide) in order to have access to or get a price discount on the ''desired product.'' Section 106 is premised on the notion that the ''desired product'' is the product the customer really seeks.

To illustrate, suppose a customer seeks a mortgage loan (the desired product) from a bank. Section 106 prohibits a bank from requiring that the customer purchase homeowners insurance (the tied product) from the bank or an affiliate of the bank as a condition to granting the customer the mortgage loan or a discount on the loan. However, as discussed in Part IV, some exceptions from the statute's prohibitions are available where the tied product is a traditional bank product (that is a loan, discount, deposit or trust service). The Board notes that certain types of derivative products, such as interest rate and foreign exchange swaps, often are sold by banks and purchased by customers in connection with lending transactions. The Board

[19] *See* 12 U.S.C. 1464(q); *Integon Life Insurance Corp.* v. *Browning,* 989 F.2d 1143, 1149 (11th Cir. 1993).

[20] *See Yentsch* v. *Texaco, Inc.,* 630 F.2d 46 (2d Cir. 1980); *Tic-X-Press, Inc.* v. *Omni Promotions Co.,* 815 F.2d 1407 (11th Cir. 1987); *see also* 9 Phillip Areeda, *Antitrust Law* at ¶1702 (1991). A tying arrangement may be found to be *per se* illegal under the general antitrust laws without any showing of anti-competitive effects in the market for the other product if the seller has sufficiently strong economic power in the market for the desired product. *See Jefferson Parish Hospital District No. 2* v. *Hyde,* 466 U.S. 2 (1984). In these cases, the courts essentially assume that the tying arrangement, combined with the seller's strong economic position in the market for the desired product, has or will produce anti-competitive effects. *Id.* at 16, n. 25.

In conventional antitrust parlance, the desired product is known as the ''tying product,'' because it is customers' desire to obtain it that allows a producer to tie other, possibly unwanted products—the tied products—to it. In the interest of clarity, this statement uses the term ''desired product'' instead of ''tying product.''

[21] Legislative history indicates that economic power, anti-competitive effects, and effects on interstate commerce are not necessary elements of a section 106 claim. *See* S. Rep. No. 1084, 91st Cong., 2d Sess. (1970), *reprinted in* 1970 U.S.C.C.A.N. 5519, 5558 (''Senate Report'') (Supplementary views of Sen. Brooke); Senate Report at 5547 (Supplementary views of Senators Bennett, Tower, Percy and Packwood); *see also Integon Life Insurance Corp.* v *Browning,* 989 F.2d 1143 (11th Cir. 1993); *Amerifirst Properties, Inc.* v. *FDIC,* 880 F.2d 821 (5th Cir. 1989); 62 FR 9290, 9313, Feb. 28, 1997; 59 FR 65473, Dec. 20, 1994.

[22] The exclusive dealing prohibition in section 106 (12 U.S.C. 1972(1)(E)) also prohibits a bank from requiring that a customer refrain from obtaining another product from a competitor of the bank or of an affiliate in order to obtain the customer's desired product. Although exclusive dealing arrangements are not specifically discussed in this Part III, the elements discussed in this Part III are equally applicable to exclusive dealing arrangements prohibited by section 106.

[23] As a general matter, two products are separate and distinct for purposes of section 106 only if there is sufficient consumer demand for each of the products individually that it would be efficient for a firm to provide the two products separately. *See Eastman Kodak Co.* v. *Image Technical Services, Inc.,* 504 U.S. 451, 462 (1992); *Jefferson Parish Hospital District No. 2* v. *Hyde,* 466 U.S. 2, 19 (1984). Determining whether sufficient consumer demand exists for the two products separately often is a highly fact-intensive inquiry that depends on the nature and character of the products and markets involved. *See* 2 Joseph P. Bauer and William H. Page, Kintner Federal Antitrust Law 13.17 (2002).

[24] A tying arrangement, however, may exist where a bank imposes a condition that involves two separate products of the same type (*e.g.*, two separate insurance products).

requests comment on how interest rate swaps, foreign exchange swaps, and other derivative products that often are connected with lending transactions should be treated under section 106.

B. Bank—Imposed Condition or requirement.

Section 106 applies only if a bank provides or offers to provide a customer one product (the desired product), or a discount on the desired product, ''*on the condition or requirement*'' that the customer obtain (or provide) an additional product (the tied product) from (or to) the bank or an affiliate. This element of section 106 was modeled on the tying prohibitions in the general antitrust laws.

Under the general antitrust laws, an illegal tie exists only where the seller forces the customer to purchase the tied product in order for the customer to obtain its desired product.[25] Accordingly, a seller engages in an illegal tie under the general antitrust laws only if it requires the customer to purchase the tied product to obtain the customer's desired product.[26] Moreover, the evidence must demonstrate that the seller imposed the arrangement on the customer through some type of coercion.[27] Thus, the courts have held that a seller's bundled sale of multiple products to a customer does not violate the general antitrust laws if the customer *voluntarily* decided to purchase the package of products from the seller.[28] In such circumstances, the seller has not coerced or forced the buyer to purchase any product from the seller.

The language and legislative history of section 106 indicate that this distinction between an arrangement imposed by the seller and one voluntarily sought by the customer also is embedded in section 106.[29] Accordingly, section 106 applies only if each of two requirements are met: (1) A condition or requirement exists that ties the customer's desired product to another product; and (2) this condition or requirement was imposed or forced on the customer by the bank.[30]

1. *Existence of a condition or requirement.*

First, a violation of section 106 may occur only when a customer is *required* to obtain an additional product from, or provide an additional product to, the bank or an affiliate in order to obtain the customer's desired product or a discount on the desired product.[31] It is the existence of such a requirement that forms the heart of an illegal tying arrangement. Absent a requirement that the customer obtain a separate product from, or provide a separate product to, the bank or an affiliate, there is no ''tie'' between the customer's desired product and another product.

Thus, for example, a bank would violate section 106 if the bank informs a customer seeking only a loan from the bank that the bank will make the loan only if the customer commits to hire the bank's securities affiliate to underwrite an upcoming bond offering for the customer. In this example, the bank has conditioned the availability of credit to the customer on a requirement that the customer obtain another product (bond underwriting services) from an affiliate of the bank.

Section 106, however, does not prohibit a customer from deciding on its own to award some of its business to a bank or an affiliate as a reward for the bank previously providing credit or other products to the customer. Using the example in the previous paragraph, if the bank made the loan to the customer *without* conditioning it on a requirement that the customer obtain one or more additional products from the bank or an affiliate, then no tie actionable under section 106 would exist if the customer later voluntarily decides to award some of its securities underwriting business to the bank's securities affiliate.

In addition, section 106 does not prohibit a bank from granting credit or providing any other product to a customer based solely on a *desire* or *hope* (but not a requirement) that the customer will obtain additional products from the bank or its affiliates in the future. This is true even if the bank conveys to the customer this desire or hope for additional business. Section 106 also does *not* prohibit a bank from cross-marketing the full range of products offered by the bank or its affiliates to a customer or encouraging an existing customer to purchase additional products offered by the bank or its affiliates. Cross-marketing and cross-selling activities, whether suggestive or aggressive, are part of the nature of ordinary business dealings and do not, in and of themselves, represent a violation of section 106. However, bank actions that go beyond cross-marketing or cross-selling and that

[25] *See Times-Picayune Publishing Co.* v. *United States,* 345 U.S. 594, 614 (1953) (''The common core of . . . unlawful tying arrangements is the *forced* purchase of a second distinct commodity with the desired purchase of a dominant 'tying' product'')(emphasis added); *see also Datagate, Inc.* v. *Hewlett-Packard Co.,* 60 F.3d 1421 (9th Cir. 1995), *cert. denied* 517 U.S. 1115 (1996); *Thompson* v. *Multi-List, Inc.,* 934 F.2d 1566, 1577–78 (11th Cir. 1991), *reh'g en banc denied* 946 F.2d 906 (1991); *Yentsch* v. *Texaco, Inc.,* 630 F.2d 46, 56–57 (2d Cir. 1980); *Response of Carolina, Inc.* v. *Leasco Response, Inc.,* 537 F.2d 1307, 1327 (5th Cir. 1976); *American Manufacturers Mut. Ins. Co.* v. *American Broadcasting-Paramount Theatres, Inc.,* 446 F.2d 1131, 1137 (2d Cir. 1971), *cert. denied* 404 U.S. 1063 (1972).

[26] *See, e.g., Northern Pacific Ry.* v. *United States,* 356 U.S. 1, 5–6 (1958) (''a tying arrangement may be defined as an agreement by one party to sell one product *only on the condition* that the buyer also purchases a different (or tied) product'') (emphasis supplied); *Tic-X-Press, Inc.* v. *Omni Promotions Co.,* 815 F.2d 1407, 1415–17 (11th Cir. 1987); 9 Phillip Areeda, *Antitrust Law* at ¶1752 (1991) (''There is no tie for any antitrust purpose unless the defendant improperly imposes conditions that explicitly or practically require buyers to take the second product if they want the first one.'')

[27] *See, e.g., Thompson* v. *Multi-List, Inc.,* 934 F.2d 1566, 1577–78 (11th Cir. 1991), *reh'g en banc denied* 946 F.2d 906 (1991); *Tic-X-Press, Inc.* v. *Omni Promotions Co.,* 815 F.2d 1407, 1415 & 1418–19 (11th Cir. 1987); *Unijax, Inc.* v. *Champion Int'l, Inc.,* 683 F.2d 678, 685 (2d Cir. 1982) (''Actual coercion by the seller that in fact forces the buyer to purchase the tied product is an indispensable element of a tying violation.''); *Bob Maxfield, Inc.* v. *American Motors Corp.,* 637 F.2d 1033, 1037 (5th Cir.) (''actual coercion is an indispensable element of a tie-in charge''), *cert. denied* 454 U.S. 860 (1981).

[28] See, *e.g., Tic-X-Press, Inc.* v. *Omni Promotions Co.,* 815 F.2d 1407, 1417 (11th Cir. 1987) (''two products are not tied as a matter of antitrust law if the buyer voluntarily purchases the tied product''); *Sports Form, Inc.* v. *United Press International, Inc.,* 686 F.2d 750, 754 (9th Cir. 1982) (''Where a company is simply sold what it wishes to buy, there can be no tying problem.''); *Dunkin Donuts of America, Inc.* v. *Dunkin Donuts, Inc.,* 531 F.2d 1211, 1224 (3d Cir.), *cert. denied* 429 U.S. 823 (1976) (''a voluntary purchase of two products is simply not a tie-in''); *Capital Temporaries, Inc.* v. *Olsten Corporation,* 506 F.2d 658, 662 (2d Cir. 1974) (''We do not think that there can be any question that no tying arrangement can possibly exist unless the person aggrieved can establish that he has been required to purchase something which he does not want to take.'')

[29] *See* Conf. Rep. No. 1747, 91st Cong., 2d Sess., *reprinted in* 1970 U.S.C.C.A.N. 5561, 5569 (''Conference Report'').

[30] As discussed in Part IV, exceptions to section 106 *allow* a bank to impose a condition on a customer in certain circumstances where the tied product is a traditional bank product. In addition, as discussed in Part IV, arrangements that allow the customer the option to satisfy a condition imposed by the bank through the purchase of traditional bank products *or* other products do not force a customer to purchase a non-traditional product in violation of section 106 if the customer has a meaningful choice of satisfying the condition solely through the purchase of traditional bank products.

[31] *See* Conference Report at 5580 (Section 106 ''prohibits any subsidiary bank from providing any credit, property or service for a customer on the condition that he must obtain from, or provide to, the holding company or any other subsidiary thereof some additional credit, property or service.''); Senate Report at 5535 (''The purpose of [the anti-tying provisions] is to prohibit anti-competitive practices which require bank customers to accept or provide some other service or product or refrain from dealing with other parties in order to obtain the bank product or services they desire.''); *see also Integon Life Insurance Corp.* v *Browning,* 989 F.2d 1143 (11th Cir. 1993); *Tose* v. *First Pennsylvania Bank,* 648 F.2d 879 (3rd Cir. 1981), *cert. denied* 454 U.S. 893 (1981); *Duryea* v. *Third Northwestern National Bank,* 606 F.2d 823 (8th Cir. 1979); *Stefiuk* v. *First Union,* 61 F. Supp.2d 1294 (S.D. Fla. 1999), *aff'd without opinion* 207 F.3d 664 (11th Cir. 2000).

indicate that the bank will not provide the customer the desired product unless the customer obtains (or provides) another product from (or to) the bank or an affiliate do raise issues under section 106.

Importantly, a prohibited tying arrangement does not exist if the bank offers the customer the opportunity to obtain the customer's desired product (or a discount on the desired product) from the bank separately from the allegedly tied product. That is, if the customer was offered the option of obtaining the customer's desired product or discount from the bank *without* also obtaining (or providing) the allegedly tied product from (or to) the bank or an affiliate, then the customer was not *required* to obtain (or provide) the other product to obtain the desired product or discount. In such circumstances, no ''tie'' would exist between the two products for purposes of section 106.[32]

2. *Condition or requirement was imposed or forced on the customer by the bank.*

Even if a condition or requirement exists tying the customer's desired product to another product, a violation of section 106 may occur only if the condition or requirement was imposed or forced on the customer by the bank.[33] In this regard, section 106 was intended to prohibit banks from using their ability to offer bank products, and credit in particular, as leverage to force a customer to purchase (or provide) another product from (or to) the bank or an affiliate.[34] It was *not* the purpose of the statute to prohibit bank customers from using their own bargaining power to obtain a package of desired products from a bank and its affiliates or a price discount on those products. Similarly, it was not the purpose of the statute to prohibit customers from *voluntarily* seeking and obtaining multiple products that the customer desires from a bank or its affiliates.[35]

Accordingly, if a condition or requirement exists, further inquiry may be necessary to determine whether the condition or requirement was imposed or forced on the customer by the bank. If the condition or requirement resulted from coercion by the bank, then the condition or requirement violates section 106, unless an exemption is available for the transaction.[36] Prohibited coercive actions may be explicit or implicit. In some cases, a bank's coercive behavior may be clear from the agreement or conversations between the bank and the customer. In other cases, coercion may be implicit and reasonably inferred from the facts and circumstances surrounding the transaction.

On the other hand, if a condition or requirement was voluntarily sought or imposed by the customer, then the arrangement results from the free choice of the customer and no violation of section 106 has occurred. Thus, for example, a violation of section 106 does not occur if a large corporate customer of a bank demands that the bank provide the customer one product (such as a loan) in order for the bank or its affiliates to obtain other business from the customer (such as bond underwriting business), and the bank agrees to the customer's condition. In such circumstances, it is the *customer* that is using its business as leverage to obtain the products it desires—an action that does not implicate the purposes or proscriptions of section 106. Likewise, a violation of section 106 does not occur if a customer seeking to engage in a multi-faceted corporate transaction voluntarily solicits a bid from a bank and its securities affiliate for a package of products related to the transaction (such as a bridge loan, strategic advisory services, and bond underwriting services) and the bank and the securities affiliate offer to provide the customer all of the requested products.

3. *Factual inquiry required.*

As the foregoing illustrates, the specific facts and circumstances surrounding the bank-customer relationship often will be critical in determining whether a prohibited condition or requirement existed and whether the condition or requirement was imposed or forced on the customer by the bank or was volunteered or sought by the customer. Typically, the terms of the bank's offer to the customer or the agreement entered into between the bank and the customer will provide the best evidence of whether the customer was required to purchase (or provide) an additional product as a condition of obtaining the customer's desired product. The timing and sequence of the offers, purchases or other transactions between the customer and the bank or its affiliates that form the basis of the alleged tying arrangement, and the nature of the condition or requirement itself, also may be particularly relevant in determining whether the customer was required to obtain (or provide) the tied product in order to obtain the desired product.

Other information that may be useful in determining whether a condition or requirement exists and, if so, whether the bank coerced the customer into accepting the condition or requirement include any correspondence and conversations between the bank and the customer concerning the transaction; the marketing or other materials presented to the customer by the bank or an affiliate; the bank's course of dealings with the customer and other similarly situated customers; the banking organization's policies and procedures; the customer's course of dealings with the bank and other financial institutions; the financial resources and level of sophistication of the customer; and whether the customer was represented by legal counsel or other advisors.

[32] *See John Doe* v. *Norwest Bank Minnesota, N.A.,* 107 F.3d 1297, 1304 (8th Cir. 1997); *Stefiuk* v. *First Union Nat'l Bank,* 61 F. Supp. 2d 1294, 1299 (S.D. Fla. 1999), *aff'd without opinion* 207 F.3d 664 (11th Cir. 2000); *Nordic Bank PLC* v. *Trend Group, Ltd.,* 619 F. Supp. 542, 553 (S.D.N.Y. 1985).

[33] *See* 116 Cong. Rec. S15708 (daily ed. Sept. 16, 1970) (''The bill as amended would require that a condition or requirement imposed by the bank must be demonstrated in order to prove that a violation of [section 106] has occurred.'') (Statement of Sen. Bennett).

[34] *See* Conference Report at 5569 (''Section 106 of the bill, which has become known as the anti-tie-in section, will largely prevent coercive tie-ins and reciprocity.''); 116 Cong. Rec. S20647 (daily ed. Dec. 18, 1970) (Statement of Sen. Brooke) (violation of section 106 occurs ''where the totality of the circumstances indicates that the customer has not voluntarily entered into the transaction, but rather has been induced into doing so through coercion''); 116 Cong. Rec. S15709 (daily ed. Sept. 16, 1970) (attaching letter from Arthur Burns, Chairman of the Board of Governors of the Federal Reserve System, noting that section 106 ''would prohibit coercive tie-ins involving banks, bank holding companies, and their subsidiaries'').

[35] *See* Conference Report at 5569; 116 Cong. Rec. S16316 (daily ed. Sept. 23, 1970) (Remarks of Donald I. Baker, Deputy Director of Policy Planning, Antitrust Division, Department of Justice, submitted by Senator Proxmire). The statute's legislative history, for example, indicates that a voluntary tie-in may occur when a customer believes that it stands a better chance of ''securing a scarce and important commodity (such as credit) by 'volunteering' to accept other products or services'' from the bank or its affiliates. Although the statute's legislative history characterizes this type of voluntary tying as generally being undesirable, it also explicitly states that such voluntary tying is not prohibited by section 106. *See* Conference Report at 5569. The Board also has noted previously that section 106 prohibits coercive tying arrangements, but does not prohibit voluntary tying. *See, e.g., Mercantile Bancorporation,* 66 Federal Reserve Bulletin 799 (1980); *Barnett Banks, Inc.,* 61 Federal Reserve Bulletin 678 (1975).

[36] The Board recognizes that some courts have held that a tying arrangement may violate section 106 without a showing that the arrangement resulted from any type of coercion by the bank. *See, e.g., Dibidale of Louisiana, Inc.* v. *American Bank & Trust Company,* 916 F.2d 300 (5th Cir. 1990). After carefully reviewing the language, legislative history and purposes of the statute, the Board believes the better interpretation of section 106 is that a violation may exist only if a bank forces or coerces a customer to obtain (or provide) the tied product as a condition to obtaining the customer's desired product.

IV. What Are the Exceptions to the Anti-Tying Prohibitions of Section 106?

Section 106 contains several exceptions to its anti-tying prohibitions. Congress also authorized the Board to grant additional exceptions from the statute's prohibitions, by regulation or order, if the Board determines the exception ''will not be contrary to the purposes of [section 106].'' [37] The exceptions adopted by Congress and the authorization granted to the Board to grant additional exceptions were intended in part to ensure that section 106 did not interfere with the conduct of appropriate traditional banking practices.[38]

A. Tying Arrangements Involving Traditional Bank Products.

1. *Statutory and regulatory exceptions.*

Section 106 specifically allows a bank to condition both the availability and price of any bank product (the desired product) on the requirement that the customer obtain a ''traditional bank product'' (the tied product) from the bank. One of the purposes of this exception was to allow banks and their customers to continue to negotiate their fee arrangements on the basis of the customer's entire banking relationship with the bank.[39] The Board has extended this exception by regulation to include situations where the tied product is a traditional bank product offered by an affiliate of the bank, rather than by the bank itself.[40] Taken together, these exceptions allow a bank to restrict the availability or vary the price of *any* bank product on the condition that the customer also obtain a traditional bank product from the bank or an affiliate of the bank.

Several facts are important in determining whether the traditional bank product exceptions apply in a given situation. First, the exceptions are available only if the *tied* product is a traditional bank product. The availability of the exceptions, however, does *not* depend on the type of *desired* product involved; the desired product may or may not be a traditional bank product.

Second, the exceptions apply only if the tied product is a *defined* traditional bank product. The statute defines a traditional bank product to be a ''loan, discount, deposit, or trust service.'' [41] The statute also defines a ''trust service'' to mean any service customarily performed by a bank trust department.[42] Products that fall within the scope of these terms include, among other things, the following:

- All types of extensions of credit, including loans, lines of credit, and backup lines of credit; [43]
- Letters of credit and financial guarantees;
- Lease transactions that are the functional equivalent of an extension of credit; [44]
- Credit derivatives where the bank or affiliate is the seller of credit protection;
- Acquiring, brokering, arranging, syndicating and servicing loans or other extensions of credit;
- All forms of deposit accounts, including demand, negotiable order of withdrawal (''NOW''), savings and time deposit accounts;
- Safe deposit box services;
- Escrow services;
- Payment and settlement services, including check clearing, check guaranty, ACH, wire transfer, and debit card services;
- Payroll services;
- Traveler's check and money order services;
- Cash management services; [45]
- Services provided as trustee or guardian, or as executor or administrator of an estate;
- Discretionary asset management services provided as fiduciary; [46]
- Custody services (including securities lending services); and
- Paying agent, transfer agent and registrar services.

Thus, for example, the traditional bank product exceptions permit a bank to condition the availability or price of a particular loan on a requirement that the customer maintain a specified amount of deposits with the bank or its affiliates. Similarly, a bank may inform a customer that it will lend (or continue lending) to the customer only if the customer obtains cash management services from the bank or its affiliates. In both cases, the bank's actions are permissible because the tied products (deposits and cash management services) are traditional bank products.

A bank, however, may *not* require a customer seeking an auto loan from the bank to purchase automobile insurance from the bank or from an insurance agency affiliate of the bank. Although the desired product (an auto loan) in this case is a traditional bank product, the tied product (automobile insurance) is not and, accordingly, the traditional bank product exceptions are not available for this transaction.

2. *Mixed-product arrangements.*

As discussed above, section 106 does not prohibit a bank from conditioning the grant of a loan to a customer on a requirement that the customer also obtain one or more traditional bank products, or a specified amount of traditional bank products, from the bank or its affiliates. In some cases, however, a bank may wish to provide a customer the freedom to choose whether to satisfy a condition imposed by the bank through the purchase of one or more traditional bank products *or* other ''non-traditional'' products (a ''mixed-product arrangement'').[47] Allowing a bank to offer the customer the *option* of satisfying a condition by purchasing either traditional bank products *or* non-traditional products can provide benefits to the customer (by increasing the choices available to the customer) *without* requiring the customer to purchase any non-traditional product from the bank or an affiliate in violation of section 106.[48]

[37] 12 U.S.C. 1972(1). The exceptions that the Board has adopted by regulation are set forth at section 225.7(b) of the Board's Regulation Y (12 CFR 225.7(b)). Regulation Y expressly permits the Board to terminate the eligibility of a bank to operate under any exception set forth in section 225.7(b) if the Board finds the activities conducted by the bank under the exception result in anti-competitive practices. 12 CFR 225.7(c).

[38] *See* 116 Cong. Rec. S15708 (daily ed. Sept. 16, 1970) (Statement of Sen. Bennett); *see also* Senate Report at 5535.

[39] *See id.*

[40] *See* 12 CFR 225.7(b)(1)(i).

[41] 12 U.S.C. 1972(1)(A).

[42] *Id.* at section 1971. A product that meets this ''trust service'' standard is a traditional bank product even if the bank or affiliate providing the product does not have, or does not provide the product through, a trust department.

[43] An ''extension of credit'' for this purpose does not include underwriting, privately placing or brokering debt securities.

[44] ''CEBA leases'' that are entered into by banks pursuant to 12 U.S.C. 24 (Tenth) are *not* considered to be the functional equivalent of an extension of credit.

[45] The term ''cash management services'' refers generally to the payment and collection services that are provided to customers to speed collection of receivables, control payments and efficiently manage deposit balances. Cash management services may include one or more of the traditional bank products listed separately above, such as deposit, payment and lockbox services.

[46] A bank has discretionary authority over an account for these purposes if the bank, acting in a fiduciary capacity, has sole or shared authority (whether or not that authority is exercised) to determine what assets to purchase or sell on behalf of the account. *See* 12 CFR 9.2(i).

[47] As used in this discussion, a mixed-product arrangement involves a choice among traditional bank products and non-traditional products. The term does not apply to arrangements that involve only traditional bank products (which, as discussed in Part IV.A.1., are permissible under section 106) or arrangements that involve only non-traditional products (which, as discussed throughout this statement, may be prohibited by section 106).

[48] The Board previously has noted that the addition of non-traditional products to a menu of traditional bank products offered a customer may, in some circumstances, increase customer choice in a manner consistent with the purposes and intent of section 106. *See* 60 FR 20186, 20187–88, April 25, 1995. Indeed, this rationale formed the basis of the safe harbor that the Board adopted in 1995, as

Accordingly, where a bank offers a customer a mixed-product arrangement, further analysis may be necessary to determine whether the offer constitutes a tying arrangement prohibited by section 106. If the customer that is offered the mixed-product arrangement has a meaningful option to satisfy the bank's condition solely through the purchase of the traditional bank products included in the arrangement, then the bank's offer would not, in fact, require the customer to purchase any non-traditional product from the bank or its affiliates in violation of section 106.[49] In these circumstances, the customer has been provided a meaningful choice in determining whether to satisfy the bank's condition through the purchase of traditional bank products or non-traditional products, and the bank's inclusion of non-traditional products within the range of tied products may be viewed as giving the customer additional flexibility in determining how it may choose to satisfy a condition that the bank is permitted by law to impose.

If, on the other hand, the customer does not have a meaningful option to satisfy the bank's condition solely through the purchase of the traditional bank products included in the arrangement, then the arrangement violates section 106 because the arrangement effectively requires the customer to purchase one or more non-traditional products in order to obtain the customer's desired product or a discount on the desired product. A mixed-product arrangement also would violate section 106 if the facts indicate that the bank did not provide the customer the freedom to choose to satisfy the bank's condition solely through the purchase of one or more of the traditional bank products included in the mixed-product arrangement.[50]

To illustrate a mixed-product arrangement, assume Company, a large manufacturing concern with an investment-grade credit rating, has a backup credit facility with Bank that will shortly come up for renewal. Assume also that Bank and its affiliates periodically review the overall profitability of their combined business relationships with their large corporate customers to determine whether the profitability of the customers' aggregate business relationships with Bank and its affiliates meets the internal profitability threshold (the ''hurdle rate'') established by Bank and its affiliates for that customer or type of customer. In accordance with this policy, Bank conducts a review of the overall profitability of Company's relationships with Bank and its affiliates and determines that the profitability of Company's existing relationships with Bank and its affiliates (*i.e.,* the credit facility with Bank) does not meet the hurdle rate.

In light of this review, Bank informs Company that Bank will not renew Company's credit facility unless Company commits to provide Bank or its affiliates sufficient additional business to allow Company's overall relationships with Bank and its affiliates to meet the hurdle rate. Bank does *not* tie renewal of the credit to the purchase by Company of any *specific* product or package of products from Bank or its affiliates. Rather, Bank informs Company that Company is free to choose from among all of the products offered by Bank and its affiliates in determining how Company may seek to meet the hurdle rate. Bank and its affiliates offer a wide variety of products, including deposits, trust services, cash management services and several other traditional bank products as well as bond underwriting services and several other non-traditional products.

Bank's actions would be permissible under section 106 if, for example, Company could reasonably obtain sufficient cash management services from Bank to permit Company to meet the hurdle rate. In such circumstances, Company would have a meaningful option to satisfy the hurdle rate solely through the purchase of one or more of the traditional bank products that are offered by Bank and its affiliates (cash management services in this example),[51] and Bank's actions would not effectively require Company to purchase any non-traditional product in order to obtain renewal of the credit facility. This is true regardless of the product(s), if any, that Company ultimately chooses to obtain from Bank or its affiliates.

On the other hand, Bank's actions would violate section 106 if, for example, Company could satisfy the hurdle rate only by obtaining insurance, securities underwriting or strategic advisory services from Bank or an affiliate of Bank. In such circumstances, Company would not have a meaningful option to satisfy the hurdle rate solely through the purchase of one or more of the traditional bank products that are offered by Bank and its affiliates.

As the foregoing illustrates, the determination of whether a mixed-product arrangement comports with section 106 often will depend on the nature and characteristics of the arrangement itself and the customers to whom the arrangement is offered. Part VII of this statement discusses the types of policies, procedures and systems, including internal audit and recordkeeping systems, that should help banks offering mixed-product arrangements ensure that these arrangements are structured and offered in a manner consistent with section 106. The Board will review these policies, procedures and systems during the supervisory process as part of its examination and review of bank anti-tying policies, procedures and systems.

