



Federal Register

9-11-03

Vol. 68 No. 176

Thursday

Sept. 11, 2003

Pages 53483-53664



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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 245

RIN 0584—AD20

Determining Eligibility for Free and Reduced Price Meals in Schools—Verification Reporting and Recordkeeping Requirements

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the reporting and recordkeeping requirements under the National School Lunch Program (NSLP) and School Breakfast Program (SBP) relating to the verification of applications for free and reduced price meal benefits under the NSLP and the SBP. In spite of the efforts of school food authorities and State agencies to ensure the accuracy of free and reduced price applications, data indicate that the number of children certified as eligible to receive free meals exceeds the number of children who are eligible to receive those meals, given other poverty indicators. This rule requires school food authorities to report verification activity and results to their respective State agencies and requires State agencies to analyze and act on these data and to report school food authority level data to the Food and Nutrition Service (FNS) beginning with the school year which starts on July 1, 2004. School food authorities and State agencies are encouraged to begin to collect and report verification data prior to the required implementation date. Recordkeeping requirements will be revised consistent with the reporting requirements. Submission of these data on a school food authority basis will enable State agencies and FNS to improve and target oversight activities.

DATES: *Effective date:* This rule is effective October 14, 2003. However, the reporting requirements contained in 7 CFR 245.11 will not be in effect until approved by OMB under the Paperwork Reduction Act. FNS will publish a notice upon approval of those requirements to establish the effective date.

Implementation dates: Beginning in School Year 2004–2005, each school food authority and State agency must collect and report data elements designated by FNS to their State agency and FNS, respectively.

Contingent upon new funding to support this purpose, beginning in School Year 2005–2006, FNS will also require each school food authority and State agency to collect and report to their State agency and FNS, respectively, additional data concerning the reinstatement of students who have been terminated as a result of verification.

FOR FURTHER INFORMATION CONTACT:

Robert M. Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, VA 22302 or by telephone at (703) 305–2590.

SUPPLEMENTARY INFORMATION:

Background

What Was Proposed?

On August 9, 2002, FNS published a proposed rule in the **Federal Register** (67 FR 51779) proposing to amend 7 CFR § 245.6a(c) to require school food authorities to report verification activity and results to their respective State agencies in support of State agency and FNS oversight activities. Specifically, the document proposed amending § 245.6a(c) to require school food authorities to report certain verification information to the State agency by March 1 annually. The information would be reported on a form designated by FNS. The information requested on the form would address, but not be limited to, the characteristics of the verification sample and the results of verification activity. The preamble to the proposal provided the following examples of information to be collected: the number of children approved for free and reduced price meal benefits based on direct certification, income applications, and categorically eligible

applications; the method of verification sample selection; the number of applications selected for verification; the number of students on selected applications; the number of students approved for free meal benefits and reduced price meal benefits whose eligibility for benefits were reduced or terminated as the result of verification activities; of those terminated, the number of non-respondents; and the number of students reinstated for free or reduced price meal benefits, as of February 15th of each year.

In addition, the document proposed that § 245.6a(c) would require school food authorities to retain copies of the information reported to the State agency and all supporting documents. The proposed rule also restated the existing requirements that verified applications and information submitted by households must be readily retrievable by schools and that school food authorities must retain all documents submitted by households to confirm eligibility, reproductions of those documents, or annotations made by the determining official that indicate which documents were submitted by households and the dates of submission. The existing requirement that relevant correspondence between the households selected for verification and the school or school food authority must be retained was also restated.

FNS also proposed to add a new § 245.11(i) to require each State agency to collect the annual verification data from each school food authority in accordance with guidance provided by FNS. To facilitate the reporting of these data, FNS would provide a data collection instrument in electronic format. In addition, the proposed rule required that each State agency analyze these data, determine if there are potential problems, and formulate corrective actions and technical assistance activities to support the objective of certifying only those children eligible for free or reduced price meals. The availability and review of this information at the State level is designed to assist State agencies in targeting more rigorous oversight and technical assistance activities on school food authorities when their verification activities result in a high termination rate. A high termination rate may be due to a number of applications either being changed from free or reduced price

status to paid status because of documentation provided by households or because of households' failure to respond to the verification request.

The proposed rule would also require that the State agency report to FNS, not later than April 15th of each year, the results of each school food authority's verification activities, submitted in accordance with § 245.6a(c), and any ameliorative actions the State agency has taken or intends to take in those school food authorities with high numbers of applications changed due to verification activities. FNS intends to provide for the electronic submission of these data.

Additionally, the proposed rule included in 7 CFR Part 245 a definition of the term "FNS" which means "the Food and Nutrition Service of the Department of Agriculture". This definition was inadvertently not included in this Part in earlier editions and FNS proposed to add the definition at 7 CFR 245.2(b-2) for the sake of clarity and completeness.

Has FNS Taken Other Actions To Address Over-Certification?

FNS has taken several actions to address the issues associated with over-certification. On January 21, 2000, FNS published a notice in the **Federal Register** (65 FR 3409) soliciting States and school food authorities to participate in pilot projects to test alternate application, approval and verification procedures for free and reduced price eligibility determinations. Twenty-one school food authorities operated pilot projects. These pilot sites conducted alternative certification or verification processes for three consecutive school years, beginning in School Year 2000-2001. Preliminary data has shown the alternative methods have, to varying degrees, deterred and detected misreporting of eligibility information. FNS is currently conducting an in-depth analysis of the administrative data presented, to date, from the pilot sites. While the information derived from the pilots is not nationally representative, pilot activities have provided FNS with insight on the efficacy of the existing application and verification processes and on alternatives to those processes. This final rule is intended to complement pilot activities by collecting information on verification activity nationwide.

Discussion of Comments and Their Resolution

How Many Comments Were Received?

During the 60 day comment period, 99 comment letters were received: 81 from State and local agencies administering the school programs; 12 from advocacy groups; 5 from the general public, and 1 from the food industry. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C 3507), the public was invited to send comments on the proposed information collection to the Office of Management and Budget (OMB). OMB received 12 comments on the information collection aspects of the proposed rule.

What Did Commenters Say About the Proposed Rule?

Discussion of General Comments

In general, the commenters were supportive of ensuring that free and reduced price meal benefits only go to eligible children and gave a number of suggestions outside the scope of the proposed rule to address this problem. Some examples of suggested ideas are: hold households accountable for the information submitted on their application; eliminate publication of income eligibility guidelines; have other programs/agencies take more responsibility in regards to free and reduced price benefit determinations; consider/research reasons why households are not responding to verification requests (*e.g.*, moved, limited English proficiency, undocumented immigrants, migrants, lack of understanding of the concept of verification); use the additional costs that the proposal would incur to provide universal free school meals to all children; and specify that the verification notification needs to be provided in a language that the families of participating children can understand. Additional studies of the issue of over-certification were also suggested.

A few commenters expressed concern that the proposed rule did not address the inadequacies of the verification process (such as non-respondents and language barriers). Several commenters recommended that FNS delay any changes to the verification requirements until completion of the pilot projects and the analysis of the results. As previously stated, the purpose of this regulation is to establish a method to obtain data about verification results as another step in the overall goal of improved program integrity. The requirements for the reporting of

verification activities contained in this rule will complement the pilot activities. The data collection is a tool for FNS to better analyze current verification procedures and results. The information, when reviewed and analyzed, may lead to other proposals in the future to further refine the entire certification and verification process. The ideas that were suggested will also be kept in mind for future rulemaking.