B. Reciprocity Exceptions

The reciprocity restrictions of section 106 generally prohibit a bank from conditioning the availability or price of a product (the desired product) on a requirement that the customer *provide* another product (the tied product) to the bank or an affiliate.[52] Section 106, however, contains an exception for situations where the tied product is to be provided to the bank and is ''related to and usually provided in connection with a loan, discount, deposit, or trust service'' (a ''usually connected product'').[53] The Board has extended this exception by regulation to include situations where a bank requires the customer to provide a usually connected product to an *affiliate* of the bank, rather than to the bank itself.[54] Taken together, these exceptions allow a bank to restrict the availability or vary the price of any bank product on the condition that the customer provide a usually connected product to the bank or an affiliate of the bank.

Both the statutory and regulatory reciprocity exceptions are intended to ensure that section 106 does not restrict appropriate traditional banking

an exception to section 106, for certain types of combined-balance discount programs. *Id.* This safe harbor is discussed further in Part IV.D.

[49] *Cf. Tic-X-Press, Inc.* v. *Omni Promotions Co.*, 815 F.2d 1407, 1416–17 (11th Cir. 1987) (a tying arrangement does not exist under the Sherman Act if the buyer had ''meaningful freedom of choice'' in deciding whether or not to purchase allegedly tied product from the seller); *Stephen Jay Photography, Ltd.* v. *Olan Mills, Inc.*, 903 F.2d 988, 991 (4th Cir. 1990) (tying arrangement does not exist if customer had the option to purchase, or not purchase, the allegedly tied product).

[50] Thus, a bank would violate section 106 if it ostensibly offered a customer a mixed-product arrangement, but informed the customer that the customer could satisfy the bank's condition only by purchasing one or more of the non-traditional products included in the arrangement.

[51] Company would have a meaningful option even though Company had a long-standing cash management arrangement with another financial institution so long as Company may legally transfer its cash management business to Bank and Bank is able to satisfy Company's cash management needs.

[52] 12 U.S.C. 1972(1)(C) and (D).

[53] *Id.* at 1972(1)(C).

[54] *See* 12 CFR 225.7(b)(1)(ii).

practices. Thus, for example, the exceptions permit a bank to condition the availability of secured credit on a requirement that the customer obtain insurance, for the benefit of the bank, that protects the value of the bank's security interest in the collateral securing the loan.[55] Similarly, the exceptions permit a bank to take a wide variety of steps to protect the bank's financial interest in its credit relationships, such as, for example, requiring the affiliated parties of a troubled borrower to pay down their loans with the bank prior to renewing or advancing additional credit to the troubled borrower or requiring the owners of a corporate borrower to provide a personal guarantee of the corporation's debt to the bank.

Facts that may be relevant in determining whether a bank's demand that a customer provide an additional product is usual and appropriate and, thus, permissible under the exceptions include the relationship between the tied product and the desired product; whether the practice protects the value of the bank's credit or other exposures to the customer and associated parties; whether the practice is usual in the banking industry in connection with the type of product involved; and whether the condition was imposed by the bank principally to reduce competition or allow it to compete unfairly in the market for the tied product. The Board notes, however, that a reciprocity arrangement involving a loan or other product does not violate section 106 simply because the arrangement is not frequently imposed in banking transactions. Contractual agreements between banks and their customers, and loan agreements in particular, often are tailored to account for the characteristics of the individual customer and the specific transaction at issue. Accordingly, even though a particular reciprocal arrangement is uncommon, it still may reflect an appropriate banking practice in light of the facts and circumstances surrounding the transaction.[56]

C. Exclusive Dealing Exception

The statute's exclusive dealing restriction generally prohibits a bank from conditioning the availability or price of a bank product (the desired product) on a requirement that the customer *not obtain* another product (the tied product) from a competitor of the bank or a competitor of an affiliate of the bank.[57] This restriction, for example, prohibits a bank that has a securities affiliate engaged in bond underwriting activities from threatening a corporate customer that the bank will terminate the bank's credit relationships with the customer if the customer uses the bond underwriting services of a competitor of the bank's securities affiliate.

Section 106 contains an exception to its exclusive dealing restriction for situations where the condition was reasonably imposed by the bank in a credit transaction to ensure the soundness of the credit.[58] This exception, like the statutory reciprocity exception, was intended to preserve the ability of banks to take appropriate steps to protect their credit extensions to customers.

This exception, for example, permits a bank, when consistent with appropriate banking standards, to condition the availability of a loan to a customer on the requirement that the customer not borrow from other sources (or pledge any collateral securing the loan to other entities) during the term of the loan.[59] Similarly, this exception would permit a bank to condition the availability of floating-rate credit on a requirement that the prospective borrower hedge its floating-rate exposure by purchasing a fixed-to-floating interest rate swap, and limiting the permitted swap counterparties to those with a certain minimum credit rating. Although this condition may prevent the borrower from obtaining the swap from some less creditworthy competitors of the bank, the condition would appear to be reasonably designed to enhance the collectibility of the credit.

D. Regulatory Safe Harbors

1. *Combined-balance discount safe harbor.*

The Board has granted a regulatory safe harbor for combined-balance discount packages, provided that they are structured in a way that does not, as a practical matter, obligate customers to purchase non-traditional products in order to obtain the discount.[60] This safe harbor allows a bank to vary the consideration for a product or package of products based on a customer's maintaining a combined minimum balance in certain products specified by the bank if three conditions are met: the bank offers deposits; all deposits are eligible to be counted toward the minimum balance; and deposits count at least as much as nondeposit products toward the minimum balance.[61] Although the products included in the combined-balance discount program must be specified by the bank, the products may be offered by the bank or by an affiliate of the bank.

2. *Foreign transaction safe harbor.*

The Board also has granted a regulatory safe harbor for bank transactions with foreign persons.[62] The foreign transaction safe harbor provides that the anti-tying prohibitions of section 106 do not apply to transactions between a bank and a customer if: (i) The customer is a company that is incorporated, chartered, or otherwise organized outside the United States and has its principal place of business outside the United States (a ''foreign company''); or (ii) the customer is an individual who is a citizen of a country other than the United States and is not resident in the United States.

The foreign transaction safe harbor would generally be available for a loan transaction entered into by a bank with a foreign company even if the loan is partially guaranteed by a U.S. incorporated affiliate of the foreign company, or the foreign company directs the bank to disburse a portion of the loan proceeds to a U.S. incorporated affiliate of the foreign company that is not a party to the loan agreement. Such a loan transaction with a foreign company, however, would *not* qualify for the foreign transaction safe harbor if

[55] The bank, however, may not require that the customer obtain the insurance from the bank or an affiliate of the bank.

[56] For example, as one court has noted, debtors in ''serious financial straits, working with their creditors, [often] enter into numerous types of transactions that protect the creditors' investments while permitting the debtors' businesses to continue. The complexity of the transactions and special needs of the parties involved determine the type of arrangement that will be made to secure the joint aims of the debtor and creditor. Due to the complicated circumstances of many bailout cases, the specific banking transactions utilized may appear uncommon, yet, in the milieu of bailouts, they constitute appropriate banking practices. As such, they do not violate [section 106].'' *See Continental Bank of Pennsylvania* v. *Barclay Riding Academy, Inc.,* 93 N.J. 153, 459 A.2d 1163, *cert. denied* 464 U.S. 994 (1983).

[57] 12 U.S.C. 1972(1)(E).

[58] *Id.*

[59] *See* 116 Cong. Rec. S15708 (daily ed. Sep. 16, 1970) (Statement of Sen. Bennett).

[60] 12 CFR 225.7(b)(2).

[61] The Board recently issued an interpretive letter clarifying that any financial product, including insurance products, may be included in a combined-balance discount program and explaining the permissible methods for weighting insurance products within a combined-balance discount program. *See* Letter dated May 16, 2001, from J. Virgil Mattingly, Jr., General Counsel of the Board, to Carl Howard. The Board also recently issued a letter indicating that, for purposes of applying the regulatory safe harbor for combined-balance discount programs, the term ''customer'' may include separate individuals who are all members of the same immediate family (as defined in 12 CFR 225.41(b)(3)) and who all reside at the same address. *See* Letter dated November 26, 2002, from J. Virgil Mattingly, Jr., General Counsel of the Board, to Oliver I. Ireland.

[62] 12 CFR 225.7(b)(3).

the facts and circumstances surrounding the transaction indicate that the borrower, in substance, was the U.S. incorporated affiliate and not the foreign company. The safe harbor also would *not* protect tying arrangements where the customer itself is a U.S. incorporated subsidiary of a foreign company.

3. *Transactions outside a ''safe harbor''.*

The combined-balance discount and foreign transaction provisions discussed above are regulatory safe harbors. Accordingly, some combined-balance discount programs that are outside the regulatory safe harbor still may not be covered by section 106 because the arrangement does not satisfy the essential elements of a prohibited tying arrangement under section 106 or qualifies for another statutory or regulatory exception from section 106. In addition, some tying arrangements that are outside the foreign transaction safe harbor still may not be covered by section 106 because the transactions involved are so foreign in nature that they do not raise the competitive concerns that section 106 was designed to address.

V. What Is a ''Bank'' for Purposes of Section 106?

Section 106 applies, by its terms, to any depository institution that meets the definition of ''bank'' in section 2(c) of the Bank Holding Company Act (BHC Act), including a grandfathered ''nonbank bank'' that is controlled by a company under section 4(f) of the BHC Act.[63] The statute also applies to any depository institution that is described in section 2(c)(2)(D), (F), (G), (H), (I) or (J) of the BHC Act and, thus, excluded from the definition of ''bank'' under the BHC Act.[64] As a result, virtually every type of institution that is chartered as a bank, including every ''insured bank'' (as defined in section 3 of the Federal Deposit Insurance Act), is subject to section 106.[65] This is true whether or not the covered depository institution is owned or controlled by a bank holding company registered under the BHC Act.

Section 106 also applies to any U.S. branch, agency, or commercial lending company of a foreign bank (as those terms are defined in section 8 of the International Banking Act).[66] In addition, although affiliates of a bank generally are not subject to section 106, the BHC Act specifically provides that an affiliate of an institution controlled pursuant to section 4(f) or described in section 2(c)(2)(D), (F), (G), (H), (I), or (J) of the BHC Act is subject to the anti-tying prohibitions of section 106 in connection with any transaction involving the products of both the affiliate and the institution as if the affiliate were a bank and the institution were an affiliate.[67]

Section 106 also applies to most, but not all, subsidiaries of banks. In particular, section 106 applies to all subsidiaries of a bank—other than a financial subsidiary—in exactly the same manner as the statute applies to the bank itself. A financial subsidiary of a national bank or a state member bank, however, is treated as an affiliate of the bank, and not as a subsidiary of the bank, for purposes of the statute.[68]

This statement uses the term ''bank'' to refer to all entities that are subject to section 106. As noted above, savings associations are subject to anti-tying restrictions that are virtually identical to those applicable to banks under section 106.[69]

VI. What Is an ''Affiliate'' for Purposes of Section 106?

Section 106 prohibits a bank from requiring that a customer obtain any additional product from, or provide any additional product to, ''a bank holding company of such bank, or * * * any other subsidiary of such bank holding company.''[70] For purposes of these restrictions, any company that controls a bank that is subject to section 106 is treated as a bank holding company (even if the company is not a bank holding company under the BHC Act), and any subsidiary of such a company is treated as a subsidiary of a bank holding company.[71] In addition, for purposes of section 106, any *natural person* that controls a bank that is subject to section 106 is treated as a ''bank holding company'' of the bank, and any other company controlled by such a natural person is treated as a subsidiary of the ''bank holding company'' of such bank.[72]

To reflect the scope of section 106, the term ''affiliate'' as used in this statement with respect to a bank means any company or natural person that controls the bank, and any company that is controlled by such company or person (other than the bank itself).

As noted previously, section 106 generally does not apply to tying arrangements imposed by an affiliate of a bank. However, a bank may not participate in a transaction in which an affiliate has nominally imposed a condition on a customer that the bank is prohibited from directly imposing under section 106 if the affiliate was acting on behalf of, as agent for, or in conjunction with the bank. For example, a bank should not have a pre-arrangement or understanding with an affiliate to fund a syndicated loan for which the affiliate acts as syndicate manager if the affiliate has conditioned the availability (or price) of its syndication services on a requirement that the customer obtain securities underwriting services from the affiliate. Similarly, if an affiliate of a bank has conditioned the availability (or price) of a bridge loan on a requirement that the customer hire the bank's securities affiliate as an underwriter for the company's follow-on bond offering, the bank should not have an arrangement or understanding with the affiliate at the time the bridge loan is made to purchase the loan (or a participation in the loan) from the affiliate.

VII. What Internal Controls Should Banks Have to Ensure Compliance With the Anti-Tying Prohibitions of Section 106?

The board of directors and senior management of a bank are responsible for ensuring that the bank establishes and maintains an effective system of internal controls that, among other things, provides reasonable assurances that the bank complies with applicable laws and regulations, including the anti-tying prohibitions of section 106. An effective system of internal controls and a management environment that emphasizes compliance not only helps an organization operate in an efficient and safe and sound manner, but also helps mitigate the legal and reputational risks that may arise from actual or perceived violations of the anti-tying prohibitions of section 106.

[63] *See* 12 U.S.C. 1971 and 1841(c)(1).

[64] 12 U.S.C. 1843(f)(9) and (h)(1). These institutions include limited-purpose trust companies, credit card banks, Edge Act and Agreement corporations, and industrial loan companies and similar institutions.

[65] *See* 12 U.S.C. 1813.

[66] *See* 12 U.S.C. 3106.

[67] *See* 12 U.S.C. 1843(f)(9)(B) and (h)(2).

[68] *See* 12 U.S.C. 1971; 12 CFR 208.73(e). Tying arrangements imposed by a financial subsidiary of a bank, like tying arrangements imposed by any other affiliate of a bank, remain subject to the general antitrust laws.

[69] *See* 12 U.S.C. 1464(q).

[70] *See* 12 U.S.C. 1972(1)(B) and (D). The exclusive dealing prohibition in section 106(1)(E) similarly prohibits a bank from requiring that a customer not obtain an additional product from a competitor of the ''bank holding company of such bank, or any subsidiary of such bank holding company.'' *Id.* at 1972(1)(E).

[71] *See* 12 U.S.C. 1843(f)(9) and (h)(1). A company that controls a bank (as defined under section 2(c) of the BHC Act) and that is not considered a bank holding company by reason of section 2(a)(5) of the BHC Act, however, is not considered a bank holding company for purposes of section 106 and, thus, is not considered an affiliate of the bank for purposes of this statement.

[72] *See* 12 U.S.C. 1971.

A. Anti-Tying Policies, Procedures and Systems

Banks should have policies, procedures and systems in place that are reasonably designed to ensure that the bank complies with the anti-tying prohibitions of section 106. The types of anti-tying policies, procedures and systems appropriate for a particular bank depends on the size of the bank, and the nature, scope and complexity of the bank's activities (including activities conducted in conjunction with affiliates). Banks should review and update their anti-tying policies, procedures and systems periodically to ensure that these policies, procedures and systems reflect any changes in the nature, scope or complexity of the bank's activities or applicable law, regulations or supervisory guidance.

The anti-tying policies and procedures of banks should describe the scope of section 106 and the types of tying arrangements prohibited by the statute. Banks should ensure that the anti-tying prohibitions of section 106 are appropriately reflected or incorporated in the institution's corporate policies and procedures, including the institution's policies and procedures concerning credit approval, new product approval and pricing, and marketing.

Banks also should ensure that appropriate bank personnel receive education and training concerning the anti-tying prohibitions of section 106. The scope and frequency of the education and training provided an individual or department should be tailored to the nature and scope of the person's or department's functions at the bank, with greater focus and resources devoted to those positions or departments that present the greatest legal or reputational risk to the bank. Corporate relationship managers, syndicated lending personnel, persons with authority to approve credit extensions or establish pricing policies for the bank and other personnel that have direct contact with customers for purposes of marketing or selling the bank's products, for example, should receive comprehensive and regular anti-tying training.[73]

In addition, the policies and procedures of a bank should—

- Permit personnel with questions concerning section 106 or its application to a particular transaction to discuss the issue with an appropriate representative of the institution's compliance or legal department;
- Include procedures for the receipt, handling and resolution of customer complaints alleging a violation of section 106 by the bank; and
- Prohibit the bank or any employee of the bank from taking adverse action against a customer because the customer submitted a complaint to the bank or a Federal banking agency alleging a violation of section 106 by the bank.

A bank's compliance function should take a lead role in monitoring the bank's compliance with section 106. Appropriate compliance activities may include reviewing periodically the bank's policies and procedures to ensure they are updated as necessary to reflect changes in the bank's business or applicable laws, regulations or supervisory guidance and conducting training sessions for appropriate bank personnel. The compliance function also should review the bank's marketing materials and individual transactions to test the bank's compliance with the anti-tying restrictions of section 106. In performing such tests, compliance personnel typically should review the documentation associated with the transaction and discuss the transaction with the relevant bank personnel involved in the transaction.

Internal audit also plays an important role in ensuring a bank's compliance with the anti-tying restrictions. A bank's internal audit function should periodically review and test the institution's anti-tying policies, procedures and systems in order to confirm that they are working effectively and in the manner intended. The appropriate scope and frequency of these reviews and tests will depend on the size, nature and complexity of the bank's business operations and the effectiveness of the bank's compliance function. Thus, for example, if the bank's compliance function properly conducts transaction testing on a regular basis, the bank's internal audit reviews may focus on reviewing the adequacy of the bank's policies and procedures and validating the compliance function's work. Banks should ensure that the compliance and internal audit personnel responsible for monitoring and assessing the institution's compliance with section 106 are well trained with respect to the anti-tying rules.

B. Internal Control and Recordkeeping Requirements for Banks Offering Mixed-Product Arrangements Outside a Regulatory Safe Harbor

As discussed above, a bank may offer a mixed-product arrangement under which the bank provides the customer the option of satisfying a condition imposed by the bank through the purchase of traditional bank products or non-traditional products where the customer has a meaningful option to satisfy the condition solely through the purchase of traditional bank products.[74] Because mixed-product arrangements present special compliance issues under section 106, the anti-tying policies, procedures and systems of a bank offering a mixed-product arrangement play a particularly important role in demonstrating and ensuring that the bank's actions with respect to these arrangements are consistent with section 106. Accordingly, in conducting anti-tying compliance reviews at banking organizations, the Board expects to carefully review the anti-tying policies, procedures and systems used by banks that offer mixed-product arrangements.

A bank's policies, procedures and documentation should reflect how the bank will and does establish a good faith belief that a customer offered a mixed-product arrangement would be able to satisfy the condition associated with the arrangement solely through the purchase of traditional bank products. For example, the bank's policies, procedures and documentation generally should address—

- The factors and types of information that the bank will review in forming a good faith belief that any customer offered a mixed-product arrangement has a meaningful option to satisfy the bank s condition *solely* through the purchase of one or more of the traditional bank products included in the arrangement. Information relevant to this determination may include:
- The range and types of traditional bank products that are offered by the bank and its affiliates and included in the mixed-product arrangement;
- The manner in which traditional bank products and non-traditional products are treated for purposes of determining whether a customer has or would meet the condition associated with the arrangement;[75]
- The types and amounts of traditional bank products typically required or obtained by companies that are comparable in size, credit quality, and nature, scope and complexity of business operations to the customer; and

[73] Banks also should review their employee compensation programs in order to ensure that such programs do not provide employees inappropriate incentives to tie products in a manner prohibited by section 106.

[74] *See* Part IV.A.2.

[75] In mixed-product arrangements, banks may not weight, discourage the use of, or otherwise treat traditional bank products in a manner that is designed to deprive customers of a meaningful choice.

• Information provided by the customer concerning the types and amounts of traditional bank products needed or desired by the customer and the customer s ability to obtain those products from the bank or its affiliates; and

• The bank personnel authorized to make the analysis described above for individual customers or classes of customers and the training and guidelines provided these personnel; and

• The internal processes and controls, including approval and documentation requirements, the bank uses to ensure that the analysis described above is (i) performed by the bank for a customer before the customer is offered a mixed-product arrangement and (ii) adequately reflected in the records of the bank.

The bank's policies and procedures also should ensure that any material information relied on by the bank in analyzing the types and amounts of traditional bank products likely required by a customer is current and reliable, and that the assessment of a customer's ability to satisfy the condition associated with a mixed-product arrangement solely through the purchase of traditional bank products is made prior to, and reasonably current with, the time the arrangement is offered to the customer.

The types and amount of information and level of analysis necessary for a bank to establish a good faith belief that a customer has a meaningful choice under a mixed-product arrangement may vary depending on the nature and characteristics of the arrangement and the types of customer(s) to which it is offered. For example, a less detailed and granular review likely would be required for a bank to establish a good faith belief that a large, complex company has a meaningful option of satisfying a condition solely through the purchase of traditional bank products than a smaller company with less complex business operations. In addition, a less detailed review likely would be necessary for a bank to develop a good faith estimate of the need for traditional bank products of an existing customer with a long history with the bank than of a potential customer or a customer with only a brief relationship with the bank.

C. Ability of Banks to Offer Mixed-Product Arrangements to Individuals

Bank products directed to individuals typically are standardized. Although such standardization may allow the product to be offered economically to large numbers of individual customers, it also means that the terms of the product typically are not modified to the same extent as with corporate customers to reflect the specific needs and resources of the customer.

Furthermore, because individuals typically have less bargaining power and may be less financially sophisticated, individuals may be more susceptible to subtle pressure by a bank that encourages the customer to purchase a non-traditional product from the bank or an affiliate. The potential for such subtle pressure to be applied in a manner that is both effective and difficult to uncover is particularly strong in mixed-product arrangements because these arrangements include both traditional bank products and non-traditional products and individuals often believe that they do not have (and, in fact, may not have) the ability to negotiate with a bank. These facts make it difficult for a bank to establish a good faith belief that a mixed-product arrangement provides an individual a meaningful option to satisfy the condition associated with the arrangement solely through the purchase of traditional bank products without a detailed and, in many cases, uneconomical analysis of the financial needs and capabilities of each individual offered the arrangement.

The Board recognizes that section 106 limits the ability of banking organizations to provide individual consumers with discounts on packages of bundled products and, thus, pass along the cost savings that may arise from bundled offerings in ways that are both pro-consumer and not anti-competitive. It was in part to allow banks some flexibility to provide individual consumers with the benefits of discounts on bundled offerings that the Board in 1995 exercised its exemptive authority to adopt a safe-harbor for combined-balance discount programs, which are a type of mixed-product arrangement that typically are marketed to individuals.[76] Moreover, the Board notes that section 106 does not impede the ability of a bank to provide individual consumers with discounts on packages of bundled *traditional* bank products and does not restrict the ability of a *nonbank* affiliate of a bank to offer mixed-product arrangements to individual consumers.

[76] This exception, which is discussed in Part IV.D, allows banks to offer certain combined-balance discount programs to individuals without making a specific determination that the particular customer has a meaningful option of qualifying for the discounts within the program solely through the use of the deposit products (a traditional bank product) included in the program. *See* 12 CFR 225.7(b)(2).

By order of the Board of Governors of the Federal Reserve System, August 25, 2003.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 03–22091 Filed 8–28–03; 8:45 am]

BILLING CODE 6210–02–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 12, 2003.

A. Federal Reserve Bank of Cleveland (Stephen J. Ong, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. Laurie L. McClellan and Walter L. McClellan, Minerva, Ohio; to acquire voting shares of Consumers Bancorp, Inc., and thereby indirectly acquire voting shares of Consumers National Bank, Minerva, Ohio.

Board of Governors of the Federal Reserve System, August 25, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–22092 Filed 8–28–03; 8:45 am]

BILLING CODE 6210–01–S

GENERAL SERVICES ADMINISTRATION

Maximum Per Diem Rates for the Continental United States (CONUS)

AGENCY: Office of Governmentwide Policy, General Services Administration (GSA).

ACTION: Notice of Per Diem Bulletin 04–1, Fiscal Year (FY) 2004 continental United States (CONUS) per diem rates.

SUMMARY: An analysis of lodging and meal cost survey data reveals that the FY 2004 maximum per diem rates for locations within the continental United

States (CONUS) should be updated to provide for the reimbursement of Federal employees' expenses covered by per diem. Per Diem Bulletin 04–1 increases/decreases the maximum lodging amounts in certain existing per diem localities, adds new per diem localities, and increases the incidental expenses from $2 to $3 for all per diem localities. The per diems prescribed in Bulletin 04–1 may be found at *http://www.gsa.gov/perdiem.* In an effort to improve the ability of the per diem rates to meet the lodging demands of Federal travelers to high cost travel locations, the General Services Administration (GSA) has integrated the contracting mechanism of the new Federal Premier Lodging Program (FPLP) into the per diem rate-setting process. The FPLP continues to grow as GSA has awarded virtually all contracts in the top 70 Federal metropolitan travel destinations. The FPLP enhances the Government's ability to better meet its overall room night demand and allows travelers to find lodging close to where they need to conduct business. If a CONUS per diem rate is insufficient to meet necessary expenses bulletin 04–1 also contains a listing of pertinent lodging and meal cost data that must be submitted through an agency requesting a location be resurveyed.

DATES: This notice is effective October 1, 2003, and applies for travel performed on or after October 1, 2003.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Patrick McConnell, Office of Governmentwide Policy, Travel Management Policy, at (202) 501–2362. Please cite Notice of Per Diem Bulletin 04–1.

SUPPLEMENTARY INFORMATION:

A. Background

After an analysis of additional data, GSA has determined that current lodging and meals and incidental expenses (M&IE) allowances for certain localities do not adequately reflect the cost of lodging in those areas.

B. Change in Standard Procedure

GSA will issue/publish the CONUS per diem rates, formerly published in appendix A to 41 CFR chapter 301, solely on the Internet at *http://www.gsa.gov/perdiem.* This new process ensures timely increases or decreases in per diem rates established by GSA for Federal employees on official travel within CONUS. Notices published periodically in the **Federal Register**, such as this one, now constitute the only notification of revisions in CONUS per diem rates to agencies.

Dated: August 22, 2003.

John Sindelar,

Deputy Associate Administrator.

[FR Doc. 03–22107 Filed 8–28–03; 8:45 am]

BILLING CODE 6820–14–M

HARRY S TRUMAN SCHOLARSHIP FOUNDATION

Notice of Intent To Extend an Information Collection

AGENCY: Harry S Truman Scholarship Foundation.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Truman Scholarship Foundation [Foundation] has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. This is the second notice for public comment: the first was published in the **Federal Register** (June 27, 2003 (Volume 68, Number 124), Page 38341), and no comments were received. The Foundation is forwarding the proposed renewal submission to OMB for clearance simultaneously with the publication of this second notice.

Comments: Comments regarding (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 should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for the Harry S Truman Scholarship Foundation, 725 17th Street, NW., Room 10235, Washington, DC 20503, and to Louis H. Blair, Executive Secretary, Harry S Truman Scholarship Foundation, 712 Jackson Place, NW., Washington, DC 20005, or send e-mail to *lblair@truman.gov.*

DATES: Comments regarding this information collection are best assured of having their full effect if received on or before September 28, 2003. Copies of the submission may be obtained at 202–395–7434.

FOR FURTHER INFORMATION CONTACT: Contact Louis H. Blair, Executive Secretary, Harry S Truman Scholarship Foundation, 712 Jackson Place, NW., Washington, DC 20006; telephone 202–395–4831; or send e-mail to *lblair@truman.gov.* You also may obtain a copy of the data collection instrument and instructions from Mr. Blair.

The Foundation may not conduct a collection of information unless the collection displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such person are not required to respond to the collection of information unless it displays a currently valid OMB control number.

SUPPLEMENTARY INFORMATION:

Title of Collection: Truman Scholarship Application.

OMB Approval Number: 3200–0004.

Expiration Date of Approval: 08/03.

Type of Request: Intent to seek approval to extend an information collection for three years.

Proposed Project: The Foundation has been providing scholarships since 1977 in compliance with Public Law 93–642. This data collection instrument is used to collect essential information to enable the Truman Scholarship Finalists Selection Committee to determine whom to invite to interviews. It is used by Regional Review Panels as essential background information on the Finalists whom they interview and ultimately the Truman Scholars they select. A total response rate of 100% was provided by the 635 candidates who applied for Year 2003 Truman Scholarships.

Estimate of Burden: The Foundation estimates that, on average, 50 hours per respondent will be required to complete the application, for a total of 35,000 hours for all respondents.

Respondents: Individuals.

Estimated Number of Responses: 700.

Estimated Total Annual Burden on Respondents: 35,000 hours.

Dated: August 25, 2003.

Louis H. Blair,

Executive Secretary.

[FR Doc. 03–22203 Filed 8–28–03; 8:45 am]

BILLING CODE 6820–AD–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Announcement of Continuation of a Cooperative Agreement for the Responsible Conduct of Research (RCR) Program for Academic Societies

AGENCY: Department of Health and Human Services (DHHS), Office of the Secretary, Office of Public Health and Science, Office of Research Integrity.

ACTION: Notice.

Project Title: Responsible Conduct of Research Program for Academic Societies.

OMB Catalog of Federal Domestic Assistance: Application has been made for a CFDA number.

Authority: This Cooperative Agreement is authorized under section 301 of the Public Health Service (PHS) Act, as amended.

SUMMARY: The Department of Health and Human Services (DHHS), Office of the Secretary, Office of Public Health and Science, Office of Research Integrity announces its plan to continue a non-competitive continuation award through a single source cooperative agreement with the Association of American Medical Colleges (AAMC) to continue to provide programmatic administration of the RCR Program for Academic Societies. The ultimate goal of the continuation of this cooperative agreement is to provide fiscal support through sub-award contracts to U.S. biomedical and behavioral academic societies for the promotion of RCR and research integrity (RI) education, and/or other society initiatives focusing on the responsible conduct of research. This program is designed to benefit not only the researchers who are members of academic societies, but the U.S. public who will benefit from biomedical and behavioral research conducted in a responsible manner worthy of the public's trust.

DATES: To receive consideration, applications must be received no later than September 29, 2003. Applications will be considered as meeting the deadline if they are: (1) Received on or before the deadline date, or (2) postmarked by the U.S. Postal Service on or before the deadline date and received in time for orderly processing. A legibly dated receipt from a commercial carrier such as FedEx will be accepted in lieu of a postmark. Private metered postmarks will not be accepted as proof of timely mailing. Applications hand-carried by applicants or by applicant couriers shall be considered as meeting an announced deadline if they are received on or before the deadline date between the hours of 8 a.m. to 5 p.m. at the address indicated below. Applications submitted by facsimile transmission (FAX) or any other electronic format will not be accepted. Applications which do not meet the deadline will be considered late and will be returned to the applicant unread.

ADDRESSES: For this cooperative agreement, Form PHS 5161–1 (Revised July, 2000 and approved by OMB under Control Number 0937–0189) must be used. An applicant is advised to pay close attention to the specific program guidelines and general instructions provided in the application kit. To obtain an application kit, write to: Office of Grants Management, Ms. Karen Campbell, Director of Grants Management, Suite 550, 1101 Wootton Parkway, Rockville, MD 20852; or call Ms. Karen Campbell at (301) 594–0758.

This program is subject to the Intergovernmental Review of Federal Programs as governed by Executive Order 12372. Executive Order 12372 sets up a system for State and local government review of proposed Federal Assistance Applications. Applicants (other than federally-recognized Indian Tribal Governments) should contact their State Single Point of Contact (SPOC) as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. A current list is included in the application kit.

Submission Information: Applications for this announcement shall be submitted to: Office of Grants Management, Ms. Karen Campbell, Director of Grants Management, Suite 550, 1101 Wootton Parkway, Rockville, MD 20852. Send the original application with signatures in blue ink and 2 copies of the complete application to this address. Application receipt will be acknowledged by the Office of Grants Management issuing form (PHS–3038–1) Application Receipt Card to the applicant.

Background

The Department of Health and Human Services, Office of Public Health and Science, Office of Research Integrity carries out its mission of promoting research integrity in order to reduce the incidence of research misconduct in DHHS supported biomedical and behavioral research by, among other activities, working to educate the biomedical and behavioral sciences research community in the responsible conduct of research. Toward this end, the ORI works in collaboration with universities, medical schools, research centers, and academic and professional societies to educate researchers.

For more than a decade, the ORI has been initiating efforts to work with organizations representing the biomedical and behavioral research community to foster a joint commitment to RCR education understanding the crucial role these organizations have in the promotion of research integrity. In 1989, the Institute of Medicine (IOM) stated that ''Professional and scientific organizations representing the research community should develop educational and training activities and materials to improve the integrity of research.'' IOM noted that ''Professional organizations, including the various disciplinary societies, play an important role in developing consensus about the goals and values that should shape research practice'' and ''* * *that more can be done by these and other organizations to promote the responsible conduct of research'' (IOM, 1989:36).

Academic societies are well-positioned to play a crucial and pivotal role in defining and promoting standards for the responsible conduct of research as has been widely recognized by the IOM and others. While some academic and professional societies have demonstrated leadership in educating their members to further integrity in the conduct of research they perform, others are just recently turning their attention toward such initiatives.

Over the past several years, ORI efforts to educate researchers in the responsible conduct of research have been growing. Nonetheless, they are still limited given the thousands of researchers yet to be reached. In order to continue to effectively extend its reach in educating researchers in the RCR, to encourage increased and sustained leadership by academic societies in this regard, and to build stronger ties with the biomedical and behavioral sciences research community in promoting the responsible conduct of research, ORI intends to continue the RCR Program for Academic Societies with the AAMC as the single source administrator.

Purpose

The ORI announces its plan to continue a non-competitive continuation award through a single source cooperative agreement with the AAMC as the programmatic administrator for the RCR Program for Academic Societies for four (4) more years subject to available funding. (The current project period is from 09/30/02 through 09/29/03). The purposes of this cooperative agreement are: (1) To provide sub-awards contracts to U.S. biomedical and behavioral academic societies to promote responsible conduct of research education and other RCR initiatives with their members in order to foster research integrity in DHHS sponsored research specifically; and generally, within the research conducted by the U.S. biomedical and behavioral research scientists; and (2) to continue utilizing the AAMC as a

programmatic administrator for the program.

For the purposes of this program, ''academic societies'' are non-profit organizations active in the United States in the fields of medicine, biomedical, or the behavioral sciences, whose primary missions include advancing medical education and/or biomedical or behavioral research. Eligibility for sub-award funding is not limited to societies within the AAMC Council of Academic Societies. Of particular interest are academic societies whose membership base consists largely of university and medical school faculty members, a significant portion of whom conduct DHHS (*i.e.*, National Institutes of Health, Centers for Disease Control, Food and Drug Administration, Health Resources and Services Administration, Agency for Healthcare Research and Quality, and Indian Health Service) funded research.

Award Information

The ORI intends to make available approximately $275,000 for the purposes of this program in fiscal year 2003. This award will begin prior to or on September 30, 2003, for a 12 month budget period with a project period of four years. Funding estimates may vary and are subject to change. Continuation awards within the project period will be made on the basis of satisfactory progress and availability of funds.

Of the $275,000, ORI intends to direct $25,000 (*i.e.*, less than 10%) to the AAMC for programmatic administration. (The cooperative agreement does not require fund matching or sharing in project costs.) The remaining $250,000 will support approximately 12 sub-awards in the form of contracts to academic societies following a competitive, peer reviewed process administered by the AAMC.

SUPPLEMENTARY INFORMATION:

Sub-Awards

The purpose of the sub-awards is to provide funds to academic societies to specifically address some, or all, of the nine core components of responsible conduct of research education described on the ORI Web site (*http://ori.hhs.gov*). These are: (1) Data acquisition, management, sharing, and ownership (2) mentor/trainee responsibilities (3) publication practices and responsible authorship (4) peer review (5) collaborative science (6) human subjects (7) research involving animals (8) research misconduct, and (9) conflicts of interest and commitment.

It is envisioned that the sub-awards would be directed toward establishing a long-term commitment to RCR education involving multiple generations of researchers. Such a commitment would move beyond more traditional, episodic educational events, and emphasize a well-conceived long-term plan, and attendant process of creating and coordinating RCR/RI initiatives that are then adopted, integrated, and sustained as enduring elements into an academic society's infrastructure, and into the culture of the discipline.

During FY 2003, as a result of the first two rounds of competitive review for the RCR Program for Academic Societies administered by the AAMC, sub-award contracts were made to 13 academic societies for 15 projects or programs. Examples of past sub-awards include a one day workshop, *A Course in Responsible Research*, for emergency medical personnel; a mini-conference in RCR education for chairpersons in departments of physiology; an association session at annual meeting on *Promoting Research Integrity in Obesity Research*; the development of a multi-step process focused on defining and communicating RCR and ethical guidelines for the genetic disease intervention clinical research community; the development and distribution of *Guidelines for the Ethical and Legal Conduct of Clinical Research Involving Critically Ill Patients*; a workshop and development of a *Code of Research Ethics for General Pediatrics*; and the development, dissemination, and evaluation of an *Ethics Curriculum for Psychiatric Research*.

Sub-awards made to academic societies following a competitive review process administered by the AAMC will be subdivided into three categories. The first category will fund approximately five (5) sub-awards of up to $5,000 to support single events or activities such as a special meeting, a national conference, or a publication. The second category of sub-awards will fund approximately five (5) sub-awards of up to $25,000, and the third category will fund approximately two (2) sub-awards up to $50,000. These two latter categories will be used for major program initiatives aimed at promoting the responsible conduct of research.

Successful proposals for the sub-awards categories will demonstrate an understanding and focus on RCR education as distinct from bioethics. (Sub-award applicants unfamiliar with the distinction are referred to the ORI web site information on RCR Education). Areas of emphasis for the $25,000 sub-awards would include, but not be limited to: (1) The use of leadership summit meetings, national symposia, focus groups, and/or needs assessments to identify RCR/RI educational gaps, and/or (2) the development of a society RCR task force, subcommittee, or committee to begin to identify a society's RCR needs, goals, objectives, strategies, and effective actions central to sustaining RCR education as a core component of its members' professional research development, and their life-long learning, or (3) a RCR national symposium or conference (teleconferences and/or satellite broadcasts would be acceptable) to include some discussion on methods for integrating RCR education into existing coursework for graduate students, and/or (4) the development of a publication addressing a RCR topic(s) of particular interest to a society (*e.g.*, ''Instructions to Authors,'' or responsible resource sharing), (5) the development of a society *inter-generational dialogue* (through one, or a series of sessions) on RCR to include new and experienced researchers on a particular component, or aspect, of RCR education, (6) an RCR plenary at an annual conference to launch an RCR educational and/or evaluative initiative, (7) a national colloquium addressing a comprehensive RCR program for its members with proceedings published in a society journal on the nine core areas of RCR, and/or (8) the development, and publication, of a 1-year series on some of the core RCR instructional areas in a society's journal.

Areas of emphasis for the larger category of sub-awards of up to $50,000 will include proposals featuring the development of a multi-year RCR educationally-directed plan with a focus on goals, measurable objectives, and intermediate outcomes to address RCR education across a full-spectrum of generations of researchers, as well as providing specific actions to be taken. Examples of specific actions that a society may choose to focus on as part of its plan are: (1) The development of a curriculum, and an outcomes focused evaluation, for a practically-oriented (*i.e.*, with both knowledge and skills development emphasis) RCR training program for society members (with special focus on new society members, or with a goal of providing a basic RCR education to members who are graduate students, and postdoctoral fellows on an ongoing basis), with the findings to be shared with the membership at an annual meeting, and/or through an article(s) in the society's journal, (2) the development of an outcomes-directed RCR educational program evaluative tool(s) to assess the impact, and quality of a society's activities to increase its

members' RCR knowledge, skills development, and formal research practice, (3) the creation of a multi-year plan with strategies and actions to provide professional development sessions, or workshops on educating its members on RCR and reinforcing standards for the responsible conduct of research (*e.g.*, in the areas of data acquisition, management, sharing, and ownership; publications practices; and mentoring).

Expected Program Outcomes for Sub-Awards

Expected outcomes of the sub-awards made through this cooperative agreement include: (1) Increased numbers of researchers receiving RCR education; or (2) increased numbers of other academic society endeavors (*e.g.*, developing new RCR ''infrastructure'' such as an RCR committee, subcommittee, or task force) in order to begin to establish, or to strengthen, the institutionalization of RCR in academic societies representing the research community largely responsible for conducting DHHS-supported research; or (3) increased numbers of society publications on one, or more, of the 9 core areas of RCR education described previously in this announcement, or (4) an increase in the number of programmatic development plans for RCR education and evaluation.

ORI Activities and the Cooperative Agreement

The ORI uses cooperative agreements to support its mission to promote research integrity with the biomedical and behavioral research community. Through current cooperative agreements, ORI has increased its capacity to create public-non-profit partnerships to extend the reach and effectiveness of its work.

With the continuation of this non-competitive continuation award through a single source cooperative agreement with the AAMC, the ORI will continue its substantial programmatic involvement along with the AAMC in the RCR Program for Academic Societies. ORI will continue working cooperatively with the AAMC in establishing specific goals and areas of emphasis for this program, and will participate in the development of the RCR Program for Academic Societies Request for Applications (RFA). It will assist the AAMC in locating reviewers for the peer review process, and participate in the review process. ORI will also assist in announcing the RFA, and the competitive review sub-award results. Along with the AAMC, the ORI will promote the academic societies' RCR projects and programs, and ORI staff will attend some of the professional societies' programs, and review the final report on these initiatives from the AAMC.

Eligible Applicants

Assistance will be provided only to the Association of American Medical Colleges. No other applications are solicited for this activity. The AAMC is uniquely suited to conduct the activities under this cooperative agreement because:

1. The AAMC has the unique distinction of having established access, and ongoing, daily communication with 96 biomedical and behavioral academic societies through its Council of Academic Societies (CAS). As the AAMC states, ''The mission of the CAS is to help the faculty of academic medical centers in their primary responsibilities of research education, and patient care, with an ultimate goal of improving the health of all Americans.'' The CAS is comprised of ''faculty who represent medical school departments and their chairs, academic societies, and individual faculty members.'' It is because of this organizational relationship that the AAMC has a unique capacity to work directly with key academic societies that intersect with the DHHS supported research community. Ready access to the CAS network makes the AAMC unique in terms of suitability over other biomedical and behavioral institutional associations in terms of having ready, daily access to a substantially larger network of academic societies for the promotion of the RCR Program for Academic Societies RFA, and the announcements following the competitive review process of sub-award projects and programs. (Although sub-award eligibility for the RCR Program for Academic Societies is not limited to the CAS members, the extensive AAMC's CAS network is a distinct competitive advantage for performing the services related to the program).

2. The AAMC, founded in 1876, is a leading biomedical non-profit association with education and research emphases comprised of 126 accredited U.S. medical schools, 400 major teaching hospitals including 56 health systems, 75 Department of Veterans Affairs medical centers, and 96 academic and professional societies representing more than 100,000 members, including the nation's 67,000 medical students and 103,000 residents. The AAMC has been nationally prominent and instrumental in providing continuing forums for the discussion and exchange of RCR/RI information for over a decade; not only within its membership but also among academic researchers more broadly, from the clinical sciences to basic research. No other academic organization has such a diverse membership and at the same time is so directly associated with the research programs sponsored by DHHS. Significantly, no public comments were received by ORI following the first **Federal Register** announcement (June 12, 2002) of ORI's intention to enter into the current single source cooperative agreement with the AAMC to support the RCR and the promotion of research integrity with academic societies.

During the current project period (09/30/02 through 09/29/03), the AAMC has assisted ORI in forming vital partnerships with the extramural community to foster the responsible conduct of research and promote research integrity. It has demonstrated that it can work successfully with both the ORI and the scientific community in launching and providing programmatic administration for the RCR Program for Academic Societies. Accordingly, the ORI intends to continue to substantially enhance and increase its performance in reaching larger numbers of researchers in the future by promoting RCR education and research integrity through the continuation of a non-competitive continuation cooperative agreement with the AAMC.

Application Review Criteria

Criteria to be utilized with this non-competitive continuation award sole source cooperative agreement include the following, listed in order of priority: (1) Linkage to a large network of biomedical and behavioral academic societies (*i.e.*, greater than 75) comprised of scientific researchers (2) demonstrated experience in the programmatic administration of a DHHS program to increase RCR education and other RCR related initiatives with biomedical and behavioral academic societies to promote research integrity, and (3) a demonstrated commitment to RCR education as indicated by a history of RCR programs, policies, and other publications.

Recipient Activities

The AAMC will provide programmatic administration of the RCR Program for Academic Societies as it is performing currently. It will develop a (revised) RFA for the program as well as criteria for competitive review of sub-award applications; promote the RFA to academic societies to encourage application submissions through two

cycles; select external AAMC reviewers for the competitive sub-awards review process; select an internal AAMC staff member (who is experienced in working with RCR activities and academic societies) to participate in the review of proposals; make sub-award selections; announce the results of the sub-awards competitive review; disperse sub-award funds; and review reports from the sub-awardees. The AAMC will also prepare and submit a final report to ORI evaluating the short-term implementation of the program. As it has done this during the current project period, the AAMC will assist the ORI in efforts to nurture the process of institutionalization of RCR into the infrastructure of biomedical and behavioral academic societies as part of its commitment to educating researchers which is central to the educational mission of the AAMC.

FOR FURTHER INFORMATION CONTACT: Carolyn R. Fassi, MPH, DPA, Director, ORI RCR Program for Academic Societies, Division of Education and Integrity, Office of Research Integrity, Suite 750, 1101 Wootton Parkway, Rockville, MD 20852; or call Dr. Carolyn Fassi at (301) 443–5300.

Dated: August 26, 2003.

Chris B. Pascal,

Director, Office of Research Integrity.

[FR Doc. 03–22299 Filed 8–28–03; 8:45 am]

BILLING CODE 4150–31–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–02–112]

Proposed Data Collections Submitted for Public Comment and Recommendations

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 Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer at (404) 639–7090.

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. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: Weekly Morbidity and Mortality Reports and Annual Morbidity Series—OMB #0920–0007—Extension—Epidemiology Program Office (EPO), Centers for Disease Control and Prevention (CDC). In 1878, Congress authorized the U. S. Marine Hospital Service (later renamed the U.S. Public Health Service (PHS) to collect morbidity reports on cholera, smallpox, plague, and yellow fever from U.S. consuls overseas; this information was to be used for instituting quarantine measures to prevent the introduction and spread of these diseases into the United States. In 1879, a specific Congressional appropriation was made for the collection and publication of reports of these notifiable diseases. Congress expanded the authority for weekly reporting and publication in 1893 to include data from state and municipal authorities throughout the United States. To increase the uniformity of the data, Congress enacted a law in 1902 directing the Surgeon General of the Public Health Service (PHS) to provide forms for the collection and compilation of data and for the publication of reports at the national level.

Reports on notifiable diseases were received from very few states and cities prior to 1900, but gradually more states submitted monthly and annual summaries. In 1912, state and territorial health authorities—in conjunction with PHS—recommended immediate telegraphic reports of five diseases and monthly reporting by letter of 10 additional diseases, but it was not until after 1925 that all states reported regularly. In 1942, the collection, compilation, and publication of morbidity statistics, under the direction of the Division of Sanitary Reports and Statistics, PHS, was transferred to the Division of Public Health Methods, PHS.

A PHS study in 1948 led to a revision of the morbidity reporting procedures, and in 1949 morbidity reporting activities were transferred to the National Office of Vital Statistics. Another committee in PHS presented a revised plan to the Association of State and Territorial Health Officers (ASTHO) at its meeting in Washington, DC, October 1950. ASTHO authorized a Conference of State and Territorial Epidemiologists (CSTE) for the purpose of determining the diseases that should be reported by the states to PHS. Beginning in 1951, national meetings of CSTE were held every two years until 1974, then annually thereafter.

In 1961, responsibility for the collection of data on nationally notifiable diseases and deaths in 122 U.S. cities was transferred from the National Office of Vital Statistics to CDC. For 37 years the Morbidity and Mortality Weekly Report (MMWR) has consistently served as CDC premier communication channel for disease outbreaks and trends in health and health behavior. In collaboration with the Council of State and Territorial Epidemiologists (CSTE), CDC has demonstrated the efficiency and effectiveness of computer transmission of data. The data collected electronically for publication in the MMWR provides information which CDC and State epidemiologists use to detail and more effectively interrupt outbreaks. Reporting also provides the timely information needed to measure and demonstrate the impact of changed immunization laws or a new therapeutic measure. Users of data include, but are not limited to, congressional offices, state and local health agencies, health care providers, and other health related groups.

The dissemination of public health information is accomplished through the MMWR series of publications. The publications consist of the MMWR, the CDC Surveillance Summaries, the Recommendations and Reports, and the Annual Summary of Notifiable Diseases. There are no costs to respondents.

Type of respondents	Number of respondents	Frequency of response	Average time of response	Annual hour burden
State and Local Health Departments	179	52	30/60	4,654

Type of respondents	Number of respondents	Frequency of response	Average time of response	Annual hour burden
Total				4, 654

Dated: August 25, 2003.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03–22101 Filed 8–28–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Government-Owned Inventions; Availability for Licensing and Cooperative Research and Development Agreements (CRADAs)

AGENCY: Centers for Disease Control and Prevention (CDC), Technology Transfer Office, Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The invention named in this notice is owned by agencies of the United States Government and is available for licensing in the United States (U.S.) in accordance with 35 U.S.C. 207, and is available for cooperative research and development agreements (CRADAs) in accordance with 15 U.S.C. 3710, to achieve expeditious commercialization of results of federally funded research and development. U.S. and foreign patent applications are expected to be filed in the near future to extend market coverage for U.S. companies and may also be available for licensing.

ADDRESSES: Licensing and CRADA information, and information related to the technology listed below, may be obtained by writing to Suzanne Seavello Shope, J.D., Technology Licensing and Marketing Scientist, Technology Transfer Office, Centers for Disease Control and Prevention (CDC), Mailstop K–79, 4770 Buford Highway, Atlanta, GA 30341, telephone (770) 488–8613; facsimile (770) 488–8615; or e-mail *sshope@cdc.gov.* A signed Confidential Disclosure Agreement (available under Forms at *http://www.cdc.gov/tto)* will be required to receive copies of unpublished patent applications and other information.

Occupational Safety

Air Sampler for Collecting Airborne Pollutants in a Micro Centrifuge Tube for Molecular Analysis

Occupational exposure to small particles, such as fungal spores, bacteria, dust, *etc.,* is of concern in a number of places that exhibit air quality problems, for example, school buildings and agricultural settings. The conventional approach for assessing human exposure to bioaerosols has been to take samples using filters, impingers, or impactors and then perform laboratory analyses, which could be directly counting the organisms or indirectly counting their colony-forming units. While these methods provide reasonably adequate assessment in bioaerosol concentration, they are time-consuming and sometimes take days or even weeks to conduct the analysis. In addition, although the health consequence is evident, there has been difficulty in establishing exposure-response relationship because of the poor correlation between measured biomass and recorded health effect. Recent attention paid to indoor air quality, biological warfare and terrorist attacks has revealed a need for highly specific and sensitive techniques, such as immunoassays and polymerase chain reactions (PCR), for detecting a variety of air pollutants. However, there is a lack of sampling devices that could provide adequate sampling of airborne pollutants and match these advanced analytical techniques.

Researchers at NIOSH have evaluated sampling techniques matched to the analytical procedures used in PCR, immunoassays, and other procedures, and developed a personal sampler for collecting airborne pollutants. Preliminary data have demonstrated an excellent aspiration and collection efficiency for the sampler. It is the intent that use of this sampler would solve the technical compatibility problem between sampling and analyzing as well as allow sample analysis without the need for sample extraction which is required by most current air sampling methods. In turn, the whole scheme of sampling and analysis would help enhance the assessment of exposure to airborne pollutants.

Inventors: The-hsun ''Bean'' Chen *et al.*

U.S. Patent Application SN: Not yet filed.

(*CDC Ref. #:* I–020–03).

Dated: August 25, 2003.

Joseph R. Carter,

Deputy Chief Operating Officer, Centers for Disease Control and Prevention (CDC).

[FR Doc. 03–22100 Filed 8–28–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–1537, CMS–R–200, CMS–10094 and CMS–R–247]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare and Medicaid Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (CMS)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Reinstatement, with change, of a previously approved collection for which approval has expired; *Title of Information Collection:* Medicare/Medicaid Hospital Surveyor's Worksheet Form and Supporting Regulations in 42 CFR 488.26 and 442.30; *Form No.:* CMS–1537 (OMB #0938–0382); *Use:* Section 1861(e) of the Social Security Act (the Act) provides that hospitals participating in

Medicare under the Act must meet specific requirements. These requirements are presented as Condition of Participation. State agencies can determine compliance with these conditions through the use of this worksheet form; *Frequency:* Other: 3–5 years; *Affected Public:* State, Local, or Tribal Government, Business or other for-profit, Not-for-profit institutions; *Number of Respondents:* 3323; *Total Annual Responses:* 3323; *Total Annual Hours:* 553.

2. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Health Plan Employer Data and Information Set (HEDIS) and Health Outcome Survey (HOS) and supporting regulations at 42 CFR 422.152; *Form No.:* CMS–R–200 (OMB #0938–0701); *Use:* The Centers for Medicare and Medicaid Services (formerly HCFA) collects quality performance measures in order to hold the Medicare managed care industry accountable for the care being delivered, to enable quality improvement, and to provide quality information to Medicare beneficiaries in order to promote informed choice. It is critical to CMS's mission that we collect and disseminate information that will help beneficiaries choose among health plans, contribute to improved quality of care through identification of improvement opportunities and assist CMS in carrying out its oversight and purchasing responsibilities; *Frequency:* Annually; *Affected Public:* Business or other for-profit, Not-for-profit institutions, and Individuals or Households; *Number of Respondents:* 166,709; *Total Annual Responses:* 70,992; *Total Annual Hours:* 498,436.

3. *Type of Information Collection Request:* New Collection; *Title of Information Collection:* Evaluation of the Medicaid Health Reform Demonstrations; *Form No.:* CMS–10094 (OMB #0938–NEW); *Use:* This survey is part of an evaluation of the State of Vermont's pharmacy assistance programs, which principally serve low income Medicare beneficiaries who do not have other coverage for prescription drugs. The surveys will explore the issues of self-selection into the pharmacy programs, motivations for joining or not joining, the extent of pharmacy coverage among low income Medicare beneficiaries who are not enrolled and the impact of coverage on Medicare spending. The Vermont evaluation is part of a larger evaluation of Section 1115 Medicaid demonstration programs in five states. (The other states are California, Kentucky, Minnesota, and New York. The survey will take place only in Vermont); *Frequency:* Other: One-time; *Affected Public:* Individuals or Households; *Number of Respondents:* 11,310; *Total Annual Responses:* 11,310; *Total Annual Hours:* 1,087.

4. *Type of Information Collection Request:* Reinstatement, without change, of a previously approved collection; *Title of Information Collection:* Expanded Coverage for Diabetes Outpatient Self-Management Training Services and Supporting Regulations Contained in 42 CFR 410.141–410.146 and 414.63; *Form No.:* CMS–R–247 (OMB #0938–0818); *Use:* 42 CFR 410.141–410.146 and 414.63 provide for uniform coverage of diabetes outpatient self-management training services. These services include educational and training services furnished to a beneficiary with diabetes by an entity approved to furnish the services. The physician or qualified nonphysician practitioner treating the beneficiary's diabetes certifies that these services are needed as part of a comprehensive plan of care. The regulations set forth the quality standards that an entity is required to meet in order to participate in furnishing diabetes outpatient self-management training services; *Frequency:* On occasion; *Affected Public:* Business or other for-profit; *Number of Respondents:* 1,708; *Total Annual Responses:* 6,832; *Total Annual Hours:* 53,013.5.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web Site address at *http://cms.hhs.gov/regulations/pra/default.asp,* or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov,* or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Brenda Aguilar, New Executive Office Building, Room 10235, Washington, DC 20503, Fax Number: (202) 395–6974.

Dated: August 21, 2003.

Dawn Willinghan,

Acting Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, Office of Strategic Operations and Strategic Affairs, Division of Regulations Development and Issuances.

[FR Doc. 03–22076 Filed 8–28–03; 8:45 am]

BILLING CODE 4120–03–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–372]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare and Medicaid Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS)(formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Annual Report on Home and Community Based Services Waivers and Supporting Regulations in 42 CFR 440.180 and 441.300–.310; *Form No.:* CMS–372 (OMB# 0938–0272); *Use:* States request waivers in order for beneficiaries to have the option of receiving hospital services in their homes. States with an approved waiver under section 1915(c) of the Act are required to submit the CMS–372 or CMS–372(S) annually in order for CMS to: (1) Verify that State assurances regarding waiver-cost-neutrality are met, and (2) determine the waiver's impact on the type, amount and cost of services provided under the State plan and health and welfare of recipients; *Frequency:* Annually; *Affected Public:* State, local or tribal government; *Number of Respondents;* 50; *Total Annual Responses:* 277; *Total Annual Hours:* 20,775. To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web Site address at *http:/*

/cms.hhs.gov/regulations/pra/default.asp, or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hefa.gov,* or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances, Attention: Dawn Willinghan, Room CS–14–03, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: August 21, 2003.

Dawn Willinghan,

Acting, CMS Reports Clearance Officer, Office of Strategic Operations and Strategic Affairs, Division of Regulations Development and Issuances.

[FR Doc. 03–22077 Filed 8–28–03; 8:45 am]

BILLING CODE 4120–03–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Notice of Hearing: Reconsideration of Disapproval of Oklahoma Medicaid State Plan Amendment (SPA) 02–14

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing on October 7, 2003, 10 a.m.; Room 714, 1301 Young Street; CMS Dallas Regional Office; Dallas, Texas 75202 to reconsider our decision to disapprove Oklahoma State Plan Amendment 02–14.

Closing Date: Requests to participate in the hearing as a party must be received by the presiding officer by September 15, 2003.

FOR FURTHER INFORMATION CONTACT: Kathleen Scully-Hayes, Presiding Officer, CMS, 2520 Lord Baltimore Drive, Suite L, Baltimore, Maryland 21244, Telephone: (410) 786–2055.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider the decision dated May 28, 2003, to disapprove Oklahoma Medicaid State Plan Amendment (SPA) 02–14.

Oklahoma submitted SPA 02–14 on October 22, 2002, and revised it on May 14, 2003. On May 28, 2003, CMS disapproved SPA 02–14, after consultation with the Secretary as required under 42 CFR 430.15(c)(2). The State requested reconsideration by letter dated July 25, 2003.