Discussion of Comments on the Proposed Burden Under the Paperwork Reduction Act

Over fifty commenters discussed the burden that the proposed requirements would place on school food authorities and State agencies. The general consensus is that the proposed reporting and recordkeeping requirements are too burdensome and the estimated annual reporting and recordkeeping burden hours under the Paperwork Reduction Act of 1995 are too low. We have reviewed the burden hours and have adjusted the estimate to account for the fact that there will be differences in the amount of time required to complete the report based on the size of the school food authority. Small school food authorities, which constitute the majority of participating school food authorities, may only have a small number of verified applications to summarize, while larger school food authorities will have numerous verified applications to summarize. However, larger districts may also have automated information systems that will provide some or all of the information to complete the report, thereby reducing their overall burden hours. We have taken these different circumstances into consideration and have adjusted the burden hours as follows: School food authorities average burden hours have been increased from 16,342 to 32,684, an average of 2 hours per school food authority. State agency average burden hours are increased per response from 8 to 24 hours. This results in an increase of annual burden hours from 432 to 1,296 for State agencies. We submitted the revised burden to OMB for approval.

A few commenters questioned the need for requiring additional data collection by school food authorities beyond the current requirements. Specifically, commenters stated that most school food authorities do not currently track data regarding the number of students whose benefits were terminated and who were then reinstated (due to submission of required documentation or a change in household circumstances) for free or reduced price meals by February 15. The Department is concerned about the

students that are terminated as a result of verification activities. Data regarding the number of students that reapply and are re-certified for free or reduced price meals would be beneficial in analyzing the over-certification issue. Commenters expressed concern that this data element would be labor intensive since it is not currently being collected. The Department is mindful of the commenters' concerns about this burden and recognizes that this requirement would result in additional administrative burden at a time when school food authorities are faced with serious fiscal and staff constraints. In order to balance the need for this data with the additional economic burden on school food authorities, the Department is modifying the implementation date for this data element, as well as attempting to secure additional funds to enable school food authorities to enhance their data collection and reporting systems. Therefore, reporting and collecting this data will be required for the School Year 2005–2006 contingent upon new funding to support this purpose. However, the implementation date for other data collection and reporting remains as proposed. The Department encourages school food authorities and State agencies to collect and report any or all verification data elements to their respective State agency before the required dates regardless of the availability of additional budgetary assistance.

Discussion of Comments on Public Law 104–4: Unfunded Mandates Reform Act of 1995

One of the requirements for agencies when promulgating regulations is an assessment required by Public Law 104–4 the Unfunded Mandates Reform Act of 1995, of the impact of the proposed changes on State, local and tribal governments and the private sector. The threshold for this assessment is \$100 million in any one year. One commenter took issue with FNS' assessment that the proposed rule contained no Federal mandates of \$100 million. The commenter stated that there is no estimate of the overall time required to complete the entire verification, reporting, review and analysis at the State agency as "Each State agency must analyze these data, determine if there are potential problems, and formulate corrective action * * *". The commenter indicated that the assumption was inaccurate and the procedures will create a significant burden on State agencies administering these programs.

Upon further review, FNS continues to believe that this rule 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. However, as discussed earlier, FNS has modified the burden hours from the proposed rule on the data collection and reporting requirements in order to address burden concerns. It is important to note that the determination of burden hours is based only on the compilation of data and the completion of the report. The analysis of the reported data and the corrective action and technical assistance activities are not part of the data collection and reporting burden as State agencies are obligated to ensure that school food authorities administer the program in accordance with program regulations. Therefore, program oversight, corrective action, and technical assistance resulting from the data reported are part of the overall administrative responsibility of State agencies.

Discussion of Comments on the Need for Guidance

Over 20 commenters discussed the need for additional guidance on the procedures for the State agency's responsibilities outlined in the proposal. Many stated that the proposal language was vague and that definitions of "corrective action", "rigorous oversight activity", and "ameliorative actions" are needed. Commenters also indicated that there is a need to be more specific as to what the State agency is expected to do when reviewing questionable reports.

The Department envisions that State agencies will note trends and notify school food authorities of these trends as well as provide training and technical assistance to school food authorities as needed. Also, in response to these concerns, FNS is developing guidance materials supporting the State agency's role in this effort, including an outline of possible review techniques and suggested technical assistance, which will be provided prior to the implementation date of this rule.

Discussion of Comments on Deadlines

Some commenters discussed the deadlines for school food authorities to submit accumulated data to the State agency and for States agencies to submit consolidated data to FNS. Most suggested that the deadlines are too short and should be extended in order for the data to be collected, compiled and analyzed. A particular concern to commenters was the short turn around for collecting and reporting the

information on students that are reinstated after termination due to verification.

We recognize the commenters' concerns regarding the reporting deadlines and to alleviate some of the burden, we have modified, as discussed earlier in this preamble, the implementation date of the data element regarding reinstated students. Because the remaining data elements that were discussed in the proposed rule are based on data that is already collected, the Department is not changing the reporting deadlines of March 1st for each school food authority to submit data to their respective State agency, as well as the April 15th date for State agencies to submit the aggregated data to FNS.

Three commenters requested a delay in the implementation of the rule. FNS does not feel that a delay in implementation for collection and reporting of existing data is warranted due to the urgency in finding a solution to the issue of over-certification.

However, it is important to note that the first report on the majority of data elements will not be due from the school food authorities to the State agencies until March 1, 2005 and the first reports from the State agencies to FNS are not due until April 15, 2005.

Over 20 commenters requested an extension to the comment period for the proposed rule. Again, due to the urgency of the over-certification issue, FNS believes that the 60-day comment period for the proposed rule was sufficient.

Discussion of Comments on Concerns That the Rule Will Have Adverse Results

Some commenters expressed concern that the proposed rule may have adverse effects on eligible children. Specific comments on this issue are: (1) Verification has been shown to discourage participation by needy children, and (2) some efforts by State agencies to assure that only eligible children are certified may inadvertently impede program participation by some needy children. While FNS recognizes and shares the concerns about discouraging participation of eligible children, FNS does not believe that this rule will have any adverse results. The rule does not change existing certification and verification requirements, and should not change the way that school food authorities interact with families applying for benefits. The rule merely requires analysis and reporting of information, by school food authorities and State

agencies, related to existing certification and verification requirements.

Discussion of Comments on Data Presented by FNS and Need for Rulemaking

Two commenters suggested that the preamble overstated the strength of available data and that the preamble should have included a more careful discussion of the limitations of verification data. These comments specifically stated that FNS should not, especially in the context of a call for better analysis, present misleading data and questionable analysis without any discussion of its meaning and soundness of the methodology employed. The commenters also felt that the actions described in the preamble were an example of the type of cursory use of data that could lead State agencies to take harmful or ineffective steps in response to the verification data. Further, they recommended that the preamble to the proposed rule should have clearly addressed the limitations of verification data and, thus, the conclusions that may be drawn from analyses of these data. In response to these concerns, it is the intent of this rule to simply provide information in order to provide a broader understanding of the over-certification problem. This rule is intended to provide information about the verification problem by collecting data nationally. At this point in time, FNS does not have enough information to discuss any conclusions that may result from collection and analysis of this data.

A few commenters discussed the background information provided in the preamble to the proposal. In particular, they noted that the preamble stated that when State agencies conducted comprehensive on-site evaluations of school food authorities the resulting findings indicate that school food authorities have been determining free and reduced price eligibility correctly. Commenters agree with this conclusion and stated that this indicates that the problem does not lie with administrative procedures and measures taken by school food authorities and State agencies, but likely with household reporting. Other commenters said that requiring school food authorities and State agencies to annually collect, review and report a massive amount of data to confirm what is already known, is counter-productive—a waste of scarce and valuable resources.

In response to these commenters, we reiterate that the purpose of this rule is to better understand these issues in

order to determine our course of action to correct problems with certification as well as the verification process. The purpose of this rule is to gather and assess the results of verification as a means to compare the initial certification decisions and the disposition of verified applications when households are asked to provide information confirming their current eligibility.