At issue is whether the proposed supplemental payment methodology contained in the SPA complies with the requirement at section 1902(a)(30)(A) of the Social Security Act (the Act) that payment methodologies must assure that ''payments are consistent with efficiency, economy and quality of care.'' The proposed payment methodology would provide supplemental payment for services rendered by doctors of medicine, osteopathy, and dentists who are State employees. The State asserted that increased payment was warranted because of the specialized services provided by these State employees. The State failed to demonstrate, however, that delivering Medicaid services through State employees generated significantly higher costs sufficient to justify the requested supplemental payment. Moreover, the supplemental payment methodology proposed by the State is not a customary method for paying physicians and other health professionals. The methodology would make it difficult to track payments for specific services and would complicate auditing processes. In sum, at issue is whether it is consistent with efficiency, economy, and quality of care to use a methodology that: (1) Is not justified by any increased costs to the State to ensure access to services for Medicaid beneficiaries; (2) is not a usual and customary payment methodology; and (3) would unduly complicate tracking and audit processes.

Section 1116 of the Act and 42 CFR part 430 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. The CMS is required to publish a copy of the notice to a state Medicaid agency that informs the agency of the time and place of the hearing and the issues to be considered. If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish that notice.

Any individual or group that wants to participate in the hearing as a party must petition the presiding officer within 15 days after publication of this notice, in accordance with the requirements contained at 42 CFR 430.76(b)(2). Any interested person or organization that wants to participate as *amicus curiae* must petition the presiding officer before the hearing begins in accordance with the requirements contained at 42 CFR 430.76(c). If the hearing is later rescheduled, the presiding officer will notify all participants.

The notice to Oklahoma announcing an administrative hearing to reconsider the disapproval of its SPA reads as follows:

Mr. Jim Hancock, Director
Health Policy Division
Oklahoma Health Authority
4545 North Lincoln Boulevard, Suite 124
Oklahoma City, OK 73105

Dear Mr. Hancock: I am responding to your request for reconsideration of the decision to disapprove Oklahoma State Plan Amendment (SPA) 02–14.

Oklahoma submitted SPA 02–14 on October 22, 2002, and revised it on May 14, 2003. On May 28, 2003, I disapproved SPA 02–14, after consultation with the Secretary as required under 42 CFR 430.15(c)(2). You requested reconsideration by letter dated July 25, 2003.

At issue is whether the proposed supplemental payment methodology contained in the SPA complies with the requirement at section 1902(a)(30)(A) of the Social Security Act that payment methodologies must assure that ''payments are consistent with efficiency, economy and quality of care.'' The proposed payment methodology would provide supplemental payment for services rendered by doctors of medicine, osteopathy, and dentists who are State employees. The State asserted that increased payment was warranted because of the specialized services provided by these State employees. The State failed to demonstrate, however, that delivering Medicaid services through State employees generated significantly higher costs sufficient to justify the requested supplemental payment. Moreover, the supplemental payment methodology proposed by the State is not a customary method for paying physicians and other health professionals. The methodology would make it difficult to track payments for specific services and would complicate auditing processes. In sum, at issue is whether it is consistent with efficiency, economy, and quality of care to use a methodology that: (1) Is not justified by any increased costs to the State to ensure access to services for Medicaid beneficiaries; (2) is not a usual and customary payment methodology; and (3) would unduly complicate tracking and audit processes. For the above stated reasons, and after consulting with the Secretary as required by 42 CFR 430.15(c)(2), the Centers for Medicare & Medicaid Services (CMS) disapproved Oklahoma SPA 02–14.

I am scheduling a hearing on your request for reconsideration to be held on October 7, 2003, at 10 a.m., 1301 Young Street, Room 714, CMS Dallas Regional Office, Dallas, Texas 75202. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties. The hearing will be governed by the procedures prescribed at 42 CFR, part 430.

I am designating Ms. Kathleen Scully-Hayes as the presiding officer. If these arrangements present any problems, please contact the presiding officer. In order to

facilitate any communication which may be necessary between the parties to the hearing, please notify the presiding officer to indicate acceptability of the hearing date that has been scheduled and provide names of the individuals who will represent the State at the hearing. The presiding officer may be reached at (410) 786–2055.

Sincerely,
Thomas A. Scully

Section 1116 of the Social Security Act (42 U.S.C. section 1316); 42 CFR Section 430.18)

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

Dated: August 25, 2003.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 03–22245 Filed 8–28–03; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Office of Community Services

Grant to the Rural Community Assistance Program

AGENCY: Office of Community Services, Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

ACTION: Award announcement.

CFDA: The Catalog of Federal Domestic Assistance (CFDA) number for this program is 93.570. The title is Rural Community Development Activities Program (RF Program).

Amount of Award: $500,000.

SUMMARY: Notice is hereby given that a noncompetitive grant award is being made to the Rural Community Assistance Program, Inc. to provide training and technical assistance to small communities struggling to deal with the safety and security of small and very small community water and wastewater treatment systems. This award addresses Congressional concern that many small and very small community water and wastewater treatment systems might be most vulnerable to terrorist attack, yet the least prepared to deal with the issues.

The application is not within the scope of any existing or expected to be issued program announcement for the Fiscal Year 2003—Rural Community Development Activities Program (RF) as authorized under the Community Services Block Grant Act of 1998, as amended; sections 680(a)(3)(B) of the Community Opportunities Accountability, and Training and Educational Services (COATES) Act (Pub. L. 105–285). This application is expected to provide valuable on-site training and technical assistance to small and very small communities struggling to deal with the safety and security of small community water and wastewater treatment systems. This announcement is inviting application for a 12-month budget period and a 24 month project period.

The funds are not being competed due to the Senate appropriation language in FY 2003 that directs the Office of Community Services to support a Rural Community Assistance Program Small Community Infrastructure Safety and Training and Technical project. Congress intends the funds to go to an organization that is capable of conducting a project that is national in scope that provides State, regional and national infrastructure safety training workshops and on-site technical assistance targeted to small and very small community water and wastewater treatment systems.

FOR FURTHER INFORMATION CONTACT: Administration for Children and Families, Office of Community Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Veronica Terrell—(202) 401–5295, *vterrell@acf.hhs.gov.*

Dated: August 22, 2003.

Clarence H. Carter,

Director, Office of Community Services.

[FR Doc. 03–22099 Filed 8–28–03; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003D–0367]

Draft Guidance for Industry on Providing Regulatory Submissions in Electronic Format—Human Pharmaceutical Applications and Related Submissions; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled ''Providing Regulatory Submissions in Electronic Format—Human Pharmaceutical Product Applications and Related Submissions.'' This is one in a series of guidance documents on providing regulatory submissions to FDA in electronic format. This guidance discusses issues related to the electronic submission of new drug applications (NDAs), abbreviated new drug applications (ANDAs), biologics licensing applications (BLAs), investigational new drug applications (INDs), master files, advertising material, and promotional labeling. The submission of these documents in electronic format should improve the agency's efficiency in processing, archiving, and reviewing them.

DATES: Submit written or electronic comments on the draft guidance by October 28, 2003. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, or to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Randy Levin, Center for Drug Evaluation and Research (HFD–001), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301/594–5411, e-mail: *levinr@cder.fda.gov*, or R. Yetter, Center for Biologics Evaluation and Research (HFM–25), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–5349.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Providing Regulatory Submissions in Electronic Format—Human Pharmaceutical Product Applications and Related Submissions.'' This draft document provides guidance to industry regarding submission of marketing applications (NDAs, ANDAs, BLAs), INDs, and related submissions (master files, advertising, and promotional

labeling) in electronic format based on the International Conference on Harmonisation Electronic Common Technical Document specification.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on providing applications and related submissions in electronic format. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments on the draft guidance. Two copies of mailed comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments are available for public examination in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Paperwork Reduction Act of 1995

This notice contains no new collections of information. The information requested for human drug and biological products is already covered by the collection of information on postmarketing safety reporting regulations (21 CFR parts 312, 314, and 601) submitted to the Office of Management and Budget (OMB) for review and clearance. This notice announces the availability of a guidance that provides applicants with an alternative mechanism for submitting applications and related submissions to the agency.

IV. Electronic Access

Persons with access to the Internet may obtain the document at *http://www.fda.gov/cder/guidance/index.htm* or at *http://www.fda.gov/ohrms/dockets/default.htm*.

Dated: August 21, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–22183 Filed 8–28–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Advisory Council on the National Health Service Corps; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), notice is hereby given of the following meeting:

Name: National Advisory Council on the National Health Service Corps.

Dates and Times: September 18, 2003, 5 p.m.–7 p.m.; September 19, 2003, 8:30 a.m.–5 p.m.; September 20, 2003, 9 a.m.–5:30 p.m.; and September 21, 2003, 8 a.m.–10:30 a.m.

Place: Embassy Suites Hotel Raleigh/Crabtree, 4700 Creedmoor Road, Raleigh, NC 27612, 919–881–0000.

Status: The meeting will be open to the public.

Agenda: The agenda will focus on the implementation of the National Health Service Corps program within the state of North Carolina. Meeting will further cover the continuing needs of health professional shortage areas within the state. Agenda items and times are subject to change as priorities dictate.

FOR FURTHER INFORMATION CONTACT: Tira Robinson, Division of National Health Service Corps, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8A–55, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 594–4140.

Dated: August 21, 2003.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 03–22073 Filed 8–28–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request: Pretesting of NCI Office of Communications Messages

Summary: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Cancer Institute (NCI), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on April 3, 2003, page 16295 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: Pretesting of NCI Office of Communications Messages.

Type of Information Collection Request: Extension (OMB # 0925–0046, expires 8/31/03).

Need and Use of Information Collection: In order to carry out NCI's legislative mandate to educate and disseminate information about cancer prevention, detection, diagnosis, and treatment to a wide variety of audiences and organizations (*e.g.,* cancer patients, their families, the general public, health providers, the media, voluntary groups, scientific and medical organizations), the NCI Office of Communications (OC) needs to pretest its communications strategies, concepts, and messages while they are under development. The primary purpose of this pretesting, or formative evaluation, is to ensure that the messages, communication materials, and information services created by OC have the greatest capacity of being received, understood, and accepted by their target audiences. By utilizing appropriate qualitative and quantitative methodologies, OC is able to (1) understand characteristics of the intended target audience—their attitudes, beliefs and behaviors—and use this information in the development of effective communication tools and strategies; (2) produce or refine messages that have the greatest potential to influence target audience attitudes and behavior in a positive manner; and (3) expend limited program resource dollars wisely and effectively.

Frequency of Response: On occasion.

Affected Public: Individuals or households; Businesses or other for profit; Not-for-profit institutions; Federal Government; State, local or tribal Government.

Type of Respondents: Adult cancer patients; members of the public; health care professionals; organizational representatives.

The annual reporting burden is as follows:

Estimated Number of Respondents: 13,780;

Estimated Number of Responses per Respondent: 1;

Average Burden Hours Per Response: .1458; and

Estimated Total Annual Burden Hours Requested: 2,010. 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 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 Ellen Eisner, Communications Research Manager, OC Director's Office, NCI, NIH, Building 31, Room 10A03, 9000 Rockville Pike, Bethesda, MD 20892, or call non-toll-free number (301) 435–7783 or e-mail your request, including your address to: *EisnerE@occ.nci.nih.gov.*

Comment 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 21, 2003.

Reesa Nichols,

Project Clearance Liaison, NCI.

[FR Doc. 03–22085 Filed 8–28–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; 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 Environmental Health Sciences Special Emphasis Panel, Review of PO1 Applications.

Date: September 30, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Homewood Suites by Hilton-RDU Airport, 4603 Central Park Dr., Durham, NC 27703.

Contact Person: Leroy Worth, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research and Training, National Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30/Room 3171, Research Triangle Park, NC 27709, 919/541–0670, *worth@niehs.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation-Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances-Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: August 22, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–22083 Filed 8–28–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; 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 with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Concept Review—''The Synthesis and Testing of Norsteroidal and Nonhormonal Male Contraceptive Agents''.

Date: September 17, 2003.

Time: 12 p.m. to 2 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Hameed Khan, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Executive Blvd., Room 5E01, Bethesda, MD 20892, (301) 435–6902, *khanh@mail.nih.gov*.

(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 20, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–22084 Filed 8–28–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

Departmental Advisory Committee on Commercial Operations of the Bureau of Customs and Border Protection (''COAC'')

AGENCY: Department of Homeland Security.

ACTION: Notice of meeting.

SUMMARY: This notice announces the date, time, and location for the fourth meeting of the eighth term of the Departmental Advisory Committee on Commercial Operations of the Bureau of Customs and Border Protection (COAC), and the expected agenda for its consideration.

DATES: The next meeting of the COAC will be held on Friday, September 19, 2003, at 9 a.m. in the Rotunda Room, 9th Floor, Ronald Reagan Building, located at 1300 Pennsylvania Ave., NW., Washington, DC 20229 (take elevator to 8th floor and follow signs to the steps leading to the 9th floor). The duration of the meeting will be approximately four hours.

FOR FURTHER INFORMATION CONTACT: Donna Montiel, Department of Homeland Security, 202–282–8472.

SUPPLEMENTARY INFORMATION: This meeting is open to the public. However, participation in the COAC's deliberations is limited to COAC members, Homeland Security and Treasury Department officials, and persons invited to attend the meeting for special presentations. All persons entering the building must be cleared by building security at least 72 hours in advance of the meeting. Personal data to obtain this clearance must be submitted to Donna Montiel, 202–282–8472, no later than 2 p.m. e.s.t on Tuesday, September 16, 2003.

Agenda

The COAC is expected to pursue the following agenda, which may be modified prior to the meeting:

(1) Security Sub-Committee Report (Advance Manifest Rules, Free and Secure Trade (FAST program), Customs-Trade Partnership Against Terrorism and the Container Security Initiative (CTPAT and CSI), CBP Human Capital Plan).

(2) DHS Briefing on DHS Re-Organization.

(3) Other Issues (E-Rulings Project, CBP Participation on WTO Task Force for Global Security Standard, Customs Broker Exam, and Revision of Customs Forms).

Dated: August 25, 2003.

C. Stewart Verdery,

Assistant Secretary for Border and Transportation Security Policy and Planning.

[FR Doc. 03–22138 Filed 8–28–03; 8:45 am]

BILLING CODE 4820–02–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 for Asylum and for Withholding of Removal; Form I–589.

The Department of Homeland Security (DHS) has submitted the following information collection to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995.

The former Immigration and Naturalization Service (Service) published a **Federal Register** notice on February 25, 2003 at 68 FR 8784 to solicit public comments for a 60-day period regarding the proposed Form I–589, Application for Asylum and for Withholding of Removal. At the close of the public comment period on April 28, 2003, the DHS had not received any comments.

This notice allows an additional 30 days for public comments. Comments are encouraged and will be accepted until September 29, 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 agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* Application for Asylum and for Withholding of Removal.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–589, Office of International Affairs, Asylum Division, 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 collected on this form will be used to determine whether an alien applying for asylum and/or withholding of removal in the United States is classifiable as a refugee, or eligible for protection under the Convention Against Torture, and is eligible to remain in the United States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 78,000 responses at 12 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 936,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard S. Sloan (202) 514–3291, Director, Regulations and Forms Services Division, Bureau of Citizenship and Immigration Services (BCIS), 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 Mr. Richard A. Sloan.

If additional information is required contact: Ms. Terry O'Malley, Clearance Officer, U.S. Department of Homeland Security, 7th and D Streets, NW., 4th Floor, Washington, DC (202) 358–3571.

Dated: August 26, 2003.

Richard A. Sloan,

Department Clearance Officer, U.S. Department of Homeland Security, Bureau of Immigration and Customs Enforcement.

[FR Doc. 03–22129 Filed 8–28–03; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[USCG–2002–14134]

Port Pelican LLC Deepwater Port License Application

AGENCY: Coast Guard, DHS, and Maritime Administrative, DOT.

ACTION: Final environmental impact statement, notice of availability.

SUMMARY: The U.S. Coast Guard and the Maritime Administration announce the availability of the final environmental impact statement for the Port Pelican LLC Deepwater Port License Application. We request your input on this final environmental impact statement, which covers the construction and operation of a liquefied natural gas deepwater port known as ''Port Pelican'' and associated anchorage on the Outer Continental Shelf in the Gulf of Mexico, approximately 36 miles south southwest of Freshwater City, Louisiana.

DATES: The final environmental impact statement (FEIS) will be available on August 29, 2003. Comments must reach the Coast Guard on or before October 2, 2003.

ADDRESSES: The FEIS will be available in the docket on the Internet at *http://dms.dot.gov* under docket number USCG–2002–14134 or by contacting the U.S. Coast Guard as indicated under **FOR FURTHER INFORMATION CONTACT:** Comments may be submitted in several ways. To make sure your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) Electronically through the Web site for the Docket Management System at *http://dms.dot.gov.*

(2) By mail to the Docket Management Facility (USCG–2002–14134), U.S. Department of Transportation, Room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(3) By fax to the Docket Management Facility at (202) 493–2251.

(4) By delivery 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. The telephone number is (202) 366–9329.

The Docket Management Facility maintains the public docket for this notice. Comments will become part of this docket and will be available along with the FEIS for inspection or copying at Room PL–401, located on the Plaza Level of the Nassif Building at the above address between 9 a.m. and 5 p.m., Monday through Friday, except for Federal holidays. You may also view this docket, including this notice and comments, on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: If you have questions about the project, you may contact Commander Mark Prescott, U.S. Coast Guard at (202) 267–0225 or *mprescott@comdt.uscg.mil.* If you have questions on viewing or submitting material to the docket, call Andrea M. Jenkins, Program Manager, Docket Operations, telephone (202) 366–0271.

SUPPLEMENTARY INFORMATION:

Authority: 33 U.S.C. 1504(f).

Request For Comments

We encourage you to submit comments on this FEIS. If you do so, please include your name and address, identify this notice (USCG–2002–14134), and give the reason for each comment. You may submit your comments by mail, hand delivery, fax or electronic means to the Docket Management Facility at the address given under **ADDRESSES**, but please submit your comments and materials by only one means. If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail, and would like to know if they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments received during the comment period.

Proposed Action

The application plan calls for construction of the Port Pelican Deepwater Port and associated anchorage in an area situated in the Gulf of Mexico approximately 36 miles south southwest of Freshwater City, Louisiana, in Vermilion Block 140. Additional information on the application can be found on the Internet at *http://dms.dot.gov* under docket number USCG–2002–14134, or in the notice of application published in the **Federal Register** at 67 FR 79234 (Dec. 27, 2002).

The proposed project would deliver natural gas to the United States Gulf Coast using existing gas supply and gathering systems in the Gulf of Mexico and southern Louisiana. Gas would then be delivered to shippers using the national pipeline grid through interconnections with major interstate and intrastate pipelines.

The project would consist of the Port Pelican Terminal (the Terminal), an LNG receiving, storage and regasification facility and the Pelican Interconnector Pipeline (PIPL) to transport the gas to the existing offshore gas gathering system.

The project would consist of two concrete gravity based structure (GBS) units fixed to the seabed, which would include integral LNG storage tanks, support deck mounted LNG receiving and vaporization equipment and utilities, berthing accommodations for LNG carriers, facilities for delivery of natural gas to a pipeline transportation system, and personnel accommodations.

The Terminal would be able to receive the largest LNG carriers in service or on order in 2002. LNG carrier arrival frequency will be planned to match specified terminal gas delivery rates. All marine systems, communication, navigation aids and equipment necessary to conduct safe LNG carrier operations and receiving of product during specified atmospheric and sea states would be provided at the port.

The regasification process would consist of lifting the LNG from storage tanks, pumping the cold liquid to pipeline pressure, vaporization across heat exchanging equipment and delivery through custody transfer metering to the gas pipeline network. No gas conditioning would be required for the Terminal since the incoming LNG would be pipeline quality.

A 42-inch diameter offshore PIPL, 37 nautical miles in length, would be constructed as part of the project. The PIPL would transport gas from the Terminal to a point near the Tiger Shoal Platform ''A'' where it would connect to Henry-Floodway Gas Gathering System (HFGGS). The HFGGS would deliver the gas to the onshore U.S. gas pipeline network.

The Terminal would be constructed in two phases. Phase I would include the installation of two GBS units with internal storage tanks and facilities for LNG offloading, and vaporization capability to deliver a peak 1.0 billion standard cubic feet per day (SCFD) of

natural gas to the pipeline system. Additional vaporization equipment and associated support equipment and facilities would be installed during Phase II to increase the facility vaporization and send out rate to 2.0 billion SCFD peak.

Alternatives

The FEIS examines in detail an alternative location for siting of the project and a no action alternative. The alternative site, approximately 30 miles east of Vermilion Block 140, would involve use of South Marsh Island Block 4. Evaluation of the no action alternative, defined as not approving the license application, provides a baseline for comparing the impacts associated with the proposed action and use of the alternative site.

Dated: August 29, 2003.

Joseph J. Angelo,

Director of Standards, Marine Safety, Security, and Environmental Protection, U.S. Coast Guard.

Raymond R. Barberesi,

Director, Office of Ports and Domestic Shipping, Maritime Administration.

[FR Doc. 03–22139 Filed 8–28–03; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2003–15797]

Draft Environmental Impact Statement for the Proposed Lake Washington Ship Canal Bridge and Proposed Modification of the Duwamish Waterway Bridge

AGENCY: Coast Guard, DHS.

ACTION: Notice of availability; notice of public hearing; and request for public comments.

SUMMARY: The Coast Guard announces the availability of a Draft Environmental Impact Statement (Draft EIS) for the Seattle Monorail Project ''Green Line'' monorail in Seattle, Washington. The Draft EIS has been prepared in cooperation with the Seattle Monorail Project, which is a municipal transportation agency of the State of Washington and is proposing the transit project analyzed in the Draft EIS. The Coast Guard and the Seattle Monorail Project agreed to prepare this Draft EIS to satisfy the requirements of both the National Environmental Policy Act (NEPA) and the Washington State Environmental Policy Act (SEPA) for the proposed Green Line monorail project. We request your comments on the Statement. The Coast Guard will hold a public hearing to receive comments on the Draft EIS. The proposed location of the bridge is across the Lake Washington Ship Canal, approximate milepoint 1.0, at Seattle, Washington. The proposed bridge modification is across the Duwamish Waterway, approximate milepoint 0.3, at Seattle, Washington. The hearing will allow interested persons to present comments and information concerning the impact of the proposed bridgework on navigation and the human environment. Because the Coast Guard is using the EIS process to also conduct public outreach under the National Historic Preservation Act, this public hearing is also an opportunity for the public to comment on the proposed project's impacts to cultural resources, such as historic resources or archaeological resources.

DATES: This hearing will be held on Monday, September 29, 2003, with an afternoon and evening session. The afternoon session will begin promptly at 1 p.m. and adjourn at 3 p.m. The evening session will begin promptly at 5 p.m. and adjourn when all evening speakers have spoken. Requests to speak, with session preference, and requests for services must be received in the Bridge Section at the address given under **ADDRESSES** by September 22, 2003. Attendees at the hearing, who wish to present testimony and have not previously made a request to do so, will follow those having submitted a request, as time permits. Comments pertaining to the Draft EIS must be received by the docket October 14, 2003.

ADDRESSES: To make sure that your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) Electronically through the Web site for the Docket Management System at *http://dms.dot.gov.*

(2) By mail to the Docket Management Facility, (USCG–2003–15797), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) By delivery 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. The telephone number is 202–366–9329.

The Docket Management Facility maintains the public docket for this notice. Comments and material received from the public, as well as the Draft EIS, will become part of this docket and will be available for inspection or copying at 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. You may also find this docket, including the Draft EIS, on the Internet at *http://dms.dot.gov.*

The hearing will be held at the Northwest Rooms, Seattle Center, 305 Harrison Street, Seattle, Washington. The Northwest Rooms are near the northwest corner of the Seattle Center campus, just to the north of the Key Arena.

The Coast Guard point of contact is Mr. Austin Pratt, Bridge Section, Commander (oan), Thirteenth Coast Guard District, 915 Second Avenue, Room 3510, Seattle, WA 98174–1067.

Requests to receive copies of the Draft EIS should be sent to the Seattle Monorail Project, ATTN: Mr. Ross Macfarlane, 1904 Third Avenue, Suite 105, Seattle, WA 98101. Alternatively, the Draft EIS is available on the Internet at *http://www.elevated.org.* Copies are also available for inspection at the offices of the Seattle Monorail Project, 1904 Third Avenue, Suite 105, Seattle, WA 98191 (telephone (206) 328–1220), and are available at the City of Seattle public libraries, and at the U.S. Coast Guard Bridge Section address given under **ADDRESSES.**

Comments, including names and home addresses, may be published as part of the Final EIS. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, the proposed project, or the associated Draft EIS, call Mr. Austin Pratt, Bridge Administrator, telephone (206) 220–7282. Information may also be obtained from the Seattle Monorail Project, 1904 Third Avenue, Suite 105, Seattle, WA 98101, telephone (206) 382–1220. Information, including copies of the Draft EIS, is available over the Internet at the Seattle Monorail Project Web site: *http://www.elevated.org.* If you have questions on viewing or submitting material to the docket, call Dorothy Beard, Chief, Dockets, Department of

Transportation, telephone 202–366–5149.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to submit comments and related material on the Draft EIS. If you do so, please include your name and address, identify the docket number for this notice (USCG–2003–15797) and give the reasons for each comment. You may submit your comments and material by mail, hand delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period.

Proposed Action

The project under consideration is a 14-mile monorail line in Seattle, Washington, that will provide transit service serving a number of Seattle communities and destinations. The project is being proposed by the Seattle Popular Monorail Authority (also known as Seattle Monorail Project or SMP), which is a city transportation authority organized under Washington Revised Code Chapter 35.95A. The Green Line would use traditional monorail technology, which consists of linked train cars straddling an elevated guideway beam that provides electric power to propel the train cars. Green Line trains would run on rubber tires that are locked into the beams and would be operated automatically and not require drivers.

The Green Line includes a new bridge crossing of the Lake Washington Ship Canal (near the existing Ballard Bridge), for which a bridge permit from the Coast Guard and environmental review pursuant to the National Environmental Policy Act (NEPA) are required. A crossing of the Duwamish Waterway on the existing West Seattle High-Rise Bridge is proposed, and may also require a bridge permit from the Coast Guard depending on final design drawings. Comments regarding impacts that the proposed Green Line bridgework may have on navigation of the Lake Washington Ship Canal or the Duwamish Waterway will be of particular relevance to the Coast Guard's bridge permitting responsibilities. In order to evaluate indirect and cumulative environmental impacts of the Coast Guard's bridge permit actions, the Coast Guard and the SMP have agreed that the scope of NEPA review should be the entire 14-mile Green Line proposal.

The Green Line is being proposed in accordance with Seattle Citizens' Petition No. 1, which was passed by Seattle voters in November 2002. In Petition No. 1, voters adopted the Seattle Popular Monorail Plan, created the SMP, required the SMP to adopt and implement the Seattle Popular Monorail Plan, and authorized funding for the construction and operation of the Green Line as described in the Plan. The proposed Green Line would run from the Ballard neighborhood of Seattle, through the Interbay and Ballard industrial areas, through downtown Seattle, through the South Downtown (SODO) industrial area, and then to the West Seattle neighborhood. The Green Line would connect the urban neighborhoods in Ballard and West Seattle with the industrial/manufacturing areas in the Interbay and SODO areas and with the downtown urban core and central business district of the City of Seattle.

Procedural

Individuals and representatives of organizations who wish to present testimony at the hearing or who want to be placed on the project mailing list, may submit a request to the Bridge Section at the address listed under **ADDRESSES** clearly indicating name and organization represented, if applicable. Requests to speak should be received no later than September 22, 2003, in order to ensure proper scheduling for the hearing. Attendees at the hearing, who wish to present testimony and have not previously made a request to do so, will follow those having submitted a request, as time permits. Speakers will be called in the order of receipt of the request. Depending upon the number of scheduled statements, the Coast Guard may limit the amount of time allowed for each speaker. Written statements and other exhibits in lieu of, or in addition to, oral statements at the hearing may be submitted to the Bridge Section at the address listed under **ADDRESSES** until October 14, 2003, to be included in the Public Hearing transcript. Beginning at 1 p.m. on the hearing date, Seattle Monorail Project representatives will be available with project display materials adjacent to the hearing room to explain the project and answer questions from the public.

Information on Services for Individuals with Disabilities

For information about facilities or services for individuals with disabilities or to request special assistance at the meeting, contact the Commander (oan), Thirteenth Coast Guard District. Please request these services by contacting the Bridge Section at the phone number under **FOR FURTHER INFORMATION CONTACT** or in writing at the address listed under **ADDRESSES.** Any requests for an oral or sign language interpreter must be received by September 22, 2003.

Authority: Section 102(2) of the National Environmental Policy Act of 1969, 40 CFR 1503.1, 36 CFR 800.2(d).

Dated: July 30, 2003.

N.E. Mpras,

Chief, Office of Bridge Administration, U.S. Coast Guard.

[FR Doc. 03–21954 Filed 8–28–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4820–N–35]

Notice of Proposed Information Collection: Comment Request; Application and Re-Certification Packages for Approval of Nonprofit Organizations in FHA Activities

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* October 28, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8003, Washington, DC 20410, or *Wayne_Eddins@hud.gov*.

FOR FURTHER INFORMATION CONTACT: Vance T. Morris, Director, Office of Single Family Program Development, Department of Housing and Urban Development, 451 7th Street, SW.,

Washington, DC 20410, telephone (202) 708–2121 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Application and Re-Certification Packages for Approval of Nonprofit Organizations for FHA Activities.

OMB Control Number, if applicable: 2502–0540.

Description of the need for the information and proposed use: The information collection is essential to the Department's mission to expand homeownership opportunities and strengthen neighborhoods and communities by standardizing the process throughout the country. The information that nonprofit organizations must submit to be eligible to participate as a mortgagor in HUD's single-family housing programs is in the form of an application, re-certification, or other reporting criteria. Nonprofit organizations are viewed as a significant partner in rehabilitating and reselling residential housing to low- and moderate-income families, particularly in the nation's urban centers. Each nonprofit organization seeking to become approved as a mortgagor must submit a completed Application Package for Nonprofit Agency Approval and an Affordable Housing Plan-Format for Narrative to the appropriate HUD Homeownership Center (HOC). The Affordable Housing Plan-Format for Narrative details the nonprofit organization's plan to develop successful homeownership opportunities for low- and moderate-income persons. Nonprofit agencies applying for approval to provide secondary financing only do not need to include an Affordable Housing Plan in their submission.

Approvals granted to nonprofit applicants are for a period of two years. An approval letter will be issued setting forth the activities for which the nonprofit was approved to perform, and any conditions associated with the approval. Approvals granted by one HOC would be recognized and accepted by all others, with the exception of the affordable housing plan. The affordable housing plan must be approved by each HOC having jurisdiction over the areas in which the nonprofit agency wishes to do business. Nonprofit agencies must be re-certified by FHA every two years. Re-certification includes an updating of the nonprofit's activities. FHA has also placed a limitation on the number of 203(k) FHA insured mortgages a nonprofit may have at one time in order to ensure that nonprofit agencies do not overextend their financial and management capabilities. Generally, a nonprofit agency will be prohibited from borrowing under the 203(k) program if the agency has 10 or more incomplete 203(k) developments at one time. This limitation may be waived based upon an exceptional performance record.

Agency form numbers, if applicable: None.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The number of respondents are estimated to be 1,900 generating approximately 3,400 annual responses; the frequency of response is annually, biennially, and on occasion, the estimated time needed to prepare the responses varies from 3 hours to 24 hours; and the total estimated annual burden hours are 23,200.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., chapter 35, as amended.

Dated: August 22, 2003.

Margaret A. Young,

Deputy Assistant Secretary for Finance and Budget.

[FR Doc. 03–22086 Filed 8–28–03; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4817–N–14]

Notice of Proposed Information Collection for Public Comment for Public Housing, Contracting With Resident-Owned Businesses

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review and approval, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35, as amended). The Department is soliciting public comment on the subject proposal.

DATES: *Comments Due Date:* October 28, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control number and should be sent to: *Mildred M. Hamman,* Reports Liaison Officer, Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4249, Washington, DC 20410–5000.

FOR FURTHER INFORMATION CONTACT: Mildred M. Hamman, (202) 708–0614 extension 4128. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: In order to be eligible for the alternative procurement process provided by 24 CFR part 963, resident-owned businesses must submit evidence to PHAs indicating that they meet eligibility requirements as defined in 24 CFR 963.10. Resident owned-businesses must furnish evidence to PHAs that they are: A legally formed business; a resident-owned business; have the capacity to complete the work contract; and have a limited number of contracts obtained through the alternative procurement process. Although PHAs are not required to use the alternative procurement method, they are required to collect eligibility requirements from resident-owned businesses when using this procurement method.

This Notice is soliciting comments from members of the public and affected agencies (PHAs) concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agencies, including

whether the information will have practical utility; (2) evaluate the accuracy of HUD's estimate of the burden for collecting said information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond.

This Notice also lists the following information:

Title of Proposal: Public Housing, Contracting with Resident-Owned Businesses Application Requirements.

OMB Control Number: 2577–0161.

Description of the need for the information and proposed use: The information is Necessary so that the applicants (resident-owned businesses) seeking to qualify for non-Competitive contracting the Public Housing Agency (PHA) will be eligible to be solicited by the PHA as a contractor for a proposed contract.

Members of the affected public: Individuals or households; State or local governments; nonprofit institutions; small businesses or organizations.

Estimate of the total number of hours needed to prepare the information collection including the number of respondents, frequency of response and hours of response: 500 respondents, annually, 16 hours per response, 8,000; recordkeeping, 500 respondents, annually, one hour per response, 500 hours. The total burden is 8,500.

Status of the proposed information collection: Extension, without change.

Authority: Sec. 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, as amended.

Dated: August 22, 2003.

Michael Liu,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 03–22087 Filed 8–20–03; 8:45 am]

BILLING CODE 4210–33–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4809–N–35]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: August 29, 2003.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, Department of Housing and Urban Development, Room 7262, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: August 21, 2003.

John D. Garrity,

Director, Office of Special Needs Assistance Programs.

[FR Doc. 03–21926 Filed 8–28–03; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–055–5853–EU]

Notice of Realty Action: Competitive Sale of Public Lands in Clark County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action.

SUMMARY: The following described lands have been designated for disposal and will be offered at a competitive sale of public lands in Clark County, Nevada.

FOR FURTHER INFORMATION CONTACT: You may contact Judy Fry, Program Lead, Sales, on (702) 515–5081 or e-mail to *JFry@NV.blm.gov.*

SUPPLEMENTARY INFORMATION: The following lands have been designated for disposal under Pub. L. 105–263, the Southern Nevada Public Land Management Act of 1998 (112 Stat. 2343) and Pub. L. 107–282, Clark County Conservation of Public Land and Natural Resources Act of 2002 (116 Stat. 1995). Sixty parcels for a total of 2,728.49 acres, more or less, will be offered competitively on November 6, 2003, at an oral auction in accordance with Section 203 and Section 209 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713 and 1719) at not less than the appraised fair market value (FMV).

Mount Diablo Meridian, Nevada

T. 19 S., R. 60 E.,
Sec. 19, W½NE¼NE¼SE¼, E½NW¼NE¼SE¼;
Sec. 29, NE¼NE¼SE¼NE¼, N1/2SE¼NE¼SE¼NE¼;
Sec. 31, NW¼NW¼NE¼NW¼, SW¼NW¼NE¼NW¼, NE¼NW¼NE¼NW¼, SE¼NW¼NE¼NW¼, NW¼SW¼NE¼NW¼, SW¼SW¼NE¼NW¼, NE¼SW¼NE¼NW¼, SE¼SW¼NE¼NW¼, NE¼NE¼NE¼NW¼, SE¼NE¼NE¼NW¼, NE¼NE¼SE¼NW¼, SE¼NE¼SE¼NW¼.

T. 20 S., R. 60 E.,
Sec. 6, Lot 20, NW¼NW¼SW¼NE¼, SW¼NW¼SW¼NE¼, NE¼NW¼SW¼NE¼, SE¼NW¼SW¼NE¼, NE¼SW¼SW¼NE¼, SE¼SW¼SW¼NE¼, E½SE¼SE¼SW¼.

T. 21 S., R. 60 E.,
Sec. 10, NE¼SE¼NW¼NW¼, SE¼SE¼NW¼NW¼, NW¼SW¼NE¼NW¼, SW¼SW¼NE¼NW¼.

T. 22 S., R. 60 E.,
Sec. 13, W½SW¼NE¼NW¼;
Sec. 18, NE¼SW¼SE¼SW¼, SE¼SW¼SE¼SW¼;
Sec. 19, SE¼NE¼NE¼NE¼, SE¼NW¼NW¼NE¼, SW¼NW¼NW¼NE¼, NE¼SW¼NW¼NE¼;
Sec. 22, NW¼NE¼NE¼NW¼, SE¼NW¼NE¼NW¼, SW¼NW¼NE¼NW¼, SW¼NE¼NW¼NW¼, SE¼NW¼NW¼NW¼, NW¼SE¼NW¼NW¼, SW¼SE¼NW¼NW¼, NW¼SW¼NE¼NW¼;
Sec. 23, NE¼NE¼NW¼NW¼, NW¼NE¼NW¼NW¼, SW¼NE¼NW¼NW¼, SE¼NE¼NW¼NW¼, NW¼NW¼NW¼, NW¼SW¼NW¼NW¼, NW¼SE¼NW¼NW¼, NW¼SW¼NE¼NW¼, E½SW¼NE¼NW¼, NW¼SE¼NE¼NW¼, SE¼SW¼NW¼NW¼, NW¼NW¼SW¼NW¼;
Sec. 24, NW¼SW¼SW¼NE¼, SE¼SW¼SE¼NE¼, NW¼SW¼SE¼NE¼, SE¼SW¼SW¼NW¼, SW¼SE¼SW¼NW¼;
Sec. 35, NE¼SW¼NE¼NE¼, SE¼SW¼NE¼NE¼, NE¼SE¼NE¼NE¼, SE¼SE¼NE¼NE¼, NE¼NW¼SE¼NE¼, E½NE¼SE¼NE¼.

T. 22 S., R. 61 E.,
Sec. 29, NW¼SE¼SW¼SE¼;
Sec. 34, S½S½SW¼NW¼, S½SE¼NW¼, N½NW¼NW¼SW¼, NE¼NW¼SW¼, N½NW¼NE¼SW¼, NE¼NE¼SW¼, N½SE¼NE¼SW¼, S½SW¼SW¼,NE¼SE¼SW¼, N½SE¼SE¼SW¼, SW¼SE¼SW¼, S½NW¼SE¼SW¼.
T. 23 S., R. 61 E.,
Sec. 11, S½S½NW¼SE¼, SW¼SE¼, W½W½SE¼SE¼, E½SE¼SW¼, S½SE¼NE¼SW¼;
Sec. 14, W½NE¼, W½W½NE¼NE¼, SE¼SW¼NE¼NE¼, W½SE¼NE¼,W½E½SE¼NE¼, E½E½NW¼, E½NE¼SW¼, SE¼SW¼, S½SW¼SW¼,NE¼SW¼NE¼SW¼, S½SW¼NE¼SW¼, NE¼NE¼SW¼SW¼, S½NE¼SW¼SW¼, SW¼NW¼SW¼SW¼, SE¼;
Sec. 15, S½SE¼, S½NW¼SE¼, SW¼NE¼SE¼, SW¼SE¼NE¼SE¼, SW¼NW¼NE¼SE¼, S½NE¼NW¼SE¼, NE¼NE¼NW¼SE¼;
Sec. 22, E½, SW¼;
Sec. 23, All;
Sec. 24, W½E½SW¼NW¼, SW¼NW¼NW¼NW¼, SW¼NW¼NW¼, SW¼SE¼NW¼NW¼, W½SW¼NW¼, E½SE¼SW¼NW¼, SE¼NE¼SW¼NW¼, W½SW¼SE¼NW¼, W½SW¼, W½E½SW¼, W½NE¼SE¼SW¼, SE¼SE¼SW¼.
T. 23 S., R. 62 E.,
Sec. 19, Lots 13, 15, 17, 21, 22, 24, 25, 27, 28, and 29;
Sec. 20, Lots 12, 15, 17, 18, and 20;
Sec. 29, Lot 3;
Sec. 30, Lots 6, 7, 10, and 11.

Containing 2,728.49 acres, more or less.

In addition to the lands described herein, parcels that have been published in a previous Notice of Realty Action (NORA) and were previously offered but did not sell, may be re-offered at this sale.

When the land is sold, conveyance of the locatable mineral interests will occur simultaneously with the sale of the land. The locatable mineral interests being offered have no known mineral value. Acceptance of a sale offer will constitute an application for conveyance of those mineral interests. In conjunction with the final payment, the applicant will be required to pay a $50.00 non-refundable filing fee for processing the conveyance of the locatable mineral interests.

The terms and conditions applicable to the sale are as follows:

All Parcels Are Subject to the Following

1. All leaseable and saleable mineral deposits are reserved on land sold; permittees, licensees, and lessees retain the right to prospect for, mine, and remove the minerals owned by the United States under applicable law and any regulations that the Secretary of the Interior may prescribe, including all necessary access and exit rights.

2. A right-of-way is reserved for ditches and canals constructed by authority of the United States under the Act of August 30, 1890 (43 U.S.C. 945).

3. All land parcels are subject to all valid existing rights. Parcels may also be subject to applications received prior to publication of this Notice if processing the application would have no adverse affect on the appraised Fair Market Value (FMV). Encumbrances of record are available for review during business hours, 7:30 a.m. to 4:30 p.m., Monday through Friday, at the Bureau of Land Management, Las Vegas Field Office, 4701 N. Torrey Pines Drive, Las Vegas, NV.

4. All land parcels are subject to reservations for roads, public utilities and flood control purposes, both existing and proposed, in accordance with the local governing entities' Transportation Plans.

5. All purchasers/patentees, by accepting a patent, agree to indemnify, defend, and hold the United States harmless from any costs, damages, claims, causes of action, penalties, fines, liabilities, and judgments of any kind or nature arising from the past, present, and future acts or omissions of the patentee or their employees, agents, contractors, or lessees, or any third-party, arising out of or in connection with the patentee's use, occupancy, or operations on the patented real property. This indemnification and hold harmless agreement includes, but is not limited to, acts and omissions of the patentee and their employees, agents, contractors, or lessees, or any third party, arising out of or in connection with the use and/or occupancy of the patented real property which has already resulted or does hereafter result in: (1) Violations of federal, state, and local laws and regulations that are now or may in the future become, applicable to the real property; (2) Judgments, claims or demands of any kind assessed against the United States; (3) Costs, expenses, or damages of any kind incurred by the United States; (4) Other releases or threatened releases of solid or hazardous waste(s) and/or hazardous substances(s), as defined by federal or state environmental laws; off, on, into or under land, property and other interests of the United States; (5) Other activities by which solids or hazardous substances or wastes, as defined by federal and state environmental laws are generated, released, stored, used or otherwise disposed of on the patented real property, and any cleanup response, remedial action or other actions related in any manner to said solid or hazardous substances or wastes; or (6) Natural resource damages as defined by federal and state law. This covenant shall be construed as running with the patented real property and may be enforced by the United States in a court of competent jurisdiction.

Maps delineating the individual sale parcels are available for public review at the BLM Las Vegas Field Office (LVFO). Appraisals for each parcel will be available for public review at the LVFO on or about September 15, 2003.

Each parcel will be offered by sealed bid (with the exception of N–75200, N–76789, and N–76570), and at oral auction. All sealed bids must be received at the BLM LVFO, 4701 N. Torrey Pines Drive, Las Vegas, NV 89130, no later than 4:30 p.m., PST, November 4, 2003. Sealed bid envelopes must be marked on the lower front left corner with the BLM Serial Number for the parcel and the sale date. Bids must be for not less than the appraised FMV and a separate bid must be submitted for each parcel.

Each sealed bid shall be accompanied by a certified check, money order, bank draft, or cashier's check made payable to the Bureau of Land Management, for not less than 10 percent of the amount bid. The highest qualified sealed bid for each parcel will become the starting bid at the oral auction. If no sealed bids are received, oral bidding will begin at the appraised FMV.

All parcels will be offered for competitive sale by oral auction beginning at 10 a.m., PST, November 6, 2003, at Sam's Town, 5111 Boulder Highway, Las Vegas, Nevada. The location inside Sam's Town is the Sam's Town Live venue located near the Box Office and close to the movie theatres. Registration for oral bidding will begin at 8:30 a.m. the day of sale and will continue throughout the auction. All oral bidders are required to register.

The highest qualifying bid for any parcel, whether sealed or oral, will be declared the high bid. The apparent high bidder, if an oral bidder, must submit the required bid deposit immediately following the close of the sale in the form of cash, personal check, bank draft, cashiers check, money order or any combination thereof, made payable to the Bureau of Land Management, for not less than 20 percent of the amount bid. If not paid by close of the auction, *funds must be delivered no later than 4:30 p.m. the day of the sale* to the BLM Las Vegas Field Office.

The remainder of the full bid price, whether sealed or oral, must be paid within 180 calendar days of the sale date. Failure to pay the full price within the 180 days will disqualify the apparent high bidder and cause the entire bid deposit to be forfeited to the BLM.

Parcels N–75200 and N–76789 (West Henderson), as well as N–76570, will be offered only at the oral auction. Sealed bids for these parcels will not be accepted. If these parcels are not sold at the oral auction, they will not be offered on the Online Internet Auction. Should the apparent high bidders for parcels N–75200, N–76789 and N–76570 default, and if BLM decides to proceed with the sale, the second high bidder for each parcel will be declared the apparent high bidder.

Oral bids will be considered only if received at the place of sale and made at least for the appraised fair market value as determined by the Bureau of Land Management. For parcels designated *Serial Numbers N–75200 and N–76570* specifically, each prospective bidder will be required to show by certified check, postal money order, bank draft or cashier's check made payable to the Bureau of Land Management an amount of money which shall be no less than 20% of the federally appraised fair market value of the designated parcels, *Serial Numbers N–75200 and N–76570,* in order to be eligible to bid on each respective parcel. In order to bid on both designated parcels listed, a separate certified check, postal money order, bank draft or cashier's check made payable to the Bureau of Land Management in an amount of money which shall be no less than 20% of the appraised fair market value for each designated parcel will be required.

The apparent high bidders for parcels N–75200 and N–76789 will be required within 30 days from the date of the oral auction, November 6, 2003, to reach an agreement to develop with the City of Henderson. Failure to reach an agreement within will disqualify the apparent high bidder(s), the deposit(s) will be returned, and if BLM decides to proceed with the sale, the property shall be offered to the second highest bidder(s) at his/her highest bid. The second highest bidder will be required to submit to the Bureau of Land Management, a deposit in the amount of 20% of their bid. He/she will also be given 30 days from the date of the offer to reach an agreement to develop with the City of Henderson. Failure by the second high bidder(s) to reach an agreement within 30 days will disqualify the second high bidder, their deposit will be returned, the sale cancelled. Having been published once in the **Federal Register**, the property may be re-offered for sale at a later date without further legal notice. The parcels will not be offered to the third high bidder in the event of the second high bidder's default.

Unsold parcels, with the exception of parcels N–75200, N–76789 and N–76570, may be offered on the Internet. Internet auction procedures will be available at *http://www.auctionrp.com.* If unsold on the Internet, parcels may be offered at future auctions without additional legal notice. Upon publication of this notice and until the completion of the sale, the BLM is no longer accepting land use applications affecting any parcel being offered for sale, including parcels being offered for sale that have been published in a previous Notice of Realty Action. However, land use applications may be considered after completion of the sale for parcels that are not sold through sealed, oral, or online Internet auction procedures.

Federal law requires bidders to be U.S. citizens 18 years of age or older; a corporation subject to the laws of any State or of the United States; a State, State Instrumentality, or political subdivision authorized to hold property, or an entity including, but not limited to, associations or partnerships capable of holding property or interests therein under the laws of the State of Nevada. *Certification of qualification, including citizenship or corporation or partnership, must accompany the bid deposit.*

In order to determine the fair market value of the subject public lands through appraisal, certain extraordinary assumptions may have been made of the attributes and limitations of the lands and potential effects of local regulations and policies on potential future land uses. Through publication of this NORA, the Bureau of Land Management gives notice that these assumptions may not be endorsed or approved by units of local government. Furthermore, no warranty of any kind shall be given or implied by the United States as to the potential uses of the lands offered for sale, and conveyance of the subject lands will not be on a contingency basis. It is the buyer's responsibility to be aware of all applicable local government policies and regulations that would affect the subject lands. It is also the buyer's responsibility to be aware of existing or projected use of nearby properties. When conveyed out of federal ownership, the lands will be subject to any applicable reviews and approvals by the respective unit of local government for proposed future uses, and any such reviews and approvals would be the responsibility of the buyer. Any land lacking access from a public road or highway will be conveyed as such, and future access acquisition will be the responsibility of the buyer.

Detailed information concerning the sale, including the reservations, sale procedures and conditions, and environmental documents is available for review at the Bureau of Land Management, Las Vegas Field Office, 4701 N. Torrey Pines Drive, Las Vegas, NV 89130, or by calling (702) 515–5114. This information will also be available on the Internet at *http://propertydisposal.gsa.gov.* Click on NV for Nevada. It will also be available on the Internet at *http://www.nv.blm.gov.* Click on Southern Nevada Public Land Management Act and go to Land Sales.

The general public and interested parties may submit comments to the Field Manager, Las Vegas Field Office, 4701 N. Torrey Pines Drive, Las Vegas, Nevada 89130 until October 14, 2003. Any adverse comments will be reviewed by the State Director, who may sustain, vacate, or modify this realty action in whole or in part. In the absence of any adverse comments, this realty action will become the final determination of the Department of Interior. The Bureau of Land Management may accept or reject any or all offers, or withdraw any land or interest in the land from the sale, if, in the opinion of the authorized officer, consummation of the sale would not be fully consistent with FLPMA or other applicable laws or is determined to not be in the public interest. Any comments received during this process, as well as the commentor's name and address, will be available to the public in the administrative record and/or pursuant to a Freedom of Information Act request. You may indicate for the record that you do not wish to have your name and/or address made available to the public. Any determination by the Bureau of Land Management to release or withhold the names and/or addresses of those who comment will be made on a case-by-case basis. A commentor's request to have their name and/or address withheld from public release will be honored to the extent permissible by law.

Lands will not be offered for sale until at least October 28, 2003.

Dated: August 1, 2003.

Mark T Morse,

Field Manager.

[FR Doc. 03–22182 Filed 8–28–03; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF JUSTICE

Task Force for Faith-Based and Community Initiatives; Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day notice of information collection under review: Survey on Ensuring Equal Opportunity for Applicants.

The Department of Justice, Task Force for Faith-Based and Community Initiatives has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (Volume 68, Number 100, and page 28263 on May 23, 2003, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until September 29, 2003. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information

(1) Type of information collection: Extension of a currently approved collection.

(2) The title of the form/collection: Survey on Ensuring Equal Opportunity for Applicants.

(3) The agency form number, if any, and the applicable component of the department sponsoring the collection: Form Number: none. Task Force for Faith-Based and Community Initiatives, Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: not-for-profit institutions. Abstract: To ensure equal opportunity for all applicants including small, community-based, faith-based and religious groups, it is essential to collect information that enables the Federal agencies to determine the level of participation of such organizations in Federal grant programs while ensuring that such information is not used in grant-making decisions.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply: There are approximately 15,361 respondents who will each require an average of five minutes to respond.

(6) An estimate of the total public burden (in hours) associated with the collection: The total annual public burden hours associated with this information collection is estimated to be 1,229 hours.

If additional information is required contact: Brenda E. Dyer, Department Deputy Clearance Officer, Policy and Planning Staff, Justice Management Division, United States Department of Justice, 601 D Street, NW., Patrick Henry Building, Suite 1600, Washington, DC 20530.

Dated: August 26, 2003.

Brenda E. Dyer,

Department Deputy Clearance Officer, Department of Justice.

[FR Doc. 03–22180 Filed 8–28–03; 8:45 am]

BILLING CODE 4410–20–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—IMS Global Learning Consortium, Inc.

Notice is hereby given that, on August 8, 2003, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), IMS Global Learning Consortium, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Cisco Learning Institute, Phonex, AZ; European Schoolnet, Brussels, Belgium; Question Mark Computing Limited, London, United Kingdom; and Xtensis, London, United Kingdom have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and IMS Global Learning Consortium, Inc. intends to fille additional written notification disclosing all changes in membership.

On April 7, 2000, IMS Global Learning Consortium, Inc. filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on September 13, 2000 (65 FR 55283).

The last notification was filed with the Department on May 27, 2003. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on June 17, 2003 (68 FR 35913).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 03–22082 Filed 8–28–03; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Inter Company Collaboration for AIDS Drug Development

Notice is hereby given that, on August 5, 2003, pursuant to section 6(a) of the

National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Inter Company Collaboration for AIDS Drug Development has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's previsions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, although there are no other changes in the membership, Collaboration member Pfizer, Inc. of New York, NY, has acquired Collaboration member Pharmacia Corporation of Peapack, NJ.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Inter Company Collaboration for AIDS Drug Development intends to file additional written notification disclosing all changes in membership.

On May 27, 1993, Inter Company Collaboration for AIDS Drug Development filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on July 6, 1993 (58 FR 36223).

The last notification was filed with the Department on April 4, 2003. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on May 16, 2003 (68 FR 26648).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 03–22079 Filed 8–28–03; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Optical Internetworking Forum

Notice is hereby given that, on July 23, 2003, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Optical Internetworking Forum has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Movaz Networks, McLean, VA; and FCI, Etters, PA have been added as parties to this venture.

Also, Accelight Networks, Bridgeville, PA: ADC Communications, Charlotte, NC; Altamar Networks, Mountain View, CA; Alvesta Corporation, Sunnyvale, CA; Ample Communications, Fremont, CA; Axonlink, Petah Tikva, ISRAEL; Bandwidth9, Fremont, CA; Blue Sky Research, Milpitas, CA; Calix Networks, Petaluma, CA; Celion Networks, Tinton Falls, NJ; Centellax, Santa Rosa, CA; Centerpoint Broadband Technologies, San Jose, CA; Centre Tecnologic de Telecommunicacions de Catalunya, Barcelona, SPAIN; Ceybe, Kanata, Ontario, CANADA; Chiaro Networks, Richardson, TX; Cognigine, Fremont, CA; Coherent Telecom, San Jose, CA; Coriolis Networks, Boxboro, MA; E2O Communications, Rockland, DE; Equant Telecommunications, Sophia Antipolis, FRANCE; Extreme Networks, Santa Clara, CA; Fujikura, Santa Clara, CA; Future Soft Communications, San Jose, CA; JCP Photonics, Sunnyvale, CA; Kirana Networks, Red Bank, NJ; LuxN, Sunnyvale, CA; Nayna Networks, Milpitas, CA; Optillion, Stockholm, SWEDEN; Paxonet, Fremont, CA; Peta Switch Solutions, Santa Clara, CA; Pine Photonics, Fremont, CA; RF Micro Devices, Billerica, MA; RHK, North Attleborough, MA; Santel Networks, Newark, CA; Southampton Photonics, Southampton, UNITED KINGDOM; Stratos Lightwave, Mountain View, CA; Sumitomo Electric, Durham, NC; Taconic, Petersburgh, NY; Transpera Networks, San Jose, CA; Vativ, San Diego, CA; Velocium, El Segundo, CA; Wavium AB, Stockholm, SWEDEN; West Bay Semiconductor, Vancouver, British Columbia, CANADA; and Xindium, Champaign, IL have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Optical Internetworking Forum intends to file additional written notification disclosing all changes in membership.

On October 5, 1998, Optical Internetworking Forum filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on January 29, 1999 (64 FR 4709).

The last notification was filed with the Department on July 22, 2002. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on December 5, 2002 (67 FR 72429).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 03–22081 Filed 8–28–03; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Salutation Consortium, Inc.

Notice is hereby given that, on July 22, 2003, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Salutation Consortium, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Leonardo Marques Alves de Pinho (individual member), Sao Paulo, BRAZIL has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Salutation Consortium, Inc. intends to file additional written notification disclosing all changes in membership.

On March 30, 1995, Salutation Consortium, Inc. filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on June 27, 1995 (60 FR 33233).

The last notification was filed with the Department on May 6, 2003. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on June 3, 2003 (68 FR 33183).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 03–22078 Filed 8–28–03; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Silicon Integration Initiative, Inc.

Notice is hereby given that, on July 30, 2003, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Silicon Integration Initiative, Inc. (''SI2'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Agere, Allentown, PA; Renesas Technology Corp., Tokyo, Japan; Tektronix, Beaverton, OR; Artisan Components, Inc., Sunnyvale, CA; Multi-Gig, Ltd., Wellingborough, United Kingdom; Nassda, Santa Clara, CA; Sagantec, Fremont, CA; Silicon Canvas, San Jose, CA; Synplicity, Sunnyvale, CA; and Verisity Design, Inc, Mountain View, CA have been added as parties to this venture. Also, Avant!, Sunnyvale, CA; Lucent Technologies, Murray Hill, NJ; Matsushita Electronic Ind. Company, Osaka, Japan; Mitsubishi Electric Corporation, Hyogo, Japan; Silicon Graphics, Mountain View, CA; Sony Corporation, Tokyo, Japan; Texas Instruments, Inc., Dallas, TX; Toshiba Corporation, Tokyo, Japan; Agile Software, San Jose, CA; Partminer, Englewood, CO; Aprisa, Westlake Village, CA; Chronology, Inc., Redmond, WA; Circuit Semantics, San Jose, CA; eChips, Austin, TX; eSilicon, Palo Alto, CA; IC Master, Garden City, NJ; Infoquick, Irvine, CA; Intime Software, Cupertino, CA; Numerical Technologies, San Jose, CA; Saqqara Systems, Inc., Sunnyvale, CA; Synapticad, Blacksburg, VA; Virtual Component Exchange, Livingston, Scotland, United Kingdom; VSI Alliance, Los Gatos, CA; and Web-Pro, Ltd., Hong Kong, Hong Kong-China have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and SI2 intends to file additional written notifications disclosing all changes in membership.

On December 30, 1988, SI2 filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on March 13, 1989 (54 FR 10456).

The last notification was filed with the Department on May 2, 2001. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on June 4, 2001 (66 FR 30007).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 03–22080 Filed 8–28–03; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

August 19, 2003.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Darrin King on (202) 693–4129 (this is not a toll-free number) or e-mail: *king.darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Employment and Training Administration (ETA), Office of Management and Budget, Room 10235, Washington, DC 20503 (202–395–7316/ this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: Employment and Training Administration.

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Title: Youth Employment Survey.