Some commenters discussed the statement made in the preamble that there is a 27% over certification of students eligible for free meals based on a comparison of NSLP data and Current Population Survey (CPS) data. These commenters mentioned that CPS data might not be the best source of data to compare with NSLP data.

The CPS, a joint project between the Bureau of Labor Statistics and the Bureau of the Census, is a well established, technically sound survey that is used for, among other things, official U.S. unemployment and poverty estimates. In conjunction with FNS program data, the CPS is one of the best sources of information to use in understanding the problem of certification inaccuracy. One of the strengths of CPS is that it includes the non-institutionalized population of the United States and is designed to include undocumented persons and migrants in the sample. We know that these groups are hard to capture with surveys. However, the CPS does not rely solely on the sample's ability to fully record these groups—the CPS data are adjusted to reflect the Census' best estimate of the size of the undocumented population. FNS believes that the use of CPS data is a critical tool available in understanding the magnitude of the over-certification problem.

The Agency will continue to make use of CPS and other data sources in assessing certification accuracy.

Specific Comments

Sections 245.6a(c) and 245.11(i)

Two commenters wanted to replace "State agency" with "FNS" as the recipient of school food authorities' report verification information. However, since State agencies are responsible for ensuring school food authority compliance with program requirements, including accurate and timely reporting, it is more appropriate to require that school food authorities report data to the State agencies, not to FNS. State agencies (1) need to receive data to focus their efforts; (2) are in the best position to ensure accurate reporting; and (3) are responsible for all aspects of program operations within

their States. The final rule will continue to require that school food authorities report verification information to their respective State agencies.

Section 245.11(i)

Another comment questioned why "high termination rates" should trigger more rigorous oversight activities on the part of the State agency. This comment went on to state that this part of the proposal seems to be completely at odds with the statement in the preamble that "School food authorities generally have been determining free and reduced price eligibility in accordance with the regulatory requirements * * *".

If the State agency sees that the school food authority has submitted data that has a high termination rate, then the State agency will need to work with that school food authority to see if it has taken appropriate actions to ensure accuracy of the application process. State agencies are expected to develop technical assistance activities in conjunction with school food authorities to assure that they are utilizing direct certification to its fullest, providing appropriate translations (if needed), and/or providing appropriate follow-up to households that do not respond to verification requests, if needed. School food authorities should use the data collected to determine what improvements are needed in their certification and verification procedures (*i.e.* single versus multi-child applications, additional assistance for parents, use of other/additional verification procedures). School food authorities also should notify State agencies of what technical assistance is needed and in what form (training, materials, etc.) in order to improve the verification process. FNS will provide training, technical assistance, additional translations and the like, for school food authorities and State agencies to assist them in analyzing how their procedures could be improved and in developing/supplying technical assistance and training. This provision is adopted as proposed in this final regulation, as FNS will be providing guidance and resources to assist school food authorities and State agencies in addressing the issue of high termination rates.

Numerous commenters discussed concerns with the proposed regulatory requirement in § 245.11(i) that "Each State agency must analyze these data, determine if there are potential problems, and formulate corrective actions and technical assistance activities that will support the objective of certifying only those children eligible for free or reduced price meals." Some

of the concerns with this requirement are that it penalizes the school food authority for a high termination rate and creates an incentive to reduce the number of terminations. Commenters were also concerned that this focus could reduce the ability of State agencies to provide technical assistance in other significant areas like improved nutrition and menu planning. Commenters went on to say that there should be more emphasis on the number of children determined eligible who are not participating in the NSLP and SBP and that a high level of application information changed due to verification requests is not necessarily a negative reflection upon the school food authorities. Corrective action should not be required solely on the number of applications changed due to verification efforts.

Again, we emphasize that the regulation is designed to have State agencies collect and analyze information on the results of school food authorities verification activities in order to improve oversight, corrective action, and technical support with the objective of certifying only those children who are eligible for free and reduced price meals. A high rate of terminations resulting from verification activities is one indicator that there could be an underlying problem with the school food authorities certification actions. It may show, for example, areas where the school food authority needs technical assistance on certain application procedures. However, it is important that school food authorities and State agencies continue to do as much as possible to ensure that eligible children are not inadvertently hindered from receiving their appropriate level of benefits due to the procedures of the school food authority or State agency. The corrective action and technical assistance required by this rulemaking is not directed toward the verification termination rate per se, but rather toward other issues, such as ensuring that school food authorities are utilizing direct certification to its fullest, providing appropriate translations if there is a large foreign population, and/or providing appropriate follow-up to households when there is no response to a verification request.

How Will the State Agency Transmit the Data to FNS?

The proposed regulation indicated that State agencies would collect the data on verification activities already completed by school food authorities in accordance with existing regulation at 7 CFR 245.6a(c). State agencies would then consolidate that information in a

format designated by FNS. FNS is designing the format to minimize the burden on State agencies while still providing FNS with the data needed to formulate any additional measures to improve the certification and verification processes. We will be working with our cooperators prior to issuing the final format in order to obtain their input regarding the best manner to summarize the information from the school food authority level.

What Other Changes Are Being Made to the Rule?

In order to help reduce the burden on State agencies, and to allow FNS to obtain the data in a timely and accurate form, State agencies must submit a consolidated electronic file to FNS that transmits the required verification information for all the school food authorities under its administration. The proposed rule required school food authorities to report certain verification information to the State agency on a form designated by FNS. FNS will also develop a prototype form, which specifies the data elements that must be collected from each school food authority and reported to FNS. FNS will not provide a mandatory form for school food authorities to report to their State agencies. State agencies may adopt this prototype form, or may develop their own paper or electronic reporting forms to collect this data from school food authorities, as long as all required data elements are collected from each school food authority. FNS will issue guidance for State agencies on the requirements and procedures for collecting school food authority data and transmitting it to FNS.

What Technical Amendment Is Included in This Rule?

On January 11, 2001, the Department issued an interim regulation (66 FR 2195) to implement a provision of the Agricultural Risk Protection Act of 2000, Public Law 106-224. An amendment to 7 CFR 245.2 in that regulation redesignated paragraph (a-3) "Documentation" as paragraph (a-4) and added a new paragraph (a-3) "Disclosure" in its place. The Department inadvertently neglected to amend sections 245.5 and 245.6 to remove the obsolete citation and add the new citation in its place. This rule corrects that error.

Executive Order 12866

This proposed rule has been determined to be significant and was reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Impact Analysis

A regulatory impact analysis of the rule identified that these provisions will place a small additional burden on school food authorities and State agency staff and budgets. However, the new effort required will be an extension of existing reporting, record keeping, analysis, and ameliorative action, therefore the budget cost of this rule will be minimal. The analysis also indicated that reporting activities for both school food authorities and State agencies would improve understanding of certification problems. As a result of data extraction activities, school food authorities may more closely understand and utilize the data from the completed verification activities. School food authorities will be more equipped to respond to problems that they identify themselves through the reporting activity. In addition, State agencies will be more equipped to provide technical assistance to the school food authorities. The analysis indicated that the data would help FNS to evaluate the efficacy of the existing application and verification processes and alternatives to those processes. Additional nationally representative data on the efficacy of these processes are necessary to guide FNS policy concerning over-certification.

Regulatory Flexibility Act

This final rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601-612). Pursuant to that review, 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. By requiring the reporting of verification information, this rule would result in critical information being gathered and enable State agencies and FNS to take measures that would increase the level of accountability of the NSLP. FNS does not anticipate any adverse fiscal impact resulting from implementation of this rulemaking. Although there may be some burdens associated with this rule, the burdens would not be significant and would be outweighed by the benefits to programs reporting the information to the State agency and FNS.

Public Law 104-4

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 Section 202 of the UMRA, FNS 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, section 205 of the UMRA generally requires FNS 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 rule 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 sections 202 and 205 of the UMRA.

Executive Order 12372

The National School Lunch Program and School Breakfast Program are listed in the Catalog of Federal Domestic Assistance under No. 10.555 and 10.556. These programs are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR Part 3015, Subpart V, and final rule related notice at 48 FR 29115, June 24, 1983).

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 implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under section (6)(b)(2)(B) of Executive Order 13132. The Food and Nutrition Service (FNS)

has considered the impact of this rule on State and local governments and has determined that this rule does not have Federalism implications. This rule does not impose substantial or direct compliance costs on State and local governments. Therefore, under Section 6(b) of the Executive Order, a federalism summary impact statement is not required.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would impede its full implementation. This rule is not intended to have retroactive effect unless that is specified in the Effective Date section of the preamble. Before any judicial challenge to the provisions of this rule or the application of its provisions, all administrative procedures that apply must be followed. The only administrative appeal procedures relevant to this rule are the hearings that schools must provide for decisions relating to eligibility for free and reduced price meals (7 CFR 245.7 for the NSLP and SBP, in schools).

Civil Rights Impact Analysis

Under USDA Regulation 4300-4, Civil Rights Impact Analysis, FNS has reviewed this final rule to identify and address any major civil rights impacts the final rule might have on minorities, women, and persons with disabilities. After a careful review of the rule's intent and provisions, FNS has determined that this final rule will not in any way limit or reduce participants ability to participate in the Child Nutrition Programs on the basis of an individual's or group's race, color, national origin, sex, age, or disability. FNS found no factors that would negatively and disproportionately affect any group of individuals.

Paperwork Reduction Act of 1995

The information collection burden for the general reporting requirements in place prior to this rule are approved under OMB Number 0584-0026. This rule contains burdens that were included in the burden estimate in the proposed rule, Determining Eligibility for Free and Reduced Price Meals in Schools—Verification Reporting and Recordkeeping Requirements, published on August 9, 2002 at 67 FR 51779. In accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3507, the information reporting and recordkeeping requirements included in the proposed rule outlined the changes in the information collection burden. OMB accepted public comments on FNS' estimated reporting and recordkeeping burden. Commenters indicated that the proposed reporting and recordkeeping requirements are too burdensome and the proposed estimated annual reporting and recordkeeping burden hours under the Paperwork Reduction Act of 1995 are too low. We have reviewed the burden hours and have adjusted the estimate to account for the fact that there will be a significant disparity in the amount of time required to report the data elements based on the size of the school food authority. We have taken these different circumstances into consideration and have adjusted the burden hours as follows: School food authorities average burden hours have been increased from 16,342 to 32,684, an average of 2 hours per school food authority. State agency average burden hours are increased per response from 8 to 24. This results in an increase of the total annual burden hours from 432 to 1296 for State agencies. FNS is requesting approval of the data collection instruments from OMB in the near future. Implementation of the data collection elements of the rule is contingent upon OMB approval under the Paperwork Reduction Act.

ESTIMATED ANNUAL REPORTING BURDEN

	Section	Annual number of respondents	Annual frequency	Average burden per response	Annual burden hours
School food authorities report verification information to State agency					
Existing		0	0	0	0
Proposed	245.6a(c)	16,342	1	2 hours	32,684
Total Reporting Burden:					
Total Existing	0				
Total Proposed	24,513				
Change	+24,513				

ESTIMATED ANNUAL REPORTING BURDEN—Continued

	Section	Annual number of respondents	Annual frequency	Average burden per response	Annual burden hours
State agencies report district level data to FNS					
Existing		0	0	0	0
Proposed	245.11(i)	54	1	24 hours	1,296
Total Reporting Burden:					
Total Existing	0				
Total Proposed	1,296				
Change	+1,296				

ESTIMATED ANNUAL RECORDKEEPING BURDEN

	Section	Annual number of respondents	Annual frequency	Average burden per response	Annual burden hours
School food authorities maintain summary of verification efforts					
Existing	245.6a(c)	16,342	1	.75	12,256
Proposed	245.6a(c)	16,342	1	.85	13,891
Total Recordkeeping Burden:					
Total Existing	12,256				
Total Proposed	13,891				
Change	+1,635				

State agencies retain district level data

Existing		0	0	0	0
Proposed	245.11(i)	54	1	1	54
Total Recordkeeping Burden:					
Total Existing	0				
Total Proposed	54				
Change	+54				

Government Paperwork Elimination Act (GPEA)

In compliance with GPEA, 44 U.S.C. 3504, the Food and Nutrition Service is committed to implementing electronic reporting and recordkeeping processes whenever it is feasible to help minimize information collection burdens on the public. The required data elements will be specified by FNS. State agencies may develop paper or electronic reporting forms to collect this data from school food authorities, as long as all required data elements are collected from each school food authority.

List of Subjects in 7 CFR Part 245

Food assistance programs, Grant programs-education, Civil rights, Food and Nutrition Service, Grant programs-health, Infants and children, Milk, Reporting and recordkeeping requirements, School breakfast and lunch programs.

■ Accordingly, 7 CFR Part 245 is amended as follows:

PART 245—DETERMINING ELIGIBILITY FOR FREE AND REDUCED PRICE MEALS AND FREE MILK IN SCHOOLS

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

Authority: 42 U.S.C. 1752, 1758, 1759a, 1772, 1773, and 1779.

■ 2. In § 245.2:

■ a. Redesignate paragraph (c) as paragraph (b-3);

■ b. Redesignate paragraph (b-2) as paragraph (c); and

■ c. Add a new paragraph (b-2) to read as follows:

§ 245.2 Definitions.

* * * * *

(b-2) *FNS* means the Food and Nutrition Service, United States Department of Agriculture.

* * * * *

§ 245.5 [Amended]

■ 3. In § 245.5:

■ a. Remove the citation “§ 245.2(a-3)” in paragraph (a)(1)(iii) and add the citation “§ 245.2(a-4)(1)(i)” in its place; and

■ b. Remove the citation “§ 245.2(a-3)” in paragraph (a)(1)(iv) and add the citation “§ 245.2(a-4)(1)(ii)” in its place.

§ 245.6 [Amended]

■ 4. In § 245.6:

■ a. Remove the citation “§ 245.2(a-3)(2)” in paragraph (b) and add the citation “§ 245.2(a-4)(2)” in its place; and

■ b. Remove the citations “§ 245.2(a-3)(1)(i),” “§ 245.2(a-3)(1)(ii),” and “§ 245.2(a-3)(2)” in paragraph (c) introductory text and add the citations “§ 245.2(a-4)(1)(i),” “§ 245.2(a-4)(1)(ii),” and “§ 245.2(a-4)(2),” respectively, in their places.

■ 5. In § 245.6a, revise paragraph (c) to read as follows:

§ 245.6a Verification requirements.

* * * * *

(c) *Verification reporting and recordkeeping requirements.* No later than March 1, 2005 and by March 1st each year thereafter, each school food authority must report information related to its annual verification activity to the State agency in accordance with guidelines provided by FNS. These required data elements will be specified by FNS. Contingent upon new funding

to support this purpose, FNS will also require each school food authority to collect and report the number of students who were terminated as a result of verification but who were reinstated as of February 15th. The first report containing this data element would be required in the school year beginning July 1, 2005 and each school year thereafter. State agencies may develop paper or electronic reporting forms to collect this data from school food authorities, as long as all required data elements are collected from each school food authority. School food authorities shall retain copies of the information reported under this section and all supporting documents for a minimum of 3 years. All verified applications must be readily retrievable on an individual school basis and include all documents submitted by the household for the purpose of confirming eligibility, reproductions of those documents, or annotations made by the determining official which indicate which documents were submitted by the household and the date of submission. All relevant correspondence between the households selected for verification and the school or school food authority must be retained. School food authorities are encouraged to collect and report any or all verification data elements before the required dates.