OMB Number: 1205–0373.

Affected Public: Individuals or households.

Type of Response: Reporting.

Frequency: One time.

Number of Respondents: 169,152.

Information collection activity	Number of responses	Average response time (hours)	Annual burden hours
Screener Interview	147,814	0.08	12,318
Questionnaire	21,338	0.25	5,335
Total	169,152		17,653

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/ maintaining systems or purchasing services): $0.

Description: The U.S. Department of Labor's Employment and Training Administration is seeking OMB approval to reinstate with modifications the Youth Employment Survey (YES). Follow-up data from this survey are needed to complete the evaluation of the Youth Opportunity (YO) Grants. Specifically, follow-up data from the YES will be used to estimate the change in the employment and educational

attainment levels of youth residing in the 36 YO areas.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 03–22123 Filed 8–28–03; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

August 18, 2003.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation, contact Darrin King on 202–693–4129 (this is not a toll-free number) or e-mail: *king.darrin@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Employment Standards Administration (ESA), Office of Management and Budget, Room 10235, Washington, DC 20503 (202–395–7316—this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: Employment Standards Administration.

Type of Review: Extension of a currently approved collection.

Title: Overpayment Recovery Questionnaire.

OMB Number: 1215–0144.

Affected Public: Individuals or households.

Frequency: On occasion.

Type of Response: Reporting.

Number of Respondents: 4,500.

Number of Annual Responses: 4,500.

Average Response Time: 60 minutes.

Total Burden Hours: 4,500.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $1,800.

Description: The Federal Coal Mine Health and Safety Act of 1969, as amended, 30 U.S.C. 923(b) and 20 CFR 725.544(c), and the Federal Employees' Compensation Act, 5 U.S.C. 8129(b) and 20 CFR 10.430–10.441, provide for the recovery, waiver, compromise, or termination of overpayment of benefits to beneficiaries. The Form OWCP–20 collects information used to ascertain the financial condition of the beneficiary who has been overpaid to determine if the concealment or improper transfer of assets, and to identify and consider present and potential income and current assets for enforced collection proceedings. The form also provides a means for the beneficiary to explain why he/she is not at fault for the overpayment. If this information were not collected, DOL would have little basis to decide on collection proceedings.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 03–22124 Filed 8–28–03; 8:45 am]

BILLING CODE 4510–CK–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

August 18, 2003.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation, contact Darrin King on 202–693–4129 (this is not a toll-free number) or e-mail: *king.darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Mine Safety and Health Administration (MSHA), Office of Management and Budget, Room 10235, Washington, DC 20503 (202–395–7316—this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Type of Review: Extension of a currently approved collection.

Agency: Mine Safety and Health Administration.

Title: Petitions for Modification—Pertains to All Mines.

OMB Number: 1219–0065.

Affected Public: Business or other for-profit.

Frequency: On occasion.

Type of Response: Reporting and Third party disclosure.

Number of Respondents: 138.

Annual Responses: 138.

Average Response Time: 40 Hours.

Annual Burden Hours: 5,342.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $40,434.

Description: Section 101(c) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 811(c), provides that a mine operator or a representative of miners may petition the Secretary of Labor (Secretary) to modify the application of a mandatory safety standard. A petition for modification may be granted if the Secretary determines (1) that an alternative method of achieving the results of the

standard exists and that it will guarantee, at all times, no less than the same measure of protection for the miners affected as that afforded by the standard, or (2) that the application of the standard will result in a diminution of safety to the miners affected.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 03–22125 Filed 8–28–03; 8:45 am]

BILLING CODE 4510–43–M

DEPARTMENT OF LABOR

Office of the Secretary

Advisory Council of Employee Welfare and Pension Benefit Plans; Nominations for Vacancies

Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 88 Stat. 895, 29 U.S.C. 1142, provides for the establishment of an ''Advisory Council on Employee Welfare and Pension Benefit Plans'' (the Council), which is to consist of 15 members to be appointed by the Secretary of Labor (the Secretary) as follows: Three representatives of employee organizations (at least one of whom shall be a representative of an organization whose members are participants in a multi employer plan); three representatives of employers (at least one of whom shall be a representative of employers maintaining or contributing to multi employer plans); one representative each from the fields of insurance, corporate trust, actuarial counseling, investment counseling, investment management and accounting; and three representatives from the general public (one of whom shall be a person representing those receiving benefits from a pension plan). No more than eight members of the Council shall be members of the same political party.

Members shall be persons qualified to appraise the programs instituted under ERISA. Appointments are for terms of three years. The prescribed duties of the Council are to advise the Secretary with respect to the carrying out of his or her functions under ERISA, and to submit to the Secretary, or his or her designee, recommendations with respect thereto. The Council will meet at least four times each year, and recommendations of the Council to the Secretary will be included in the Secretary's annual report to the Congress ERISA.

The terms of five members of the Council expire on November 14, 2003. The groups or fields they represented are as follows: (1) Employee organizations (this member must represent an organization whose members participate in a multi employer plan); (2) a person who is an investment counselor or works for or ore presents an investment counseling firm; (3) a person who is an actuary or works for or represents an actuarial firm; (4) a person representing employer groups and interests, and (5) the general public (this member must represent persons actually receiving benefits from a private-sector pension plan). The Department of Labor is committed to equal opportunity in the workplace and seeks a broad-based and diverse ERISA Advisory Council membership.

Accordingly, notice is hereby given that any person or organization desiring to recommend one or more individuals for appointment to the ERISA Advisory Council on Employee Welfare and Pension Benefit Plans to represent any of the groups or fields specified in the preceding paragraph, may submit recommendations to Sharon Morrissey, Executive Secretary, ERISA Advisory Council, Frances Perkins Building, U.S. Department of Labor, 200 Constitution Avenue, NW., Suite N–5677, Washington, DC 20210. Recommendations must be delivered or mailed on or before October 1, 2003. Recommendations may be in the form of a letter, resolution or petition, signed by the person making the recommendation or, in the case of a recommendation by an organization, by an authorized representative of the organization.

Signed at Washington, DC, this 22nd day of August, 2003.

Paul Zurawski,

Deputy Assistant Secretary for Policy, Employee Benefits Security Administration.

[FR Doc. 03–22126 Filed 8–28–03; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than September 8, 2003.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than September 8, 2003.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 15th day of August, 2003.

Linda G. Poole,

Acting Director, Division of Trade Adjustment Assistance.

APPENDIX.—PETITIONS INSTITUTED BETWEEN 08/04/2003 AND 08/08/2003

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
52,450	VF Imagewear (Comp)	Tupelo, MS	08/04/2003	08/01/2003
52,451	Saurer, Inc. (Wkrs)	Charlotte, NC	08/04/2003	07/28/2003
52,452	Elastic Corp. of America, Inc. (Comp)	Woolwine, VA	08/04/2003	07/22/2003
52,453	National Metal Abrasive (USWA)	Wadsworth, OH	08/04/2003	07/30/2003
52,454	Pillowtex Corporation (UNITE)	Scottsboro, AL	08/04/2003	07/31/2003
52,455	Waterloo Industries (Wkrs)	Pocahontas, AR	08/04/2003	07/24/2003

APPENDIX.—PETITIONS INSTITUTED BETWEEN 08/04/2003 AND 08/08/2003—Continued

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
52,456	Cutler Hammer, Inc. (Comp)	Brooksville, FL	08/04/2003	08/01/2003
52,457	Coherent, Inc. (Comp)	Auburn, CA	08/05/2003	08/04/2003
52,458	APW (Comp)	Creedmoor, NC	08/05/2003	08/04/2003
52,459	Tingley Rubber (USWA)	So. Plainfield, NJ	08/05/2003	08/04/2003
52,460	Alice Manufacturing (Wkrs)	Easley, SC	08/05/2003	08/01/2003
52,461	Fishing Vessel (F/V) Alert (Comp)	Veronia, OR	08/05/2003	07/22/2003
52,462	F/V Joseph Booney (Comp)	Cordova, AK	08/05/2003	07/29/2003
52,463	Kannapolis Energy Partners, LLC (Comp)	Kannapolis, NC	08/05/2003	07/31/2003
52,464	Ace Packaging Systems (Comp)	Newport, MI	08/05/2003	08/04/2003
52,465	Moog Aircraft (Comp)	Salt Lake City, UT	08/05/2003	07/31/2003
52,466	USR Optonix, Inc. (Comp)	Hackettstown, NJ	08/05/2003	07/30/2003
52,467	Johnson and Johnson Wound Management (Comp)	Sherman, TX	08/05/2003	08/04/2003
52,468	Union Underwear Co., Inc. (Comp)	Fayette, AL	08/05/2003	08/04/2003
52,469	Shell E and P Company (Comp)	Houston, TX	08/05/2003	07/30/2003
52,470	Premium Security (Wkrs)	Kentwood, MI	08/05/2003	08/01/2003
52,471	Eureka Company (The) (Wkrs)	Bloomington, IL	08/05/2003	08/04/2003
52,472	Arlee Home Fashions (Wkrs)	Mexico, MO	08/05/2003	07/31/2003
52,473	Maytag Corporation (Comp)	Galesburg, IL	08/06/2003	08/06/2003
52,474	Kulicke and Soffa (Wkrs)	Austin, TX	08/07/2003	07/28/2003
52,475	Pillowtex Corporation (UNITE)	Scottsboro, Al	08/08/2003	08/06/2003
52,476	Pillowtex Corporation (Comp)	Fieldale, VA	08/08/2003	08/06/2003
52,477	Pillowtex Corporation (Comp)	Eden, NC	08/08/2003	08/06/2003
52,478	Pillowtex Corporation (Comp)	China Grove, NC	08/08/2003	08/06/2003
52,479	Pillowtex Corporation (Comp)	Rockwell, NC	08/08/2003	08/06/2003
52,480	Pillowtex Corporation (Comp)	Concord, NC	08/08/2003	08/06/2003
52,481	Pillowtex Corporation (Comp)	Union, SC	08/08/2003	08/06/2003
52,482	Pillowtex Corporation (Comp)	Mauldin, SC	08/08/2003	08/06/2003
52,483	Pillowtex Corporation (Comp)	Dallas, TX	08/08/2003	08/06/2003
52,484	Pillowtex Corporation (Comp)	Chicago, IL	08/08/2003	08/06/2003
52,485	Pillowtex Corporation (Comp)	Hanover, PA	08/08/2003	08/06/2003
52,486	Pillowtex Corporation (Comp)	Los Angeles, CA	08/08/2003	08/06/2003
52,487	Pillowtex Corporation (Comp)	Tunica, MS	08/08/2003	08/06/2003
52,488	McKenzie Forest Products, LLC (Comp)	Myrtle Point, OR	08/08/2003	08/06/2003
52,489	Portola Packaging, Inc. (Comp)	Sumter, SC	08/08/2003	08/07/2003
52,490	Vernon Plastics (UNITE)	Haverhill, MA	08/08/2003	08/07/2003
52,491	Tembec Woodsville, Inc. (Wkrs)	Woodsville, NH	08/08/2003	08/06/2003
52,492	Buckeye Lumberton, Inc. (Comp)	Lumberton, NC	08/08/2003	08/06/2003

[FR Doc. 03–22122 Filed 8–28–03; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed extension for collection of the ETA 227 Report, Overpayment Detection and Recovery Activities. A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before October 28, 2003.

ADDRESSES: Submit written comments to the Employment and Training Administration, Office of Workforce Security, 200 Constitution Avenue, NW., Room S4231, Washington, DC 20010, Attention: Bob Whiting. Telephone number: (202) 693–3215 (this is not a toll-free number). Fax: (202) 693–3975. E-mail: *whiting.robert@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 303(a)(1) of the Social Security Act requires a state's unemployment insurance (UI) law to include provisions for:

> ''Such methods of administration * * * as are found by the Secretary of Labor to be reasonably calculated to insure full payment of unemployment compensation when due * * *''

Section 303(a)(5) of the Social Security Act further requires a state's UI law to include provisions for:

> ''Expenditure of all money withdrawn from an unemployment fund of such State, in the payment of unemployment compensation * * *''

Section 3304(a)(4) of the Internal Revenue Code of 1954 provides that:

> ''All money withdrawn from the unemployment fund of the State shall be used solely in the payment of unemployment compensation * * *''

The Secretary of Labor has interpreted the above sections of federal law in Section 7511, Part V, ES Manual to further require a state's UI law to include provisions for such methods of administration as are, within reason, calculated (1) to detect benefits paid through error by the State Workforce Agency (SWA) or through willful misrepresentation or error by the claimant or others, (2) to deter claimants from obtaining benefits through willful misrepresentation, and (3) to recover benefits overpaid. The ETA 227 is used to determine whether SWAs meet these requirements of the Secretary of Labor's interpretation of the federal laws.

The ETA–227 contains data on the number and amounts of fraud and nonfraud overpayments established, the methods by which overpayments were detected, the amounts and methods by which overpayments were collected, the amounts of overpayments waived and written off, the accounts receivable for overpayments outstanding, and data on criminal/civil actions. These data are gathered by 53 SWAs and reported to the Department of Labor following the end of each calendar quarter. The overall effectiveness of SWAs' UI integrity efforts can be determined by examining and analyzing the data.

These data are also used by SWAs as a management tool for effective UI program administration.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

The UI program paid approximately $42 billion in benefits in 2002. Although the overpayment rate is relatively low (less than one percent), high amounts of money are involved, and it is in the national interest to maintain the program's integrity. Therefore, we are proposing to extend the authorization to continue collecting data to measure the effectiveness of the benefit payment control programs in the SWAs.

Type of Review: Extension.

Agency: Employment and Training Administration.

Title: Overpayment Detection and Recovery Activities.

OMB Number: 1205–0173.

Agency Number: ETA–227.

Record Keeping: State agencies are required to maintain all documentation supporting the information reported on the ETA–227 for three years following the end of each report period.

Affected Public: State Government.

Cite/Reference/Form/etc: Form.

Total Respondents: 53 state agencies.

Frequency: Quarterly.

Total Responses: 212.

Average Time per Response: 14 hours.

Estimated Total Burden Hours: 2968.

Total Burden Cost (operating/maintaining): $0.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: August 21, 2003.

Cheryl Atkinson,

Administrator, Office of Workforce Security.

[FR Doc. 03–22127 Filed 8–28–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Collection of the ETA 205, Preliminary Estimates of Average Employer Contribution Rates; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on a proposed continuance for a collection of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed extension of the ETA 205, Preliminary Estimates of Average Employer Contribution Rates. A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before October 28, 2003.

ADDRESSES: Thomas Stengle, Office of Workforce Security, Employment and Training Administration, U.S. Department of Labor, Room S–4231, 200 Constitution Avenue, NW., Washington, DC 20210; telephone number (202) 693–2991; fax: (202) 693–3229 (these are not toll-free numbers) or e-mail *stengle.thomas@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The ETA 205 reports preliminary information on the taxation efforts in States relative to taxable and total wages and allows for comparison among states. The information is used for projecting unemployment insurance tax revenues for the Federal budget process as well as for actuarial analyses of the Unemployment Trust Fund. The data is published in several forms and is often requested by data users. In addition, this report helps to fulfill two statutory requirements. Section 3302(d)(7) of the Federal Unemployment Tax Act (FUTA) requires the Secretary of Labor to notify ''the Secretary of the Treasury before June 1 of each year, on the basis of a report furnished by such state to the Secretary of Labor before May 1 of such year'' of the difference between the average tax rate in a state and the 2.7 percent (*i.e.* section 3302(c)(2)(B) or (C)). These differences are used to calculate the loss of FUTA offset credit for borrowing states. In addition, the tax schedules are used to assure that states are in compliance with provisions of the Tax Equity and Fiscal Responsibility Act (Pub. L. 97–248), section 281.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the

functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

Type of Review: Extension.

Agency: Employment and Training Administration.

Title: Preliminary Estimates of Average Employer Contribution Rates.

OMB Number: 1205–0228.

Agency Number: ETA.

Affected Public: State Governments.

Cite/Reference/Form/etc: ETA 205.

Total Respondents: 53.

Frequency: Annual.

Total Responses: 53.

Average Time per Response: 15 minutes.

Estimated Total Burden Hours: 14.

Total Burden Cost (capital/startup): $0.00.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: August 21, 2003.

Cheryl Atkinson,

Administrator, Office of Workforce Security.

[FR Doc. 03–22128 Filed 8–28–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment Standards Administration; Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of labor are issued in accordance with applicable law and are based on the information obtained by the Department of labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department.

Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modification to General Wage Determination Decisions

The nunmber of the decisions listed to the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and related Acts'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

None

Volume II

None

Volume III

None

Volume IV

None

Volume V

None

Volume VI

None

Volume VII

None

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage determinations Issued Under the Davis-Bacon and Related Acts''. This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *www.access.gpo.gov/davisbacon.* They

are also available electronically by subscription to the Davis-Bacon Online Service (*http://davisbacon.fedworld.gov*) of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate Volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 21st day of August, 2003.

Carl Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 03–21808 Filed 8–28–03; 8:45 am]

BILLING CODE 4510–27–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* 10 CFR Part 50, ''Domestic Licensing of Production and Utilization Facilities.''

2. *Current OMB approval number:* 3150–0011.

3. *How often the collection is required:* As necessary in order for NRC to meet its responsibilities to conduct a detailed review of applications for licenses and amendments thereto to construct and operate nuclear power plants, preliminary or final design approvals, design certifications, research and test facilities, reprocessing plants and other utilization and production facilities, licensed pursuant to the Atomic Energy Act of 1954, as amended (the Act) and to monitor their activities.

4. *Who is required or asked to report:* Licensees and applicants for nuclear power plants and research and test facilities.

5. *The number of annual respondents:* 175.

6. *The number of hours needed annually to complete the requirement or request:* 5.2M: 1.8M hours reporting (average of 288 hrs/response) + 3.4M hours recordkeeping (average of 19K hrs/recordkeeper).

7. *Abstract:* 10 CFR part 50 of the NRC's regulations ''Domestic Licensing of Production and Utilization Facilities,'' specifies technical information and data to be provided to the NRC or maintained by applicants and licensees so that the NRC may take determinations necessary to protect the health and safety of the public, in accordance with the Act. The reporting and recordkeeping requirements contained in 10 CFR part 50 are mandatory for the affected licensees and applicants.

Submit, by October 28, 2003, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F23, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html*. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–5 C3, Washington, DC 20555–0001, by telephone at 301–415–7233, or by Internet electronic mail at *Infocollects@nrc.gov*.

Dated at Rockville, Maryland, this 22nd day of August 2003.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 03–22104 Filed 8–28–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–250 and 50–251]

Florida Power and Light, Turkey Point Units 3 and 4; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of amendments to Facility Operating License (FOL) Nos. DPR–31 and DPR–41, issued to Florida Power and Light Company (the licensee), for operation of the Turkey Point Nuclear Plant Units 3 and 4, located in Miami-Dade County, Florida. Therefore, pursuant to Title 10 of the Code of Federal Regulations (10 CFR) part 50, section 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action: The proposed action would revise the Turkey Point, Units 3 and 4, FOLs and Technical Specifications (TSs) to correct, update, and reorder the TS Index, reformat TS equations with more appropriate mathematical symbols, delete irrelevant information, correct an error in the titling of a figure, correct ACTION and APPLICABILITY statements to improve consistency and readability, and would enhance, through administrative means, the overall clarity of the TSs.

The proposed action is in accordance with the licensee's application dated December 20, 2002, as supplemented in a letter dated August 15, 2003.

The Need for the Proposed Action: The proposed action is needed in order to achieve consistency with previously approved TS amendments, and other parts of the existing TSs through administrative changes.

Environmental Impacts of the Proposed Action: The NRC has completed its evaluation of the

proposed action and concludes that the proposed license amendment and associated changes to the TSs are administrative in nature and have no effect on the physical aspect or operation of components or structures within the restricted area as defined in 10 CFR part 20.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types or amounts of any effluents that may be released offsite, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect nonradiological plant effluents and has no other environmental impacts. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action: As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.*, the ''no-action'' alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources: The action does not involve the use of any different resource than those previously considered in the Final Environmental Statement for the Turkey Point Nuclear Plant, Units 3 and 4, dated July 1972.

Agencies and Persons Consulted: Based upon a letter dated March 8, 1991, from Ms. Mary E. Clark of the State of Florida, Department of Health and Rehabilitative Services, to Ms. Deborah A. Miller, Licensing Assistant, NRC, the State of Florida does not desire notification of issuance of license amendments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated December 20, 2002. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 25th day of August 2003.

For the Nuclear Regulatory Commission.

Eva A. Brown,

Project Manager, Section 2, Project Directorate II, Division of Licensing Project Management, Nuclear Regulation Reactor.

[FR Doc. 03–22105 Filed 8–28–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

NUREG/CR–6595, Revision 1, An Approach for Estimating the Frequencies of Various Containment Failure Modes and Bypass Events, Draft Report for Comment

AGENCY: Nuclear Regulatory Commission.

ACTION: Announcement of issuance for public comment, availability.

SUMMARY: The Nuclear Regulatory Commission has issued for public comment a document entitled: NUREG/CR–6595 Revision 1, ''An Approach for Estimating the Frequencies of Various Containment Failure Modes and Bypass Events, Draft Report for Comment''.

DATES: Please submit comments by October 31, 2003. Comments received after this date will be considered if it is practical to do so, but the NRC staff is able to ensure consideration only for comments received on or before this date.

ADDRESSES: NUREG/CR–6595 Revision 1, ''An Approach for Estimating the Frequencies of Various Containment Failure Modes and Bypass Events, Draft Report for Comment'' is available for inspection and copying for a fee at the NRC Public Document Room, Public File Area O1–F21, 11555 Rockville Pike, Rockville, Maryland. Publically available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html*. From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS Accession Number for NUREG/CR–6595, Revision 1 is ML032330225. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov*.

A free single copy of NUREG/CR–6595 Revision 1, ''An Approach for Estimating the Frequencies of Various Containment Failure Modes and Bypass Events, Draft Report for Comment'', to the extent of supply, may be requested by writing to Office of the Chief Information Officer, Reproduction and Distribution Services Section, U.S. Nuclear Regulatory Commission, Printing and Graphics Branch, Washington, DC 20555–0001; facsimile: 301–415–2289; e-mail: *DISTRIBUTION@nrc.gov*.

Please submit comments to Chief, Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. You may also deliver comments to 11545 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:30 p.m. Federal workdays, or e-mail to: *NRCREP@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Daniel O'Neal, Division of Risk Analysis and Applications, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone: 301–415–4146, e-mail: *dmo@nrc.gov*.

SUPPLEMENTARY INFORMATION: NUREG/CR–6595 Revision 1, ''An Approach for Estimating the Frequencies of Various Containment Failure Modes and Bypass Events, Draft Report for Comment'' incorporates updated information and expands on the NUREG/CR–6595 report, published in January 1999. The updated full power analyses take into account recent direct containment heating studies and information gathered from the Individual Plant Examination Level 2 studies. In addition, a new chapter provides event trees which reflect containment insights for shutdown conditions.

Dated at Rockville, Maryland, this 21st day of August 2003.

For the Nuclear Regulatory Commission.

Scott F. Newberry,

Director, Division of Risk Analysis and Applications, Office of Nuclear Regulatory Research.

[FR Doc. 03–22103 Filed 8–28–03; 8:45 am]

BILLING CODE 7590–01–P

POSTAL SERVICE

Board of Governors; Sunshine Act Meeting

TIMES AND DATES: 11 a.m., Monday, September 8, 2003; and 8:30 a.m., Tuesday, September 9, 2003.

PLACE: Washington, DC, at U.S. Postal Service Headquarters, 475 L'Enfant Plaza, SW., in the Benjamin Franklin Room.

STATUS: September 8–11 a.m. (Closed); September 9–8:30 a.m. (Open).

MATTERS TO BE CONSIDERED:

Monday, September 8–11 a.m. (Closed)

1. Office of Inspector General Fiscal Year 2004 Budget.
2. Financial Update.
3. Fiscal Year 2004 Integrated Financial Plan.
4. Strategic Planning.
5. Personnel Matters and Compensation Issues.

Tuesday, September 9–8:30 a.m. (Open)

1. Minutes of Previous Meetings, August 4–5, August 7, and August 11, 2003.
2. Remarks of the Postmaster General and CEO.
3. Postal Rate Commission Fiscal Year 2004 Budget. (Chairman David Fineman).
4. Fiscal Year 2004 Annual Performance Plan/Five-Year Strategic Plan—Government Performance and Results Act. (Chairman David Fineman).
5. Fiscal Year 2004 Operating Plan. (Mr. Dick Strasser).
6. Fiscal Year 2004 Capital Investment Plan. (Mr. Dick Strasser).
7. Fiscal Year 2004 Financing Plan. (Mr. Dick Strasser).
8. Preliminary Fiscal Year 2005 Appropriation Request. (Mr. Dick Strasser).
9. Capital Investment.

a. Advanced Facer Canceller System (AFCS) Improvements. (Mr. Tom Day).

10. Tentative Agenda for the October 2–3, 2003, meeting in Wilmington, Delaware.

FOR FURTHER INFORMATION CONTACT: William T. Johnstone, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260–1000. Telephone (202) 268–4800.

William T. Johnstone,

Secretary.

[FR Doc. 03–22340 Filed 8–27–03; 2:09 am]

BILLING CODE 7710–12–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48393; File No. SR–NYSE–2002–64]

Self-Regulatory Organizations; The New York Stock Exchange, Inc.; Order Granting Approval of Proposed Rule Change and Amendment No. 1 Thereto To Amend the Interpretation of NYSE Rule 345A

August 22, 2003.

On December 16, 2002, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its interpretation of NYSE Rule 345A (''Continuing Education for Registered Persons''). On June 11, 2003, the Exchange amended the proposed rule change.

The proposed rule change, as amended, was published for comment in the **Federal Register** on July 17, 2003.[3] The Commission received no comments on the proposal.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[4] and, in particular, the requirements of Section 6 of the Act[5] and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with Section 6(c)(3)(A)[6] of the Act, which requires the Exchange to prescribe standards of training, experience and competence for persons associated with Exchange members and member organizations.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (SR–NYSE–2002–64) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–22089 Filed 8–28–03; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 48159 (July 17, 2003), 68 FR 42447.

[4] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(c)(3)(A)(i).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48392; File No. SR–PCX–2003–17]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Order Granting Approval of Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Exchange, Inc. Relating to the Exchange's Rules Under the Minor Rule Plan

August 22, 2003.

On April 15, 2003, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the Recommended Fine Schedule (''RFS'') of the Exchange's Minor Rule Plan (''MRP'') in order to increase the fines for Late Trade Reporting violations pursuant to PCX Rule 6.69(a). The Exchange amended the proposed rule change on June 6, 2003.

The proposed rule change, as amended, was published for comment in the **Federal Register** on July 17, 2003.[3] The Commission received no comments on the proposal.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[4] and, in particular, the requirements of Section 6 of the Act[5] and the rules and regulations thereunder, and finds specifically that the proposed rule change is consistent with Section 6(b)(6)[6] of the Act. The Commission believes that the rule change should strengthen the ability of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 48158 (July 17, 2003), 68 FR 42449.

[4] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(6).

the Exchange to carry out its oversight and enforcement responsibilities as a self-regulatory organization. The rule should also aid the Exchange in carrying out its surveillance and enforcement functions.

In approving this proposed rule change, the Commission in no way minimizes the importance of compliance with PCX Rule 6.69(a), and all other rules subject to the imposition of fines under the Exchange's MRP. The Commission believes that the violation of any self-regulatory organization's rules, as well as Commission rules, is a serious matter. However, in an effort to provide the Exchange with greater flexibility in addressing certain violations, the Exchange's minor rule violation plan provides a reasonable means to address rule violations that do not rise to the level of requiring formal disciplinary proceedings. The Commission expects that the PCX will continue to conduct surveillance with due diligence, and make a determination based on its findings whether fines of more or less than the recommended amount are appropriate for violations of rules under the Exchange's minor rule violation plan, on a case by case basis, or if a violation requires formal disciplinary action.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[7] that the proposed rule change (SR–PCX–2003–17) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–22088 Filed 8–28–03; 8:45 am]

BILLING CODE 8010–01–P

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 4463]

Culturally Significant Objects Imported for Exhibition Determinations: ''Colorful Impressions: The Printmaking Revolution in Eighteenth Century France''

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 (68 FR 19875), I hereby determine that the objects to be included in the exhibition ''Colorful Impressions: The Printmaking Revolution in Eighteenth Century France,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owner. I also determine that the exhibition or display of the exhibit objects at the National Gallery of Art, Washington, DC, from on or about November 23, 2003, to on or about February 29, 2004, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, Department of State, (telephone: 202/619–6981). The address is Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: August 25, 2003.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 03–22151 Filed 8–28–03; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 4462]

Culturally Significant Objects Imported for Exhibition Determinations: ''Manet and the Sea''

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 (68 FR 19875), I hereby determine that the objects to be included in the exhibition ''Manet and the Sea,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners. I also determine that the exhibition or display of the exhibit objects at the Art Institute of Chicago from on or about October 20, 2003, until on or about January 19, 2004, at the Philadelphia Museum of Art from on or about February 15, 2004, until on or about May 30, 2004, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**. Additionally, notice is hereby given that five objects for which Determinations were previously made, and published in the **Federal Register** on May 16, 2003, are included in this exhibition.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact the Office of the Legal Adviser, U.S. Department of State, (telephone: 202/619–6982). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: August 25, 2003.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 03–22152 Filed 8–28–03; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 4461]

Culturally Significant Objects Imported for Exhibition Determinations: ''Turning Point: Oribe and the Arts of Sixteenth-Century Japan''

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 (68 FR 19875), I hereby determine that the objects to be included in the exhibition ''Turning Point: Oribe and the Arts of Sixteenth-Century Japan,'' imported from abroad for temporary exhibition within the United States, are of cultural

significance. The objects are imported pursuant to a loan agreement with the foreign owner. I also determine that the exhibition or display of the exhibit objects at The Metropolitan Museum of Art, New York, NY, from on or about October 20, 2003, to on or about January 11, 2004, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, Department of State, (telephone: 202/619–6981). The address is Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: August 25, 2003.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 03–22149 Filed 8–28–03; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 4460]

Culturally Significant Object Imported for Exhibition Determinations: ''Two and One: Printmaking in Germany, 1945–1991''

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999 (64 FR 56014), Delegation of Authority No. 236 of October 19, 1999 (64 FR 57920), as amended, and Delegation of Authority No. 257 of April 15, 2003 (68 FR 19875), I hereby determine that the object to be included in the exhibition, ''Two and One: Printmaking in Germany, 1945–1991,'' imported from abroad for temporary exhibition within the United States, is of cultural significance. The object is imported pursuant to a loan agreement with a foreign lender. I also determine that the exhibition or display of the exhibit object at the Davis Museum and Cultural Center, Wellesley College, Wellesley, Massachusetts, from on or about October 9, 2003, to on or about January 18, 2004, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a description of the exhibit object, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, (202) 619–5997, and the address is United States Department of State, SA–44, Room 700, 301 4th Street, SW., Washington, DC 20547–0001.