* * * * *

■ 4. In § 245.11, add a new paragraph (i) to read as follows:

§ 245.11 Action by State agencies and FNSROs.

* * * * *

(i) No later than March 1, 2005 and by March 1st each year thereafter, each State agency must collect annual verification data from each school food authority as described in § 245.6a(c) and in accordance with guidelines provided by FNS. Each State agency must analyze these data, determine if there are potential problems, and formulate corrective actions and technical assistance activities that will support the objective of certifying only those children eligible for free or reduced price meals. No later than April 15,

2005 and by April 15 each year thereafter, each State agency must report to FNS the verification information in a consolidated electronic file that has been reported to it as required under § 245.6a(c), by school food authority, and any ameliorative actions the State agency has taken or intends to take in school food authorities with high levels of applications changed due to verification. Contingent upon new funding to support this purpose, FNS will also require each State agency to report the aggregate number of students who were terminated as a result of verification but who were reinstated as of February 15th. The first report containing this data element would be required in the school year beginning July 1, 2005 and each school year thereafter. State agencies are encouraged to collect and report any or all verification data elements before the required dates.

Dated: September 5, 2003.

Eric M. Bost,

Under Secretary, Food, Nutrition and Consumer Service.

[FR Doc. 03-23190 Filed 9-10-03; 8:45 am]

BILLING CODE 3410-30-U

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 996

[Docket No. FV03-996-2C]

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

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Corrections to interim final rule.

SUMMARY: The Agricultural Marketing Service published an interim final rule in the **Federal Register** on August 7, 2003 (68 FR 46919), which changed the minimum quality and handling standards for domestic and imported peanuts marketed in the United States. A table specifying minimum quality standards in that rule contained several

errors. This document corrects those errors.

EFFECTIVE DATE: September 11, 2003.

FOR FURTHER INFORMATION CONTACT: Kenneth G. Johnson, DC Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, Suite 2A04, Unit 155, Room 2A38, 4700 River Road, Riverdale, Maryland 20737; telephone: (301) 734-5243, Fax: (301) 734-5275.

SUPPLEMENTARY INFORMATION:

Background

AMS published an interim final rule that changed peanut quality and handling standards for domestic and imported peanuts marketed in the United States. The interim final rule was issued under section 1308 of the Farm Security and Rural Investment Act of 2002 (Public Law 107-171; 7 U.S.C. 7958).

Need for Correction

As published, the Minimum Quality Standards table (table) following paragraph (a) in § 996.31 contained several errors. The heading "Unshelled peanuts and damaged kernels and defects" should have read "Unshelled peanuts and damaged kernels and minor defects". Under that heading for No. 2 Virginia peanuts, the number 2.50 should have been 3.00. Also, in the type and grade category column of the table, the percentage of split kernels (not less than 90 percent splits) was not included for Spanish and Valencia peanuts. This notation should have been included to be consistent with the Runner and Virginia peanut variety listings for lots of "splits". This correction document makes these changes.

Correction to Publication

■ Accordingly, the publication on August 7, 2003 (68 FR 46919), which is the subject of FR Doc. 03-20158, is corrected as follows:

■ 1. On page 46924, following paragraph (a) in § 996.31 the "Minimum Quality Standards" table is corrected to read as follows:

§ 996.31 Outgoing Quality Requirements

(a) * * *

MINIMUM QUALITY STANDARDS—PEANUTS FOR HUMAN CONSUMPTION
 [Whole kernels and splits: Maximum limitations]

Type and grade category	Unshelled peanuts and damaged kernels (percent)	Unshelled peanuts and damaged kernels and minor defects (percent)	Total fall through Sound whole kernels and/or sound split and broken kernels	Foreign materials (percent)	Moisture (percent)
Excluding Lots of "splits"					
Runner	1.50	2.50	6.00%; 1 ⁷ / ₆₄ inch round screen .....	.20	9.00
Virginia (except No. 2)	1.50	2.50	6.00%; 1 ⁷ / ₆₄ inch round screen .....	.20	9.00
Spanish and Valencia	1.50	2.50	6.00%; 1 ⁶ / ₆₄ inch round screen .....	.20	9.00
No. 2 Virginia	1.50	3.00	6.00%; 1 ⁷ / ₆₄ inch round screen .....	.20	9.00
Runner with splits (not more than 15% sound splits).	1.50	2.50	6.00%; 1 ⁷ / ₆₄ inch round screen .....	.20	9.00
Virginia with splits (not more than 15% sound splits).	1.50	2.50	6.00%; 1 ⁷ / ₆₄ inch round screen .....	.20	9.00
Spanish and Valencia with splits (not more than 15% sound splits).	1.50	2.50	6.00%; 1 ⁶ / ₆₄ inch round screen .....	.20	9.00
Lots of "splits"					
Runner (not less than 90% splits)	2.00	2.50	6.00%; 1 ⁷ / ₆₄ inch round screen .....	.20	9.00
Virginia (not less than 90% splits)	2.00	2.50	6.00%; 1 ⁷ / ₆₄ inch round screen .....	.20	9.00
Spanish and Valencia (not less than 90% splits).	2.00	2.50	6.00%; 1 ⁶ / ₆₄ inch round screen .....	.20	9.00

Dated: September 8, 2003.

A J. Yates,
 Administrator, Agricultural Marketing Service.
 [FR Doc. 03-23208 Filed 9-10-03; 8:45 am]
 BILLING CODE 3410-02-P

FEDERAL RESERVE SYSTEM

12 CFR Part 202

[Regulation B; Docket No. R-1008]

Equal Credit Opportunity

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Technical amendment.

SUMMARY: The Board is publishing a technical amendment to Regulation B (Equal Credit Opportunity). The amendment updates the model application form "Uniform Residential Loan Application" (Freddie Mac 65/Fannie Mae 1003) in Appendix B of the regulation.

DATES: The amendment is effective January 1, 2004.

FOR FURTHER INFORMATION CONTACT: Minh-Duc T. Le, Attorney, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551,

at (202) 452-3667 or (202) 452-2412. For users of Telecommunications Device for the Deaf (TDD) *only*, contact (202) 263-4869.

SUPPLEMENTARY INFORMATION:

I. Background

The Equal Credit Opportunity Act (ECOA), 15 U.S.C. 1691-1691f, makes it unlawful for a creditor to discriminate against an applicant in any aspect of a credit transaction on the basis of the applicant's national origin, marital status, religion, sex, color, race, age (provided the applicant has the capacity to contract), receipt of public assistance benefits, or the good faith exercise of a right under the Consumer Credit Protection Act (15 U.S.C. 1601 *et. seq.*). The ECOA is implemented by the Board's Regulation B.

On March 5, 2003, the Board published a final rule amending Regulation B (68 FR 13144) after a comprehensive review of the regulation. Appendix B contains model application forms, including joint Freddie Mac/Fannie Mae "Uniform Residential Loan Application" (Form 65/1003) for use in certain residential mortgage transactions. At the time the final rule was issued, Freddie Mac and Fannie Mae were in the process of revising Form 65/1003. This technical

amendment to Regulation B replaces the prior version of Form 65/1003 with the new form that Freddie Mac/Fannie Mae have adopted. Creditors should continue to use the current model form until January 1, 2004.

List of Subjects in 12 CFR Part 202

Banks, Banking, Credit, Federal Reserve System, Mortgages.

■ For the reasons set forth in the preamble, the Board amends 12 CFR Part 202 as follows:

PART 202—EQUAL CREDIT OPPORTUNITY ACT (REGULATION B)

■ 1. The authority citation for part 202 continues to read as follows:

Authority: 15 U.S.C. 1691-1891f.

■ 2. Appendix B is amended by removing the joint Freddie Mac/Fannie Mae "Uniform Residential Loan Application" (Form 65/1003) dated 10/92 and adding the joint Freddie Mac/Fannie Mae "Uniform Residential Loan Application" (Form 65/1003) dated 01/04 in its place.

APPENDIX B TO PART 202—MODEL APPLICATION FORMS

* * * * *

BILLING CODE 6210-01-P

Uniform Residential Loan Application

This application is designed to be completed by the applicant(s) with the Lender's assistance. Applicants should complete this form as "Borrower" or "Co-Borrower" as applicable. Co-Borrower information must also be provided (and the appropriate box checked) when the income or assets of a person other than the "Borrower" (including the Borrower's spouse) will be used as a basis for loan qualification or the income or assets of the Borrower's spouse will not be used as a basis for loan qualification, but his or her liabilities must be considered because the Borrower resides in a community property state, the security property is located in a community property state, or the Borrower is relying on other property located in a community property state as a basis for repayment of the loan.

I. TYPE OF MORTGAGE AND TERMS OF LOAN

Mortgage Applied for:	<input type="checkbox"/> VA	<input type="checkbox"/> Conventional	<input type="checkbox"/> Other (explain):	Agency Case Number	Lender Case Number
	<input type="checkbox"/> FHA	<input type="checkbox"/> USDA/Rural Housing Service			
Amount \$	Interest Rate %	No. of Months	Amortization Type:	<input type="checkbox"/> Fixed Rate	<input type="checkbox"/> Other (explain):
				<input type="checkbox"/> GPM	<input type="checkbox"/> ARM (type):

II. PROPERTY INFORMATION AND PURPOSE OF LOAN

Subject Property Address (street, city, state, & ZIP)	No. of Units
Legal Description of Subject Property (attach description if necessary)	Year Built

Purpose of Loan <input type="checkbox"/> Purchase <input type="checkbox"/> Construction <input type="checkbox"/> Other (explain):	Property will be:
<input type="checkbox"/> Refinance <input type="checkbox"/> Construction-Permanent	<input type="checkbox"/> Primary Residence <input type="checkbox"/> Secondary Residence <input type="checkbox"/> Investment

Complete this line if construction or construction-permanent loan.

Year Lot Acquired	Original Cost	Amount Existing Liens	(a) Present Value of Lot	(b) Cost of Improvements	Total (a + b)
	\$	\$	\$	\$	\$

Complete this line if this is a refinance loan.

Year Acquired	Original Cost	Amount Existing Liens	Purpose of Refinance	Describe Improvements	<input type="checkbox"/> made <input type="checkbox"/> to be made
	\$	\$		Cost: \$	

Title will be held in what Name(s)	Manner in which Title will be held	Estate will be held in:
Source of Down Payment, Settlement Charges and/or Subordinate Financing (explain)		<input type="checkbox"/> Fee Simple <input type="checkbox"/> Leasehold (show expiration date)

III. BORROWER INFORMATION

Borrower	Co-Borrower
Borrower's Name (include Jr. or Sr. if applicable)	Co-Borrower's Name (include Jr. or Sr. if applicable)
Social Security Number	Social Security Number
Home Phone (incl. area code)	Home Phone (incl. area code)
DOB (MM/DD/YYYY)	DOB (MM/DD/YYYY)
Yrs. School	Yrs. School
<input type="checkbox"/> Married <input type="checkbox"/> Unmarried (include single, divorced, widowed)	<input type="checkbox"/> Married <input type="checkbox"/> Unmarried (include single, divorced, widowed)
Dependents (not listed by Co-Borrower) no. ages	Dependents (not listed by Borrower) no. ages
Present Address (street, city, state, ZIP) <input type="checkbox"/> Own <input type="checkbox"/> Rent No. Yrs.	Present Address (street, city, state, ZIP) <input type="checkbox"/> Own <input type="checkbox"/> Rent No. Yrs.
Mailing Address, if different from Present Address	Mailing Address, if different from Present Address

If residing at present address for less than two years, complete the following:

Former Address (street, city, state, ZIP) <input type="checkbox"/> Own <input type="checkbox"/> Rent No. Yrs.	Former Address (street, city, state, ZIP) <input type="checkbox"/> Own <input type="checkbox"/> Rent No. Yrs.
---	---

IV. EMPLOYMENT INFORMATION

Borrower	Co-Borrower
Name & Address of Employer	Name & Address of Employer
<input type="checkbox"/> Self Employed	<input type="checkbox"/> Self Employed
Yrs. on this job	Yrs. on this job
Yrs. employed in this line of work/profession	Yrs. employed in this line of work/profession
Position/Title/Type of Business	Position/Title/Type of Business
Business Phone (incl. area code)	Business Phone (incl. area code)

If employed in current position for less than two years or if currently employed in more than one position, complete the following:

Name & Address of Employer	Name & Address of Employer
<input type="checkbox"/> Self Employed	<input type="checkbox"/> Self Employed
Dates (from - to)	Dates (from - to)
Monthly Income	Monthly Income
\$	\$
Position/Title/Type of Business	Position/Title/Type of Business
Business Phone (incl. area code)	Business Phone (incl. area code)

Name & Address of Employer	Name & Address of Employer
<input type="checkbox"/> Self Employed	<input type="checkbox"/> Self Employed
Dates (from - to)	Dates (from - to)
Monthly Income	Monthly Income
\$	\$
Position/Title/Type of Business	Position/Title/Type of Business
Business Phone (incl. area code)	Business Phone (incl. area code)

V. MONTHLY INCOME AND COMBINED HOUSING EXPENSE INFORMATION						
Gross Monthly Income	Borrower	Co-Borrower	Total	Combined Monthly Housing Expense	Present	Proposed
Base Empl. Income*	\$	\$	\$	Rent	\$	
Overtime				First Mortgage (P&I)		\$
Bonuses				Other Financing (P&I)		
Commissions				Hazard Insurance		
Dividends/Interest				Real Estate Taxes		
Net Rental Income				Mortgage Insurance		
Other (before completing, see the notice in "describe other income," below)				Homeowner Assn. Dues		
				Other:		
Total	\$	\$	\$	Total	\$	\$

* Self Employed Borrower(s) may be required to provide additional documentation such as tax returns and financial statements.

Describe Other Income Notice: Alimony, child support, or separate maintenance income need not be revealed if the Borrower (B) or Co-Borrower (C) does not choose to have it considered for repaying this loan.

B/C	Monthly Amount
	\$

VI. ASSETS AND LIABILITIES
 This Statement and any applicable supporting schedules may be completed jointly by both married and unmarried Co-Borrowers if their assets and liabilities are sufficiently joined so that the Statement can be meaningfully and fairly presented on a combined basis; otherwise, separate Statements and Schedules are required. If the Co-Borrower section was completed about a spouse, this Statement and supporting schedules must be completed about that spouse also.