Dated: August 25, 2003.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 03–22148 Filed 8–28–03; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 4464]

International Joint Commission: Boundary Waters Treaty of 1909; Notice of Public Hearing and Invitation for Written Comment on Order of Approval for Duck Lake

In February 2003, the International Joint Commission (IJC) announced that it would review its Order of Approval governing the dykes surrounding Duck Lake, and operations inside Duck Lake, located on the Kootenay River in British Columbia. The IJC will hold a public hearing in Creston, British Columbia, on September 11, 2003, and invites written comment, to be received by October 15, 2003, before it makes any decisions about its Order for Duck Lake.

The IJC approved the construction of dykes encompassing Duck Lake in 1950 and within Duck Lake in 1970. It charged the International Kootenay Lake Board of Control with overseeing the Orders on behalf of the IJC. The dykes encompassing Duck Lake have the potential to increase water levels on the Kootenay River in the United States for certain rare floods, by about 4 or 5 inches (10–13 centimeters) at the international boundary and about half that amount at Bonners Ferry. The likelihood of such rare floods has been reduced by Duncan and Libby Dams. The Creston Valley Wildlife Management Authority operates gates and pumps that affect water levels within Duck Lake in accordance with the IJC's 1950 Order of Approval, as amended in 1956 and 1970.

Public concern has been raised over the effects of water levels management on bass, and a request has been made to transfer the management of Duck Lake water levels to local authorities. Given the public concerns, the 30-year period since the Order was last considered, and the reduced potential for transboundary effects, the Commission decided to review the Order of Approval for Duck Lake without prejudice to the end result.

More information, including an information paper about Duck Lake is available at *http://www.ijc.org.*

The International Joint Commission is an international organization established by the Boundary Waters Treaty of 1909 to prevent and resolve disputes over the use of waters shared by the United States and Canada. Its responsibilities include approving certain projects in one country that would increase the natural water levels in the other country, such as the dykes encompassing Duck Lake along the Kootenay River. If it approves the project, the IJC's Orders of Approval may specify certain conditions to protect the interests in both countries.

The public hearing will be held at the following time and place: Thursday, September 11, 2003, 7:30 p.m., Creston Valley Seniors Association Hall, 810 Canyon Street, Creston, British Columbia.

In addition to the public hearing, the International Joint Commission invites written comment on its Duck Lake Order of Approval. Written comments may be sent to one of the addresses below for receipt by October 15, 2003.

James Chandler, Acting Secretary, U.S. Section, International Joint Commission, 1250 23rd Street NW., Suite 100, Washington, DC 20037, Fax (202) 467–0746, E-mail *commission @washington.ijc.org.*

Murray Clamen, Secretary, Canadian Section, International Joint Commission, 234 Laurier Avenue West, 22nd Floor, Ottawa, ON K1P 6K6, Fax (613) 993–5583, E-mail *commission @ottawa.ijc.org.*

Dated: August 25, 2003.

James G. Chandler,

Acting Secretary, United States Section.

[FR Doc. 03–22150 Filed 8–28–03; 8:45 am]

BILLING CODE 4710–14–P

DEPARTMENT OF STATE

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Public Notice 4411]

Secretary of State's Advisory Committee on Private International Law: Study Group on International Transport Law: Meeting Notice

There will be a public meeting of a Study Group of the Secretary of State's Advisory Committee on Private International Law on Thursday, September 4, 2003, to consider the draft instrument on International Transport Law, under negotiation at the United Nations Commission on International Trade Law (UNCITRAL). The meeting will be held from 1:30 p.m. to 5 p.m. in the offices of Holland & Knight, Suite 100, 2099 Pennsylvania Avenue, NW., Washington, DC.

The purpose of the Study Group meeting is to assist the Departments of State and Transportation in preparing for the next session of the UNCITRAL Working Group on this draft instrument, to be held in Vienna, Austria from October 6, 2003 to October 17, 2003.

The draft text and the report of prior meetings of the UNCITRAL Working Group on this subject constitute the basic working documents of the UNCITRAL Working Group. These documents are available on UNCITRAL's Web site, *http://www.uncitral.org.* (The documents are listed under Working Group III (Transportation).)

The Study Group meeting is open to the public up to the capacity of the meeting room. Persons who wish to have their views considered are encouraged to submit written comments in advance of the meeting. Comments should refer to Docket number MARAD–2001–11135. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th Street, SW., Washington, DC 20490–0001. You may also send comments electronically via the internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., EST, Monday through Friday, except federal holidays. An electronic version of all documents entered into this docket is available on the internet at *http//dms.dot.gov.*

For further information, you may contact Mary Helen Carlson at 202–776–8420, or by e-mail at *carlsonmh@ms.state.gov.*

Dated: August 21, 2003.

Mary Helen Carlson,

Legal Adviser for Private International Law, Department of State.

Edmund T. Sommer, Jr.,

Chief, Division of General Law, International Law and Litigation, Office of the Chief Counsel, Maritime Administration, Department of Transportation.

[FR Doc. 03–22147 Filed 8–28–03; 8:45 am]

BILLING CODE 4710–08–P

TENNESSEE VALLEY AUTHORITY

Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: Tennessee Valley Authority.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 68 FR 51062 (August 25, 2003).

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING 9 a.m. (EDT), Wednesday, August 27, 2003.

PREVIOUSLY ANNOUNCED PLACE OF MEETING: TVA Knoxville West Tower Auditorium, 400 West Summit Hill Drive, Knoxville, Tennessee.

CHANGES IN THE MEETING: The TVA Board of Directors has approved the addition of the following item to the previously announced agenda:

A—Budget and Financing

A3. Approval of Fiscal Year 2004 TVA Budget.

FOR FURTHER INFORMATION CONTACT: Please call TVA News Bureau at (865) 632–6000, Knoxville, Tennessee. Information is also available through TVA's Washington Office at (202) 898–2999.

Maureen H. Dunn,

General Counsel and Secretary.

[FR Doc. 03–22249 Filed 8–27–03; 8:45 am]

BILLING CODE 8120–08–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed Between August 4 and August 15, 2003

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days after the filing of the application

Agreements filed during week ending August 8, 2003:

Docket Number: OST–2003–15916.

Date Filed: August 8, 2003.

Parties: Members of the International Air Transport Association.

Subject: Mail Vote 319, PTC3 0653 dated 8 August 2003, Resolution 010x—Special Passenger Amending, Resolution between Korea (Rep. of) and China (excluding Hong Kong SAR and Macao SAR) r1–r5, Intended effective date: 1 September 2003.

Docket Number: OST–2003–15917.

Date Filed: August 8, 2003.

Parties: Members of the International Air Transport Association.

Subject: PTC1 0264 dated 8 August 2003, TC1 Caribbean Expedited Resolutions 002zz and 015v r1–r6, Intended effective date: 15 September 2003.]

Docket Number: OST–2003–15918.

Date Filed: August 8, 2003.

Parties: Members of the International Air Transport Association.

Subject: PTC1 0265 dated 8 August 2003, TC1 Longhaul (except USA-Chile, Panama), Expedited Resolution 002t r1–r5, Intended effective date: 15 September 2003.

Docket Number: OST–2003–15919.

Date Filed: August 8, 2003.

Parties: Members of the International Air Transport Association.

Subject: PTC1 0266 dated 8 August 2003, TC1 Within South America Expedited Resolution 002w, Intended effective date: 15 September 2003.

Docket Number: OST–2003–15923.

Date Filed: August 8, 2003.

Parties: Members of the International Air Transport Association.

Subject: PTC2 EUR–ME 0168 dated 15 July 2003, TC12 Europe-Middle East Resolutions r1–r23, Technical Correction—PTC2 EUR–ME 0171 dated 31 July 2003, Minutes—PTC2 EUR–ME 0173 dated 8 August 2003, Tables—PTC2 EUR–ME Fares 0082 dated 1 August 2003, Intended effective date: 1 January 2004.

Agreement filed during week ending August 15, 2003:

Docket Number: OST–2003–15963.

Date Filed: August 14, 2003.

Parties: Members of the International Air Transport Association.

Subject: PTC12 USA–EUR Fares 0079 dated 18 July 2003, Resolution 015h—USA Add-Ons between USA and UK, Intended effective date: 1 October 2003.

Andrea M. Jenkins,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. 03–22094 Filed 8–28–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) Filed with the Department Between August 4, and August 15, 2003

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (*See* 14 CFR 301.201 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Applications filed during week ending: August 8, 2003:

Docket Number: OST–2003–15880.
Date Filed: August 6, 2003.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 27, 2003.
Description: Application of Brasmex Brasil Minas Express Ltda., pursuant to 49 U.S.C. 41301, *et seq.* and Subpart B, requesting a foreign air carrier permit authorizing it to engage in scheduled and charter foreign air transportation of property and mail between Brazil and the United States.

Docket Number: OST–2003–15893.
Date Filed: August 8, 2003.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 29, 2003.
Description: Application of Scott Aviation, Inc., pursuant to 49 U.S.C. 41102 and Subpart B, requesting a certificate of public convenience and necessity authorizing interstate charter air transportation of persons, property, and mail.

Application filed during week ending: August 15, 2003:

Docket Number: OST–2003–15955.
Date Filed: August 14, 2003.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 9, 2003.
Description: Application of Global Supply Systems Limited, pursuant to 49 U.S.C. 41301, 14 CFR part 211 and Subpart B, requesting a foreign air carrier permit authorizing it to engage in charter foreign air transportation of property and mail between any point or points in the United Kingdom and any point or points in the United States, and other all-cargo charters in accordance with Part 212.

Andrea M. Jenkins,
Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. 03–22095 Filed 8–28–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applicants for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before September 29, 2003.

ADDRESS COMMENTS TO: Records Center, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted to triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption application number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications (See Docket Number) are available for inspection at the New Docket Management Facility, PL–401, at the U.S. Department of Transportation, Nassif Building, 400 7th Street, SW., Washington, DC 20590, or at *http://dms.dot.gov.*

This notice of receipt of applications for new exemptions is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on August 19, 2003.

R. Ryan Posten,
Exemptions Program Officer, Office of Hazardous Materials Exemptions and Approvals.

NEW EXEMPTIONS

Application	Docket No.	Applicant	Regulation(s) affected	Nature of exemption thereof
13274–N		Department of Defense (MTMC), Fort Eustis, VA.	49 CFR 180.509	To authorize the filling of tank cars that are past their test dates. (Mode 1).
13275–N		Enviro-Safe Refrigerants, Inc., Pekin, IL.	49 CFR 173.304a(d)(3)(ii), 178.33a–8	To authorize the transportation of certain DOT Specification 2Q containers containing liquefied petroleum gas with a charging pressure of 230 psig at 130 degrees F. (Modes 1, 2, 3, 4).
13276–N		Ocenco Inc., Pleasant Prairie, WI.	49 CFR 173.301(f)(5)(i)	To authorize the the transportation in commerce of 3AA cylinders pressurized to 2100 psi with oxygen, without the use of a pressure relief device. (Modes 1, 4, 5)
13280–N		Texaco Ovonic Hydrogen Systems, L.L.C., Rochester Hills, MI.	49 CFR 173.301(a)(1)(d) and (f)	To authorize the manufacture, mark, sale and use of a specially designed storage device consisting of a non-DOT specification cylinder similar to a DOT 3AL cylinder for use in transporting hydrogen, Division 2.1. (Modes 1, 2, 3, 4).

NEW EXEMPTIONS—Continued

Application	Docket No.	Applicant	Regulation(s) affected	Nature of exemption thereof
13281–N		The Dow Chemical Company, Midland, MI.	49 CFR 174.67(i)&(j)	To authorize rail cars containing certain hazardous materials to remain connected while standing without the physical presence of an unloader. (Mode 1).
13284–N		Sovereign Specialty Chemicals, Buffalo, NY.	49 CFR 173.242(c) & (d), 173.35, 180.352.	To authorize the transportation in commerce of residual amounts of Adhesives, Class 3 in UN designed portable tanks that are currently missing their UN name plates. (Mode 1).
13285–N		EP Container Corp., Cerritos, CA.	49 CFR 173.12(b)(2)(i)	To authorize the manufacture, marking, sale and use of a UN4G fiberboard box as the outer packaging for lab pack applications. (Modes 1, 2, 3).
13286–N		Nestle Ice Cream Company, LLC, Washington, DC.	49 CFR 173.306(a)(3)(v)	To authorize the transportation in commerce of aerosol containers that have received alternative testing method for use in transporting limited quantities of compressed gases. (Modes 1, 2, 3).

[FR Doc. 03–22096 Filed 8–28–03; 8:45 am]
BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Applications for Modification of Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications for modification of exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Requests for modifications of exemptions (*e.g.* to provide for additional hazardous materials, packaging design changes, additional mode of transportation, *etc.*) are described in footnotes to the application number. Application numbers with the suffix ''M'' denote a modification request. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comments must be received on or before September 15, 2003.

ADDRESS COMMENTS TO: Records Center, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, Nassif Building, 400 7th Street SW., Washington, DC, or at *http://dms.dot.gov.*

This notice of receipt of applications for modification of exemptions is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on August 19, 2003.

R. Ryan Posten,

Exemptions Program Officer, Office of Hazardous Materials, Exemptions and Approvals.

Application No.	Docket No.	Applicant	Modification of exemption
3302–M		Air Products and Chemicals, Inc., Allentown, PA [1]	3302
6263–M		Amtrol, Inc., West Warwick, RI [2]	6263
10019–M		Structural Composites Industries, Pomona, CA [3]	10019
10319–M		Amtrol, Inc., West Warwick, RI [4]	10319
12756–M	RSPA–01–10112.	Bechtel Jacobs Company LLC, Oak Ridge, TN [5]	12756
12827–M	RSPA–01–10586.	Bechtel Jacobs Company, LLC, Oak Ridge, TN [6]	12827
12871–M	RSPA–01–11072.	Southern Calif. Edison-San Onofre Nuclear Gen Stn, San Clemente, CA [7]	12871
13080–M	RSPA–02–12999.	Pressed Steel Tank Co., Milwaukee, WI [8]	13080
13230–M	RSPA–03–15116.	FIBA Technologies, Inc., Westboro, MA [9]	13230
13258–M	RSPA–03–15629.	FIBA Technologies, Inc., Westboro, MA [10]	13258

Application No.	Docket No.	Applicant	Modification of exemption
13270–M	.....	Takata Corporation, Minato-Ku Tokyo 106–8510, JA [11]	13270

[1] To modify the exemption to authorize the construction of a newer lightweight outer protective shipping case for non-DOT specification sampling bottles transporting certain Division 2.2 materials.
[2] To modify the exemption to authorize an increased working pressure to 300 psig for the non-DOT specification pressure vessels and a change to the pressure vessel testing requirements.
[3] To modify the exemption to authorize the transportation of an additional Division 2.2 material in non-DOT specification fiber reinforced plastic (FRP) full wrapped composite (FC) cylinders.
[4] To modify the exemption to authorize additional pressure vessel model numbers and eliminate the hydrostatic pressure testing requirement.
[5] To modify the exemption to authorize a change to the destination for delivery requirement to allow operational flexibility for treatment of the Division 1.1, 4.1 and 5.2 materials before their final destination.
[6] To modify the exemption to authorize a change to the destination for delivery requirement to allow operational flexibility for treatment of various hazardous materials before their final destination.
[7] To modify the exemption to authorize route changes for the one-time transportation of a package containing a nuclear generating-station reactor pressure vessel having Class C waste internal components by cargo vessel and motor vehicle for disposal.
[8] To modify the exemption to authorize a maximum filling limit of 106% for the non-DOT specification cylinders used to transport a Division 2.3 material and to upgrade/revise cylinder markings and drawings.
[9] To reissue the exemption originally issued on an emergency basis for the use of non-DOT specification cylinders transporting Division 2.1, 2.2 and 2.3 materials.
[10] To reissue the exemption originally issued on an emergency basis for the use of non-DOT specification cylinders transporting Division 2.1, 2.2 and 2.3 materials.
[11] To reissue the exemption originally issued on an emergency basis for the transportation of Division 2.1 and 2.2 materials in non-DOT specification pressure vessels.

[FR Doc. 03–22097 Filed 8–28–03; 8:45 am]
BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Notice of Pub.lic Information Collection Submitted to OMB for Review

AGENCY: Surface Transportation Board, DOT.

ACTION: Extension of a currently approved collection.

SUMMARY: The Surface Transportation Board has submitted to the Office of Management and Budget for review and approval the following proposal for collection of information as required by the Paperwork Reduction Act of 1995, Public Law No. 104–13 (44 U.S.C. chapter 35).

Title: Annual Waybill Compliance Survey.
OMB Form Number: 2140–0010.
Frequency: Annually.
No. of Respondents: 600.
Total Burden Hours: 300.

DATES: Persons wishing to comment on this information collection should submit comments by September 26, 2003.

ADDRESSES: Direct all comments to the Surface Transportation Board, room 705, 1925 K Street, NW., Washington, DC 20423. When submitting comments refer to the OMB number and title of the information collection.

FOR FURTHER INFORMATION CONTACT: H. Jeff Warren, (202) 565–1533. Federal Information Relay Service (FIRS) for the hearing impaired: 1–800–877–8339. Requests for copies of the information collection may be obtained by contacting L. Scott Decker (202) 565–1531.

SUPPLEMENTARY INFORMATION: The Surface Transportation Board is, by statute, responsible for the economic regulation of surface transportation carriers operating in interstate and foreign commerce. The ICC Termination Act of 1995, Public Law No. 104–88, 109 Stat. 803 (1995), which took effect on January 1, 1996, abolished the Interstate Commerce Commission and transferred the responsibility for regulating rail transportation, including the collection and administration of the STB Carload Waybill Sample. The Board needs to collect annually information on railroad revenues and carloads of traffic terminated by U.S. railroads. The Board will use the information in order to classify railroads by revenue category and determine if they must participate in the STB Carload Waybill Sample. The Board has the Congressionally mandated responsibility to collect this information. The consequences of failure to collect data related to the STB Carload Waybill Sample and railroad revenues will be an inability to fulfill responsibilities under 49 U.S.C. 11144, 11145, 11901, 11326(b), 11327, and 11328(b), and 49 CFR 1244.2(f).

Dated: August 27, 2003.

Vernon A. Williams,

Secretary.

[FR Doc. 03–22308 Filed 8–28–03; 8:45 am]
BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34394]

Union Pacific Railroad Company—Trackage Rights Exemption—The Burlington Northern and Santa Fe Railway Company

The Burlington Northern and Santa Fe Railway Company (BNSF) has agreed to grant overhead trackage rights to Union Pacific Railroad Company (UP) over a line of BNSF's railroad between BNSF milepost 210.2 and BNSF milepost 211.7, a distance of approximately 1.5 miles in Wichita, KS.

The transaction was scheduled to be consummated on or after August 22, 2003.

The purpose of the trackage rights is to facilitate the City of Wichita's Central Rail Corridor Project (the City). This project is designed to minimize rail/vehicle conflicts at existing grade crossings in central Wichita by constructing grade crossings and other improvements on the BNSF route.[1]

Any employees affected by the subject transaction will be protected by the labor conditions prescribed in *Norfolk and Western Ry. Co.—Trackage Rights-BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d)

[1] UP states that the actual use of the trackage rights will not commence until the City has progressed sufficiently to permit the existing UP–BNSF connection near BNSF milepost 211.7 to be moved to a location near BNSF milepost 210.2.

may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34394, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Robert T. Opal, 1416 Dodge Street, Room 830, Omaha, NE 68179.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: August 22, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–22020 Filed 8–28–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

August 21, 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 29, 2003 to be assured of consideration.

Departmental Offices/Community Development Financial Institutions (CDFI) Fund

OMB Number: 1559–0006.

Form Number: CDFI–0008.

Type of Review: Revision.

Title: Community Development Financial Institutions (CDFI) Program Awardee Annual Report.

Description: For compliance purposes, the Fund requires each Awardee to annual report on certain performance goals and its financial and managerial health and soundness.

Respondents: Business or other for-profit, Not-for-profit institutions, State, Local or Tribal Government.

Estimated Number of Respondents: 600.

Estimated Burden Hours Per Respondent: 8 hours.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 4,800 hours.

Clearance Officer: Lois K. Holland, Departmental Offices, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220, (202) 622–1563.

OMB Reviewer: Joseph F. Lackey, Jr., Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, (202) 395–7316.

Lois K. Holland,

Treasury PRA Clearance Officer.

[FR Doc. 03–22133 Filed 8–28–03; 8:45 am]

BILLING CODE 4811–16–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

August 22, 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 29, 2003 to be assured of consideration.

Internal Revenue Service

OMB Number: 1545–0687.

Form Number: IRS Form 990–T.

Type of Review: Extension.

Title: Exempt Organization Business Income Tax Return.

Description: Form 990–T is needed to compute the section 511 tax on unrelated business income of a charitable organization. IRS uses the information to enforce the tax.

Respondents: Not-for-profit institutions.

Estimated Number of Respondents/Recordkeepers:

Estimated Burden Hours Respondent/Recordkeeper:

Recordkeeping
67 hr., 12 min.
Learning about the law or the form
25 hr., 41 min.
Preparing the form
41 hr., 52 min.
Copying, assembling, and sending the form to the IRS
4 hr., 1 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 5,149,155 hours.

OMB Number: 1545–1547.

Form Number: IRS Form W–7A.

Type of Review: Extension.

Title: Application for Taxpayer Identification Number for Pending U.S. Adoptions.

Description: Form W–7A is used to apply for an Internal Revenue Service Taxpayer Identification Number (an ATIN) for use in pending adoptions. An ATIN is A temporary nine-digit number issued by the IRS to individuals who are in the process of adopting a U.S. resident child but who cannot get a social security number for that child until the adoption is final.

Respondents: Individuals or households.

Estimated Number of Respondents/Recordkeepers: 50,000.

Estimated Burden Hours Respondent/Recordkeeper:

Learning about the law or the form
8 min.
Preparing the form
16 min.
Copying, assembling, and sending the form to the IRS
16 min.

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 35,000 hours.

Clearance Officer: Glenn Kirkland, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW., Washington, DC 20224, (202) 622–3428.

OMB Reviewer: Joseph F. Lackey, Jr., Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, (202) 395–7316.

Lois K. Holland,

Treasury PRA Clearance Officer.

[FR Doc. 03–22134 Filed 8–28–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Bureau of Engraving and Printing

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury's Bureau of Engraving and Printing, 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, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Engraving and Printing within the Department of the Treasury is soliciting comments concerning survey research designed to establish benchmark measures of awareness, confidence and behavior relating to the Bureau's NexGen currency program.

DATES: Written comments should be received on or before October 27, 2003 to be assured consideration.

ADDRESSES: Direct all written comments to Department of Treasury, Bureau of Engraving & Printing, Ellen Gano, 14th & C Streets, SW., Washington, DC 20228, (202) 874–1211.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Department of Treasury, Bureau of Engraving & Printing, Pamela Grayson, 14th & C Streets, SW., Washington, DC 20228, (202) 874–2212.

SUPPLEMENTARY INFORMATION:

Title: 2004 Series Currency Monitoring and Evaluation Surveys.

Abstract: The Bureau of Engraving and Printing requests approval to survey the public to track and measure changes in public awareness regarding the introduction of redesigned U.S. currency. The survey will be used to measure the extent to which the public has seen and remembers information about the new currency, its key design and authentication features, and to measure confidence in the currency and authentication behavior. The data is required to be collected as part of the assessment process to determine the effectiveness of the public education effort connected to the new currency design.

Current Actions: This is a new collection.

Type of Review: Regular.

Affected Public: The affected public includes all adult (18 or older) members of the U.S. population.

Estimated Number of Respondents: 4,000.

Estimated Total Annual Burden Hours: Estimated number of annual burden hours is 1,000 hours.

Request for Comments: The Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Dated: August 20, 2003.

Pamela V. Grayson,

Management Analyst.

[FR Doc. 03–22135 Filed 8–28–03; 8:45 am]

BILLING CODE 4840–01–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: Amended notice as to time change.

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. EDT to 2:30 p.m. EDT.

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. EDT to 2:30 p.m. EDT 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 25, 2003.

Sandra L. McQuin,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 03–22177 Filed 8–28–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Wage & Investment Reducing Taxpayer Burden (Notices) Issue Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Wage & Investment Reducing Taxpayer Burden (Notices) Issue Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference).

DATES: The meeting will be held Wednesday, September 24, 2003 from 12 noon EDT to 1 pm 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 Wage & Investment Reducing Taxpayer Burden (Notices) Issue Committee of the Taxpayer Advocacy Panel will be held Wednesday, September 24, 2003, from 12 noon EDT to 1 pm EDT via a telephone conference call. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service. 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 Road, 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 22, 2003.

Deryle J. Temple,

Director, Taxpayer Advocacy Panel.

[FR Doc. 03–22178 Filed 8–28–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF TREASURY

Internal Revenue Service

Performance Review Board

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: The purpose of this notice is to publish the names of the members of IRS' FY2003 SES Performance Review Board(s).

DATES: This notice is effective October 1, 2003.

FOR FURTHER INFORMATION CONTACT: Ann Pope, 1111 Constitution Avenue, NW, OS:HC:S, Room 3511, Washington DC 20224, (202) 622–0601

SUPPLEMENTARY INFORMATION: Pursuant to 5 U.S.C. 4314(c)(4), this notice announces the appointment of members of the Internal Revenue Service's Senior Executive Service Performance Review Board. The names and titles of the executives serving on this board follow:

John M. Dalrymple, Deputy Commissioner for Operations Support, and Chairperson, Service-wide Performance Review Board
Mark E. Matthews, Deputy Commissioner for Services and Enforcement
Kevin M. Brown, Chief of Staff
Tyrone B. Ayers, Director, Customer Assistance, Relationships and Education (W&I)
Gary D. Bell, National Director, Refund Crimes (CI)
Brady R. Bennett, Director, Strategy and Finance (SBSE)
John E. Binnion, Director, Management and Support (SBSE)
Helen H. Bolton, Director, Management Services (MITS)
C. John Crawford III, Director, Customer Account Services (SBSE)
Richard J. Cronin, Director, Personnel Services (AWSS)
Mary E. Davis, Director, Strategy and Finance (W&I)
John C. Duder, Deputy Commissioner, Wage and Investment Division
James P. Falcone, Assistant Director, Real Estate and Facilities Management (AWSS)
Fred L. Forman, Associate Commissioner for Business Systems Modernization (MITS)
W. Todd Grams, Chief Information Officer, Modernization and Information Technology Services
David A. Grant, Director, Procurement (AWSS)
Thelma Harris, Director, EEO and Diversity Field Services (AWSS)
Dale F. Hart, Commissioner, Small Business and Self-Employed Division
Thomas R. Hull, Deputy Director, Compliance Field Operations (SBSE)
Robert L. Hunt, Director, Taxpayer Education & Communications (SBSE)
Henry O. Lamar, Jr., Commissioner, Wage and Investment Division
Janis G. Landis, Director, Customer Support (AWSS)
Deborah Nolan, Commissioner, Large and Mid-Size Business Division
Richard J. Morgante, Deputy Commissioner, Tax Exempt and Government Entities Division
David B. Palmer, Chief, Criminal Investigation
Evelyn A. Petschek, Commissioner, Tax Exempt and Government Entities Division
William E. Porter, Director, Resource Allocation & Measure (MITS)
Ronald S. Rhodes, Director, Customer Account Services (W&I)
David B. Robison, Chief, Appeals
Julie Rushin, Chief of Staff (MITS)
Richard Speier, Jr., Director of Field Operations (CI)
Linda E. Stiff, Director, Compliance (W&I)
Martha Sullivan, Director, Compliance (SBSE)
Toni L. Zimmerman, Chief, Information Technology Services (MITS)

This document does not meet the Department of Treasury's criteria for significant regulations.