Completed Jointly Not Jointly

ASSETS		Cash or Market Value	Liabilities and Pledged Assets. List the creditor's name, address and account number for all outstanding debts, including automobile loans, revolving charge accounts, real estate loans, alimony, child support, stock pledges, etc. Use continuation sheet, if necessary. Indicate by (*) those liabilities which will be satisfied upon sale of real estate owned or upon refinancing of the subject property.	Monthly Payment & Months Left to Pay	Unpaid Balance
Description					
Cash deposit toward purchase held by:	\$				
<i>List checking and savings accounts below</i>					
Name and address of Bank, S&L, or Credit Union			Name and address of Company	\$ Payment/Months	\$
			Acct. no.		
Acct. no.	\$		Name and address of Company	\$ Payment/Months	\$
Name and address of Bank, S&L, or Credit Union					
			Acct. no.		
Acct. no.	\$		Name and address of Company	\$ Payment/Months	\$
Name and address of Bank, S&L, or Credit Union					
			Acct. no.		
Acct. no.	\$		Name and address of Company	\$ Payment/Months	\$
Name and address of Bank, S&L, or Credit Union					
			Acct. no.		
Acct. no.	\$		Name and address of Company	\$ Payment/Months	\$
Stocks & Bonds (Company name/number & description)	\$				
			Acct. no.		
Life insurance net cash value	\$		Name and address of Company	\$ Payment/Months	\$
Face amount: \$					
Subtotal Liquid Assets	\$				
Real estate owned (enter market value from schedule of real estate owned)	\$		Acct. no.		
Vested interest in retirement fund	\$		Name and address of Company	\$ Payment/Months	\$
Net worth of business(es) owned (attach financial statement)	\$				
Automobiles owned (make and year)	\$		Acct. no.		
			Alimony/Child Support/Separate Maintenance Payments Owed to:	\$	
Other Assets (itemize)	\$		Job-Related Expense (child care, union dues, etc.)	\$	
			Total Monthly Payments	\$	
Total Assets a	\$		Net Worth (a minus b)	\$	Total Liabilities b \$

Continuation Sheet/Residential Loan Application		
Use this continuation sheet if you need more space to complete the Residential Loan Application. Mark B for Borrower or C for Co-Borrower.	Borrower:	Agency Case Number:
	Co-Borrower:	Lender Case Number:

I/We fully understand that it is a Federal crime punishable by fine or imprisonment, or both, to knowingly make any false statements concerning any of the above facts as applicable under the provisions of Title 18, United States Code, Section 1001, et seq.

Borrower's Signature	Date	Co-Borrower's Signature	Date
X		X	

* * * * *

By order of the Board of Governors of the Federal Reserve System, acting through the Director of the Division of Consumer and Community Affairs under delegated authority, September 5, 2003.

Jennifer J. Johnson,
Secretary of the Board.

[FR Doc. 03-23175 Filed 9-10-03; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001-NM-370-AD; Amendment 39-13296; AD 2003-18-05]

RIN 2120-AA64

Airworthiness Directives; Boeing Model 757 Series Airplanes Powered by Pratt & Whitney Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 757 series airplanes, that currently requires modification of the nacelle strut and wing structure. This amendment reduces a certain compliance time in the existing AD. The actions specified by this AD are intended to prevent fatigue cracking in primary strut structure and consequent reduced structural integrity of the strut. This action is intended to address the identified unsafe condition.

DATES: Effective October 16, 2003.

The incorporation by reference of Boeing Service Bulletin 757-54-0034, Revision 1, dated October 11, 2001, as listed in the regulations, is approved by the Director of the Federal Register as of October 16, 2003.

The incorporation by reference of certain other publications, as listed in the regulations, was approved previously by the Director of the Federal Register as of November 13, 2000 (65 FR 59703, October 6, 2000).

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, PO Box 3707, Seattle, Washington 98124-2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dennis Stremick, Aerospace Engineer, Airframe Branch, ANM-120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 917-6450; fax (425) 917-6590.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 2000-20-09, amendment 39-11920 (65 FR 59703, October 6, 2000), which is applicable to certain Boeing Model 757 series airplanes, was published in the **Federal Register** on June 18, 2003 (68 FR 36499). The action proposed to continue to require modification of the nacelle strut and wing structure. The action also proposed to reduce a certain compliance time in the existing AD.

Comments

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

Conclusion

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

Changes to 14 CFR Part 39/Effect on the AD

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

Change to Labor Rate Estimate

We have reviewed the figures we have used over the past several years to calculate AD costs to operators. To account for various inflationary costs in the airline industry, we find it necessary to increase the labor rate used in these calculations from \$60 per work hour to \$65 per work hour. The cost impact information, below, reflects this increase in the specified hourly labor rate.

Cost Impact

There are approximately 317 airplanes of the affected design in the

worldwide fleet. The FAA estimates that 278 airplanes of U.S. registry will be affected by this AD. Since this AD will merely reduce the compliance time for certain actions required by AD 2000-20-09 (Service Bulletin 757-54-0036), it will add no additional costs, and will require no additional work to be performed by affected operators. The current costs associated with AD 2000-20-09 are reiterated in their entirety (as follows) for the convenience of affected operators:

It will take approximately 800 work hours per airplane to accomplish the required modification of the nacelle strut and wing structure described in Boeing Service Bulletin 757-54-0034, at an average labor rate of \$65 per work hour. Required parts will be provided at no cost by the airplane manufacturer. Based on these figures, the cost impact of this required modification on U.S. operators is estimated to be \$14,456,000, or \$52,000 per airplane.

It will take approximately 26 work hours per airplane to accomplish the actions described in Boeing Service Bulletin 757-54-0027, Revision 1, at an average labor rate of \$65 per work hour. Required parts will be provided at no cost by the airplane manufacturer. Based on these figures, the cost impact of these required actions on U.S. operators is estimated to be \$469,820, or \$1,690 per airplane.

It will take approximately 90 work hours per airplane to accomplish the actions described in Boeing Service Bulletin 757-54-0036, at an average labor rate of \$65 per work hour. Required parts will be provided at no cost by the airplane manufacturer. Based on these figures, the cost impact of these required actions on U.S. operators is estimated to be \$1,626,300, or \$5,850 per airplane.

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

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States,

or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39-11920 (65 FR 59703, October 6, 2000), and by adding a new airworthiness directive (AD), amendment 39-13296, to read as follows:

2003-18-05 Boeing: Amendment 39-13296. Docket 2001-NM-370-AD. Supersedes AD 2000-20-09, Amendment 39-11920.

Applicability: Model 757 series airplanes powered by Pratt & Whitney engines, line numbers 1 through 735 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability

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

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking in primary strut structure and consequent reduced structural integrity of the strut, accomplish the following:

Restatement of Requirements of AD 2000-20-09:

Modifications

(a) Modify the nacelle strut and wing structure on both the left and right sides of the airplane, in accordance with Boeing Service Bulletin 757-54-0034, dated May 14, 1998; or Revision 1, dated October 11, 2001; at the later of the times specified in paragraph (a)(1) or (a)(2) of this AD.

(1) Prior to the accumulation of 37,500 total flight cycles, or within 20 years since the date of manufacture, whichever occurs first. Use of the optional threshold formula described in paragraph I.D. of the service bulletin is an acceptable alternative to the 20-year threshold.

(2) Within 3,000 flight cycles after November 13, 2000 (the effective date of AD 2000-20-09, amendment 39-11920).

(b) Except as provided by paragraph (d) of this AD: Prior to or concurrently with the accomplishment of the modification of the nacelle strut and wing structure required by paragraph (a) of this AD; as specified in paragraph I.D., Table I, "Strut Improvement Bulletins," on page 5 of Boeing Service Bulletin 757-54-0034, dated May 14, 1998; accomplish the actions specified in Boeing Service Bulletin 757-54-0027, Revision 1, dated October 27, 1994; and Boeing Service Bulletin 757-54-0036, dated May 14, 1998; as applicable; in accordance with those service bulletins.

Repair

(c) If any damage to airplane structure is found during the accomplishment of the modification required by paragraph (a) of this AD; and the service bulletin specifies to contact Boeing for appropriate action: Prior to further flight, repair in accordance with a

method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative (DER) who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the approval letter must specifically reference this AD.