Dated: August 21, 2003.

John M. Dalrymple,

Deputy Commissioner for Operations Support, Internal Revenue Service.

[FR Doc. 03–22176 Filed 8–28–03; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register

Vol. 68, No. 168

Friday, August 29, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27713; 70–10083]

Hydro-Quebec, et al.; Order Granting Limited Approval to Application of Hydro Quebec, et al.

August 15, 2003.

Correction

In notice document 03–21401 beginning on page 50561 in the issue of Thursday, August 21, 2003, make the following correction:

On page 50561, in the first column, the date should appear as set forth above.

[FR Doc. C3–21401 Filed 8–28–03; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–15724; Airspace Docket No. 03–ACE–66]

Modification of Class E Airspace; Centerville, IA

Correction

In rule document 03–21076 beginning on page 49691 in the issue of Tuesday, August 19, 2003, make the following corrections:

§71.1 [Corrected]

1. On page 49692, in the third column, in § 71.1, under the heading **''ACE IA E5 Centerville, IA''**, in the second line ''(Lat. 40°41′02″ N., long. 92°54′00″ W.)'' should read ''(Lat. 40°41′02″ N., long. 92°54′04″ W.)''.

2. On the same page, in the same column, in the same section, under the same heading, in the 13th line, ''6.5-mile radius northwest'' should read ''6.5-mile radius to 7.4 miles northwest.

[FR Doc. C3–21076 Filed 8–28–03; 8:45 am]

BILLING CODE 1505–01–D

Reader Aids

Federal Register

Vol. 68, No. 168

Friday, August 29, 2003

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–741–6000**
Laws	**741–6000**
Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6064**
Public Laws Update Service (numbers, dates, etc.)	**741–6043**
TTY for the deaf-and-hard-of-hearing	**741–6086**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **http://www.access.gpo.gov/nara**

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access are located at: **http://www.archives.gov/federal__register/**

E-mail

FEDREGTOC-L (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **http://listserv.access.gpo.gov** and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings);* then follow the instructions.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html** and select *Join or leave the list* (or change settings); then follow the instructions.

FEDREGTOC-L and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **info@fedreg.nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATE, AUGUST

45157–45740 1
45741–46072 4
46073–46432 5
46433–46918 6
46919–47200 7
47201–47440 8
47441–47834 11
47835–48248 12
48249–48528 13
48529–48766 14
48767–49322 15
49323–49682 18
49683–50038 19
50039–50456 20
50457–50680 21
50681–50962 22
50963–51148 25
51149–51428 26
51429–51672 27
51673–51870 28
51871–52076 29

CFR PARTS AFFECTED DURING AUGUST

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
6962 (See Proclamation 7696) 51871
7554 (See Proclamation 7696) 51871
7695 51673
7696 51871

Executive Orders:
12722 (See: Notice of July 31, 2003) 45739
12724 (See: Notice of July 31, 2003) 45739
13290 (See: Notice of July 31, 2003) 45739
13313 46073
13314 48249
13222 (See: Notice of August 7, 2003) 47833

Administrative Orders:
Notices:
Notice of July 31, 2003) 45739
Notice of August 7, 2003 47833
Presidential Determinations:
No. 1998–7 of December 5, 1997 (See No. 03–31 of August 8, 2003) 49325
No. 2003–28 47441
No. 2003–29 47443
No. 2003–30 of August 7, 2003 49323
No. 2003–31 of August 8, 2003 49325
No. 2003–32 of August 18, 2003 50963

5 CFR

Proposed Rules:
334 50726
532 .....47877, 50727

7 CFR

15 51334
15b 51334
51 .....46433, 50681
247 51675
250 46434
300 50039
301 .....51875, 51876
319 50039
340 46434
354 51878
916 .....48251, 48767
917 .....48251, 48767
958 48529
993 46436
996 46919
1000 48770
1030 50686
1032 51640
1427 49327
1481 49329
1580 50048
1778 46077
1794 45157

Proposed Rules:
Ch. I 48574
52 46504
91 48322
96 48322
273 51932
331 45787
373 51713
Ch. IX 48574
762 49723
783 47499
Ch. X 48574
945 51713
983 45990
991 48575
1124 .....46505, 49375, 51202
1032 51640
1131 .....46505, 51202
1135 49375
Ch. XI 48574
1205 51202
1778 46119
1910 50479
1941 50479
1965 50479
2200 48814
2201 48814
4279 46509

8 CFR

204 46925
212 46926
214 46926
231 46926
233 46926

9 CFR

77 47201
82 45741
92 50053
94 47835
97 51878
130 51878
206 47802
430 50687

Proposed Rules:
60 51713
93 51716

10 CFR

4 51334
72 49683
140 46929
430 51887

600 50646
1015 48531
1018 48531
1021 51429
1022 51429
1040 51334
Proposed Rules:
30 45172
40 51516
72 49726
170 46439
171 46439
1015 48575
1018 48575

11 CFR

104 47386
107 47386
110 47386
111 50688
9001 47386
9003 47386
9004 47386
9008 47386
9031 47386
9032 47386
9033 47386
9034 47386
9035 47386
9036 47386
9038 47386
Proposed Rules:
100 50481
102 50488
106 50481
110 50488
114 50481
9004 50481
9034 50481

12 CFR

19 48256
24 48771
226 50965
263 48256
303 50457
308 48256
333 50457
347 50457
348 50457
359 50457
513 48256
701 46439
Proposed Rules:
3 45900
7 46119
34 46119
208 45900
225 ....45900, 51938
325 45900
567 45900
614 47502
615 47502

13 CFR

112 51334
117 51334
120 51677

14 CFR

15 48543
25 ....46428, 47202, 47445, 49332, 50054, 51436
39 ....46441, 46443, 46444, 47202, 47204, 47207, 47208, 47211, 47213, 47216, 47218, 47447, 47842, 48274, 48544, 48546, 48783, 49334, 49336, 49337, 49340, 49342, 49344, 49686, 49688, 50055, 50057, 50058, 50061, 50064, 50461, 50462, 50689, 50693, 51149, 51150, 51439, 51681, 51682
71 ....47447, 47448, 47449, 47637, 47844, 47846, 48994, 49345, 49346, 49348, 49349, 49350, 49546, 49690, 49691, 50068, 50222, 50464, 50465, 50466, 50468, 51685, 52075
91 50054
97 ....48276, 48277, 51686, 51687
119 47798
121 ....50054, 50069
125 ....50054, 50069
135 ....50054, 50069
1250 51334
1251 51334
1252 51334
1260 50468
Proposed Rules:
21 46283
25 51203
39 ....45176, 45177, 46514, 47267, 47513, 48326, 48576, 48833, 48835, 49390, 50491, 50729, 50731, 51518, 51521, 51523, 51735
61 46283
65 46283
71 ....47515, 47516, 47518, 49727, 50081, 50082, 50083, 50084, 51205, 51737
73 ....48579, 50838
77 46283
91 ....47269, 50085
107 46283
109 46283
121 ....46283, 47269, 50085
135 ....46283, 47269, 50085
145 46283
154 46283
1260 ....48837, 48838

15 CFR

8 51334
8b 51334
20 51334
732 50470
740 50470
744 50470
750 50470
752 50470
754 50470
758 50470
770 50470
772 50470
902 49683
911 45160
Proposed Rules:
303 45177
801 51939
806 51942

16 CFR

228 50984
305 47449

17 CFR

4 47221
18 48549
30 46446
200 50954
202 50954
240 46446
Proposed Rules:
1 46516
240 48724

18 CFR

2 51070
4 51070
5 51070
9 51070
16 51070
35 49846
375 51070
381 50696
385 51070
1302 51334
1304 46930
1307 51334
1309 51334
Proposed Rules:
2 46452
35 49974
284 48133
388 46456

19 CFR

Ch. I 51868
Ch. IV 51868
4 48279
12 51903
103 47453
111 47455
122 50697
148 50698
191 50700
Proposed Rules:
103 48327
141 50733

20 CFR

206 51152
218 45315
225 45315
404 ....51153, 51689
416 ....51153, 51689
Proposed Rules:
404 ....45180, 47877, 50985
416 45180

21 CFR

101 51693
172 ....46364, 46403, 50069
310 51167
510 49703
520 ....51445, 51704, 51904
522 ....48784, 49350, 49703, 51705
558 ....47237, 51170
886 49351
Proposed Rules:
101 51738
310 48133
334 48133
356 50991
510 47272
558 47272

22 CFR

41 ....46948, 47460, 49351
42 49353
120 51171
141 51334
142 51334
143 51334
209 51334
217 51334
218 51334

23 CFR

1225 50703

24 CFR

905 45730
Proposed Rules:
960 45734
3282 47881

25 CFR

170 48549
Proposed Rules:
Ch. 1 45787

26 CFR

1 ....45745, 45772, 46081, 50710, 51171, 51394, 51446
300 48785
301 46081
602 ....46081, 51171, 51394, 51446
Proposed Rules:
1 ....46516, 46983, 48331, 50087, 50734, 51749, 51944
14a 50734
301 49729

27 CFR

Proposed Rules:
9 48839

28 CFR

42 51334
549 47847
Proposed Rules
16 47519
522 46138

29 CFR

31 51334
32 51334
697 46949
4022 48787
4044 48787
Proposed Rules
Ch. X 46983
1926 48843

30 CFR

925 50944
926 46460
938 ....48789, 51447
Proposed Rules
57 ....48668, 51206
72 47886
206 50087
210 50087
925 50950
943 48844

31 CFR

50 48280
591 45777
592 45777
Proposed Rules:
210 50672

32 CFR

21 47150

22 47150
32 47150
34 47150
37 47150
199 51705

Proposed Rules

179 50900
199 ....46526, 49732
806b 51958

33 CFR

100 ....46087, 47237, 48553, 51906
117 ....45784, 47462, 47850, 47851, 51179
165 ....45164, 45165, 47237, 47239, 47241, 47243, 47245, 47464, 47465, 47852, 47854, 48282, 48284, 48555, 48798, 49356, 49359, 49704, 50711, 51449, 51451, 51453

Proposed Rules:

100 48846
110 45190
117 ....46139, 47520, 47522, 49393
165 ....46984, 47277
326 50108

36 CFR

4 46477
7 50073

Proposed Rules:

1 51207
3 51207
7 ....47524, 51207, 51526
219 49395
242 49734
294 49395

37 CFR

1 48286
2 48286

Proposed Rules:

263 50493

38 CFR

3 50966
4 51454
18 51334

39 CFR

111 49362
224 47527
261 47527
262 47527
263 47527
264 47527
265 47527
266 47527
267 47527
268 47527
3001 48293

Proposed Rules:

111 ....45192, 49396, 51750

40 CFR

7 51334
52 ....45897, 46089, 46099, 46101, 46479, 46484, 46487, 47466, 47468, 47473, 47477, 47482, 48557, 48803, 51181, 51184, 51185, 51187, 51459, 51906
60 46489
62 ....48558, 49363, 49706
63 ....46102, 51190, 51830
70 46489
71 45167
81 ....47964, 51459
86 48561
180 ....46491, 47246, 48299, 48302, 48312, 51465, 51471, 51479
261 46951
272 ....51484, 51488
300 ....48314, 50714

Proposed Rules:

Ch. 1 46435
19 45788
27 45788
51 46436
52 ....46141, 46437, 47279, 47530, 45731, 47532, 47533, 51219, 51220, 51544
62 ....48581, 49406
63 ....46142, 51220
70 46438
81 ....48848, 51544
141 ....47640, 49548
142 ....47640, 49548
143 49548
194 47887
271 45192
272 51545
300 ....48331, 49406, 50735, 51221
432 48472

41 CFR

Ch. 301 51911
101-6 51334
101-8 51334
101-45 51420
102-38 51420

Proposed Rules:

51-3 45195
51-4 45195

42 CFR

102 51492
409 ....46036, 50840
411 46036
412 ....45346, 45674, 47637
413 ....45346, 46036, 50717
417 50840
422 50840
424 48805
440 46036
447 51912
483 46036
488 46036
493 50722
489 46036

Proposed Rules:

405 50428
410 ....47966, 49030
414 ....49030, 50735
419 47966

43 CFR

17 51334

44 CFR

7 51334
64 51917
65 49365
67 49371

45 CFR

605 51334
611 51334
617 51334
1110 51334
1151 51334
1156 51334
1170 51334
1203 51334
1232 51334

46 CFR

1 51499
188 45785
189 45785

Proposed Rules:

4 50992

47 CFR

1 ....48446, 51499
2 46957
13 46957
15 ....50725, 50972
25 ....47856, 49372, 51499
27 51706
54 ....47253, 49707, 50077
61 50077
63 50973
64 ....50973, 50978
69 46500
73 ....45786, 46286, 46502, 47255, 47256, 48764, 49372, 50725, 51194, 51706, 51918
80 46957

Proposed Rules:

2 ....49409, 50739
25 ....49409, 51546
64 50993
73 ....46359, 47282, 47283, 47284, 47285, 49410, 50740, 50998

48 CFR

217 50474
219 50476
237 50476
252 50477

Proposed Rules:

242 50495
1601 48851
1602 48851
1604 48851
1615 48851
1631 48851
1632 48851
1644 48851
1652 48851
1806 45168
1807 45168
1811 45168
1814 45168
1815 45168
1817 45168
1819 45168
1825 45168
1827 45168
1844 45168
1852 45168
1872 45168
2901 48996
2902 48996
2903 48996
2904 48996
2905 48996
2906 48996
2907 48996
2908 48996
2909 48996
2910 48996
2911 48996
2912 48996
2913 48996
2914 48996
2915 48996
2916 48996
2917 48996
2918 48996
2919 48996
2920 48996
2921 48996
2922 48996
2923 48996
2924 48996
2925 48996
2926 48996
2927 48996
2928 48996
2929 48996
2930 48996
2931 48996
2932 48996
2933 48996
2934 48996
2935 48996
2936 48996
2937 48996
2938 48996
2939 48996
2940 48996
2941 48996
2942 48996
2943 48996
2944 48996
2945 48996
2946 48996
2947 48996
2948 48996
2949 48996
2950 48996
2951 48996
2952 48996
2953 48996
9904 50111

49 CFR

21 51334
27 51334
71 ....49373, 49712
171 48562
172 48562
173 48562
177 48562
178 48562
179 48562
180 48562
191 46109
192 46109
195 46109
229 49713
390 47860
398 47860
571 ....47485, 48571, 50077, 51706
1002 50980
1137 51919
1500 49718
1502 49718
1503 49718
1510 49718
1511 49718
1540 49718
1542 49718
1544 49718
1546 49718

1548 49718
1550 49718
Proposed Rules:
71 47533
380 ....47890, 48863
385 49737
390 49737
391 47890
397 49737
571 ....46539, 46546, 49756
585 46546
586 46546
589 46546
590 46546
596 46546
1152 48332
1507 49410

50 CFR

17 ....46684, 46870
20 ....50496, 51658, 51832, 51919
21 50496
223 51508
229 51195
300 ....47256, 48572
622 47498
635 45169
648 ....47264, 49693
660 ....46112, 49721
679 ....45170, 45766, 46116, 46117, 46502, 47265, 47266, 47875, 49374, 50079, 50509, 51146, 51515, 51711, 51928, 51929, 51931
Proposed Rules:
13 51222
15 46559
17 ....46143, 46989, 48581
20 ....47424, 50016
21 ....51222, 51231
32 48583
100 49734
226 51758
600 45196
622 48592
635 ....45196, 47404
648 ....49758, 50998, 51959
660 ....49415, 51548, 51763
679 ....49416, 50120, 51147
697 51232

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT AUGUST 29, 2003

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Noxious weeds:

Witchweed; regulated areas; published 8-29-03; comments due by 12-30-99; published 8-29-03 [FR 03-22142]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

Alaska; fisheries of Exclusive Economic Zone—

Pacific cod; published 7-30-03; comments due by 12-30-99; published 7-30-03 [FR 03-19425]

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:

Colorado; published 6-30-03; comments due by 7-30-03; published 6-30-03 [FR 03-16026]

North Carolina; published 6-30-03; comments due by 7-30-03; published 6-30-03 [FR 03-00172]

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Animal drugs, feeds, and related products:

Lufenuron, mibemycin oxime and lufenuron, and nitenpyram tablets; published 8-29-03; comments due by 12-30-99; published 8-29-03 [FR 03-22072]

HOMELAND SECURITY DEPARTMENT

Coast Guard

Ports and waterways safety:

Lake Michigan—

Chicago, IL; safety zone; published 8-27-03; comments due by 12-30-99; published 8-27-03 [FR 03-21958]

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

FHA programs; introduction:

Tax credit proceeds distribution; published 7-30-03; comments due by 9-29-03; published 7-30-03 [FR 03-19286]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Pratt & Whitney Canada; published 8-14-03; comments due by 10-14-03; published 8-14-03 [FR 03-20484]

RULES GOING INTO EFFECT AUGUST 30, 2003

HOMELAND SECURITY DEPARTMENT

Coast Guard

Ports and waterways safety:

Milwaukee Harbor, WI; safety zone; published 8-8-03; comments due by 12-30-99; published 8-8-03 [FR 03-20195]

RULES GOING INTO EFFECT AUGUST 31, 2003

HOMELAND SECURITY DEPARTMENT

Coast Guard

Ports and waterways safety:

Colorado River—

Laughlin, NV; safety zone; published 7-29-03; comments due by 12-30-99; published 7-29-03 [FR 03-19256]

Lake Michigan—

Grand Haven, MI; safety zone; published 8-27-03; comments due by 12-30-99; published 8-27-03 [FR 03-21957]

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Pistachios grown in—

California; comments due by 9-3-03; published 8-4-03 [FR 03-19123]

Processed fruits, vegetables, and processed products; inspection and certification; comments due by 9-5-03; published 8-6-03 [FR 03-20008]

AGRICULTURE DEPARTMENT

Forest Service

National Forest System land and resource management planning:

Special areas

Roadless area conservation; comments due by 9-2-03; published 8-18-03 [FR 03-21208]

Roadless area conservation; Tongass National Forest, AK; comments due by 9-2-03; published 8-18-03 [FR 03-21209]

AGRICULTURE DEPARTMENT

Rural Utilities Service

Grants:

Emergency and imminent community water assistance; comments due by 9-4-03; published 8-5-03 [FR 03-19697]

AGRICULTURE DEPARTMENT

Rural Utilities Service

Grants:

Emergency and imminent community water assistance; comments due by 9-4-03; published 8-5-03 [FR 03-19696]

BLIND OR SEVERELY DISABLED, COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE

Committee for Purchase From People Who Are Blind or Severely Disabled

Nonprofit agencies; annual certifications; due dates; comments due by 9-2-03; published 8-1-03 [FR 03-19630]

COMMERCE DEPARTMENT

International Trade Administration

Watches, watch movements, and jewelry:

Duty-exemption allocations—

Virgin Islands, Guam, American Samoa, and Northern Mariana Islands; comments due by 9-2-03; published 8-1-03 [FR 03-19272]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

West Coast States and Western Pacific fisheries—

Queets River to Cape Falcon, OR; recreational fishery; comments due by 9-3-03; published 8-19-03 [FR 03-21045]

COMMODITY FUTURES TRADING COMMISSION

Commodity Exchange Act:

Customer funds investment; comments due by 9-5-03; published 8-6-03 [FR 03-19949]

DEFENSE DEPARTMENT

Federal Acquisition Regulation (FAR):

Cost accounting standards administration; comments due by 9-2-03; published 7-3-03 [FR 03-16868]

Gains and losses, maintenance and repair costs, and material costs; comments due by 9-5-03; published 7-7-03 [FR 03-16982]

ENVIRONMENTAL PROTECTION AGENCY

Air pollution control:

State operating permits programs—

Kansas; comments due by 9-5-03; published 8-6-03 [FR 03-20037]

ENVIRONMENTAL PROTECTION AGENCY

Air pollution control:

State operating permits programs—

Kansas; comments due by 9-5-03; published 8-6-03 [FR 03-20019]

ENVIRONMENTAL PROTECTION AGENCY

Air programs:

Outer Continental Shelf regulations—

California; consistency update; comments due by 9-2-03; published 7-31-03 [FR 03-19283]

Air quality implementation plans:

Preparation, adoption, and submittal—

8-hour ozone national ambient air quality standard; implementation; comments due by 9-5-03; published 8-6-03 [FR 03-20030]

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:

Maryland; comments due by 9-5-03; published 8-6-03 [FR 03-19922]

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:

Maryland; comments due by 9-5-03; published 8-6-03 [FR 03-19921]

Pennsylvania; comments due by 9-4-03; published 8-5-03 [FR 03-19740]

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:

Pennsylvania; comments due by 9-4-03; published 8-5-03 [FR 03-19739]

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:

Pennsylvania; comments due by 9-5-03; published 8-6-03 [FR 03-19923]

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:

Pennsylvania; comments due by 9-5-03; published 8-6-03 [FR 03-19924]

ENVIRONMENTAL PROTECTION AGENCY

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

Bacillus thuringiensis Cry34Ab1 and Cry35Ab1 proteins; comments due by 9-5-03; published 7-7-03 [FR 03-17105]

ENVIRONMENTAL PROTECTION AGENCY

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

Famoxadone; comments due by 9-2-03; published 7-2-03 [FR 03-16736]

ENVIRONMENTAL PROTECTION AGENCY

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

Fludioxonil; comments due by 9-2-03; published 7-3-03 [FR 03-16931]

ENVIRONMENTAL PROTECTION AGENCY

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

Nomenclature changes; technical amendments; comments due by 9-2-03; published 7-1-03 [FR 03-16614]

ENVIRONMENTAL PROTECTION AGENCY

Solid wastes:

Project XL (eXcellence and Leadership) program; site-specific projects—

Georgia-Pacific Corp. pulp and paper mill, Big Island, VA; comments due by 9-4-03; published 8-5-03 [FR 03-19919]

ENVIRONMENTAL PROTECTION AGENCY

Solid wastes:

Project XL (eXcellence and Leadership) program; site-specific projects—

Georgia-Pacific Corp. pulp and paper mill, Big Island, VA; comments due by 9-4-03; published 8-5-03 [FR 03-19920]

FEDERAL COMMUNICATIONS COMMISSION

Radio broadcasting :

Definition of radio markets for areas not located in an arbitron survey area; comments due by 9-4-03; published 8-5-03 [FR 03-19091]

Radio frequency devices:

Unlicensed devices operating in 5 GHz band; comments due by 9-3-03; published 7-25-03 [FR 03-18971]

Radio stations; table of assignments:

Alabama; comments due by 9-5-03; published 7-24-03 [FR 03-18831]

Arizona; comments due by 9-5-03; published 7-24-03 [FR 03-18809]

Georgia; comments due by 9-5-03; published 7-24-03 [FR 03-18830]

West Virginia; comments due by 9-5-03; published 7-24-03 [FR 03-18807]

FEDERAL HOUSING FINANCE BOARD

Federal home loan bank system:

Acquired member assets, core mission activities, and investments and advances; amendments; comments due by 9-2-03; published 7-1-03 [FR 03-16477]

FEDERAL HOUSING FINANCE BOARD

Privacy Act and Freedom of Information Act; implementation; comments due by 9-2-03; published 7-3-03 [FR 03-16560]

GENERAL SERVICES ADMINISTRATION

Federal Acquisition Regulation (FAR):

Cost accounting standards administration; comments due by 9-2-03; published 7-3-03 [FR 03-16868]

Gains and losses, maintenance and repair costs, and material costs; comments due by 9-5-03; published 7-7-03 [FR 03-16982]

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Food additives:

Olestra; comments due by 9-4-03; published 8-5-03 [FR 03-19508]

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Human drugs:

Internal analgesic, antipyretic, and antirheumatic products (OTC); tentative final monograph and related labeling; comments due by 9-2-03; published 6-4-03 [FR 03-13914]

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Human drugs:

Skin protectant drug products (OTC); final monograph; comments due by 9-2-03; published 6-4-03 [FR 03-13751]

HOMELAND SECURITY DEPARTMENT

Coast Guard

Anchorage regulations:

Maryland; comments due by 9-2-03; published 7-2-03 [FR 03-16639]

HOMELAND SECURITY DEPARTMENT

Coast Guard

Drawbridge operations:

New York; comments due by 9-5-03; published 6-25-03 [FR 03-16000]

HOMELAND SECURITY DEPARTMENT

Coast Guard

Outer Continental Shelf activities:

Gulf of Mexico; safety zone; comments due by 9-5-03; published 7-7-03 [FR 03-16963]

Ports and waterways safety:

Bayou Casotte, Pascagoula, MS; security zone; comments due by 9-5-03; published 7-7-03 [FR 03-16972]

HOMELAND SECURITY DEPARTMENT

Coast Guard

Ports and waterways safety:

Charleston Harbor, Cooper River, SC; security zones; comments due by 9-5-03; published 7-7-03 [FR 03-16969]

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species:

Beluga sturgeon; comments due by 9-2-03; published 7-2-03 [FR 03-16724]

Critical habitat designations—

Cumberland elktoe, etc.; mussels in Tennessee and Cumberland River Basins; comments due by 9-2-03; published 6-3-03 [FR 03-12944]

Migratory bird hunting:

Seasons, limits, and shooting hours; establishment, etc.; comments due by 9-2-03; published 8-19-03 [FR 03-20940]

INTERIOR DEPARTMENT

Watches, watch movements, and jewelry:

Duty-exemption allocations—

Virgin Islands, Guam, American Samoa, and Northern Mariana Islands; comments due by 9-2-03; published 8-1-03 [FR 03-19272]

LABOR DEPARTMENT

Occupational Safety and Health Administration

Safety and health standards, etc.:

Respiratory protection—

Assigned protection factors; comments due by 9-4-03; published 6-6-03 [FR 03-13749]

Controlled negative pressure REDON fit testing protocol; comments due by 9-4-03; published 6-6-03 [FR 03-13748]

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR):

Cost accounting standards administration; comments due by 9-2-03; published 7-3-03 [FR 03-16868]

Gains and losses, maintenance and repair costs, and material costs; comments due by 9-5-03; published 7-7-03 [FR 03-16982]

NATIONAL CREDIT UNION ADMINISTRATION

Credit unions:

Organization and operations—

Loan participation regulations; definition clarifications; comments due by 9-2-03; published 7-3-03 [FR 03-16793]

Share insurance and appendix—

Share insurance regulations; clarification and simplification; comments due by 9-2-03; published 7-3-03 [FR 03-16794]

NUCLEAR REGULATORY COMMISSION

Rulemaking petitions:

Union of Concerned Scientists and Mothers for Peace; comments due by 9-2-03; published 6-16-03 [FR 03-15123]

POSTAL SERVICE

Domestic Mail Manual:

Bulk Bound Printed Matter; mailer requirements of entry; destination delivery unit rate; comments due by 9-2-03; published 8-1-03 [FR 03-19553]

SOCIAL SECURITY ADMINISTRATION

Social security benefits and supplemental security income:

Federal old-age, survivors, and disability insurance, and aged, blind, and disabled

Disability and blindness determinations; medical-vocational rules; education and previous work experience categories clarification; comments due by 9-5-03; published 7-7-03 [FR 03-16859]

STATE DEPARTMENT

Visas; nonimmigrant documentation:

Personal appearance; comments due by 9-5-03; published 7-7-03 [FR 03-17044]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Air carrier certification and operations:

Hazardous materials training requirements; air carriers and commercial operators; comments due by 9-5-03; published 7-7-03 [FR 03-17107]

Airworthiness directives:

Boeing; comments due by 9-2-03; published 7-17-03 [FR 03-18082]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Hartzell Propeller, Inc., et al.; comments due by 9-2-03; published 7-3-03 [FR 03-16689]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

MD Helicopters, Inc.; comments due by 9-2-03; published 7-2-03 [FR 03-16687]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Class E airspace; comments due by 9-2-03; published 7-29-03 [FR 03-19165]

TRANSPORTATION DEPARTMENT

Federal Highway Administration

Engineering and traffic operations:

Work zone safety and mobility; comments due by 9-4-03; published 5-7-03 [FR 03-11020]

TRANSPORTATION DEPARTMENT

Federal Motor Carrier Safety Administration

Motor carrier safety standards:

New drivers; safety performance history; comments due by 9-2-03; published 7-17-03 [FR 03-18137]

TREASURY DEPARTMENT

Internal Revenue Service

Income taxes:

Low-income housing tax credit; section 42 carryover and stacking rule amendments; comments due by 9-5-03; published 7-7-03 [FR 03-16941]

TREASURY DEPARTMENT

Alcohol and Tobacco Tax and Trade Bureau

Alcoholic beverages:

Dried fruit and honey wines production; comments due by 9-2-03; published 7-2-03 [FR 03-16564]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.access.gpo.gov/nara/nara005.html*. Some laws may not yet be available.

H.R. 2195/P.L. 108–72

Smithsonian Facilities Authorization Act (Aug. 15, 2003; 117 Stat. 888)

H.R. 2465/P.L. 108–73

Family Farmer Bankruptcy Relief Act of 2003 (Aug. 15, 2003; 117 Stat. 891)

H.R. 2854/P.L. 108–74

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)

S. 1015/P.L. 108–75

Mosquito Abatement for Safety and Health Act (Aug. 15, 2003; 117 Stat. 898)

H.R. 1412/P.L. 108–76

Higher Education Relief Opportunities for Students Act of 2003 (Aug. 18, 2003; 117 Stat. 904)

Last List August 19, 2003

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.