New Requirements of This AD

Modification

(d) Modify the nacelle strut (including replacing the upper link with a new, improved part and modifying the wire support bracket attached to the upper link) in accordance with Boeing Service Bulletin 757-54-0036, dated May 14, 1998, at the earlier of the times specified in paragraph (d)(1) or (d)(2) of this AD.

(1) Prior to or concurrently with accomplishment of the modification of the nacelle strut and wing structure required by paragraph (a) of this AD.

(2) Prior to the accumulation of 27,000 total flight cycles (for Model 757-200 series airplanes) or 29,000 total flight cycles (for Model 757-200PF series airplanes), or within 2 years after the effective date of this AD, whichever is later.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Incorporation by Reference

(g) Unless otherwise specified in this AD, the actions shall be done in accordance with the following Boeing service bulletins, as applicable:

Service bulletin	Revision level	Date
Boeing Service Bulletin 757-54-0027	1	October 27, 1994.
Boeing Service Bulletin 757-54-0034	Original	May 14, 1998.
Boeing Service Bulletin 757-54-0034	1	October 11, 2001.
Boeing Service Bulletin 757-54-0036	Original	May 14, 1998.

(1) The incorporation by reference of Boeing Service Bulletin 757-54-0034, Revision 1, dated October 11, 2001, is approved by the Director of the Federal Register, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of Boeing Service Bulletin 757-54-0027, Revision 1, dated October 27, 1994; Boeing Service Bulletin 757-54-0034, dated May 14, 1998; and Boeing Service Bulletin 757-54-0036, dated May 14, 1998; was approved previously by the Director of the Federal Register as of November 13, 2000 (65 FR 59703, October 6, 2000).

(3) Copies may be obtained from Boeing Commercial Airplane Group, PO Box 3707, Seattle, Washington 98124-2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(h) This amendment becomes effective on October 16, 2003.

Issued in Renton, Washington, on August 29, 2003.

Vi L. Lipski,

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

[FR Doc. 03-22701 Filed 9-10-03; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002-NM-179-AD; Amendment 39-13299; AD 2003-18-08]

RIN 2120-AA64

Airworthiness Directives; Airbus Model A310 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Airbus Model A310 series airplanes, that requires electrical conductivity testing to verify the correct heat treatment of the two half fittings holding the ejection jack for the ram air turbine (RAT). This action is necessary to prevent decreased structural integrity of the two half fittings and loss of the RAT during extension, which could lead to reduced controllability of the airplane in the event of a dual engine failure, or in the event of loss of two or all hydraulic systems. This action is intended to address the identified unsafe condition.

DATES: Effective October 16, 2003.

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

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

FOR FURTHER INFORMATION CONTACT: Tom Groves, Aerospace Engineer, International Branch, ANM-116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-1503; fax (425) 227-1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Airbus Model A310 series airplanes was published in the **Federal Register** on June 18, 2003 (68 FR 36504). That action proposed to require electrical conductivity testing to verify the correct heat treatment of the two half fittings holding the ejection jack for the ram air turbine (RAT).

Comments

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

Conclusion

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Change to Labor Rate Estimate

Since issuing the proposal, we have reviewed the figures we have used over the past several years to calculate AD costs to operators. To account for various inflationary costs in the airline industry, we find it necessary to increase the labor rate used in these calculations from \$60 per work hour to \$65 per work hour. The cost impact information, below, reflects this increase in the specified hourly labor rate.

Cost Impact

The FAA estimates that 48 airplanes of U.S. registry will be affected by this

AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is \$65 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be \$3,120, or \$65 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

2003-18-08 Airbus: Amendment 39-13299. Docket 2002-NM-179-AD.

Applicability: All Model A310 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent decreased structural integrity of the two half fittings and loss of the ram air turbine (RAT) during extension, which could lead to reduced controllability of the airplane in the event of a dual engine failure, or in the event of loss of two or all hydraulic systems, accomplish the following:

Service Bulletin References

(a) The following information pertains to the service bulletin referenced in this AD:

(1) The term "service bulletin," as used in this AD, means the Accomplishment Instructions of Airbus Service Bulletin A310-57A2084, excluding Appendix 01, dated May 3, 2002.

(2) Although the service bulletin referenced in this AD specifies to submit information to the manufacturer, this AD does not include such a requirement.

Conductivity Test

(b) Within 600 flight hours after the effective date of this AD, perform a one-time electrical conductivity test of the two half fittings holding the RAT ejection jack, to verify correct heat treatment of the half fittings, per the service bulletin.

(1) If correct heat treatment of the two half fittings is verified, no further action is required by this paragraph.

(2) If incorrect heat treatment of any half fitting is found by the test performed in paragraph (b) of this AD, perform a detailed inspection of the two half fittings for any cracking or corrosion, per the service bulletin.

Note 1: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Corrective Action

(c) For any half fittings that require a detailed inspection per paragraph (b)(2) of this AD: Do the actions specified in paragraph (c)(1) or (c)(2) of this AD, as applicable, per the service bulletin.

(1) If no cracking or corrosion is found: Within one year after the effective date of this

AD, replace the two half fittings with half fittings having part number A5721023800000 that have successfully passed the electrical conductivity test, per the service bulletin.

(2) If any cracking or corrosion is found: Before further flight, replace the two half fittings with half fittings having part number A5721023800000 that have successfully passed the electrical conductivity test, per the service bulletin.

Parts Installation

(d) As of the effective date of this AD, no person shall install a half fitting having part number A5721023800000 that has not successfully passed the electrical conductivity test per the service bulletin, on any airplane.

Alternative Methods of Compliance

(e) In accordance with 14 CFR 39.19, the Manager, ANM-116, FAA, is authorized to approve alternative methods of compliance for this AD.

Incorporation by Reference

(f) The actions shall be done in accordance with Airbus Service Bulletin A310-57A2084, excluding Appendix 01, dated May 3, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 2: The subject of this AD is addressed in French airworthiness directive 2002-263(B), dated May 15, 2002.

Effective Date

(g) This amendment becomes effective on October 16, 2003.

Issued in Renton, Washington, on August 29, 2003.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03-22708 Filed 9-10-03; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 39**

[Docket No. 2003-NM-190-AD; Amendment 39-13302; AD 2003-18-11]

RIN 2120-AA64

Airworthiness Directives; Gulfstream Model G-V Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Gulfstream Model G-V series airplanes. This action requires a one-time inspection of the balance weight installation of the left and right ailerons for correctly installed attachment components, and corrective action if necessary. This action is necessary to prevent separation of the balance weights of the aileron, which could result in jamming of the pilot's aileron control system, subsequent loss of aileron control, and consequent reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective September 26, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 26, 2003.

Comments for inclusion in the Rules Docket must be received on or before November 10, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 2003-NM-190-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227-1232. Comments may also be sent via the Internet using the following address: 9-anm-iarcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2003-NM-190-AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in this AD may be obtained from Gulfstream Aerospace Corporation, PO Box 2206, M/S D-10, Savannah, Georgia 31402-9980. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Darby Mirocha, Aerospace Engineer, ACE-116A, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450,

Atlanta, Georgia 30349; telephone (770) 703-6095; fax (770) 703-6097.

SUPPLEMENTARY INFORMATION: The FAA has received a report on a Gulfstream Model G-V series airplane of loss of aileron control authority on final approach during landing. Investigation revealed that the outboard balance weight of the left aileron had detached and was wedged between the aileron and the rear beam of the wing. Further investigation revealed that the attachment hardware (all nine fastener assemblies) for the balance weight was missing. Supporting data show that all the attachment hardware was not properly installed during assembly. Separation of the balance weights of the aileron could result in jamming of the pilot's aileron control system, subsequent loss of aileron control, and consequent reduced controllability of the airplane.

Explanation of Relevant Service Information

We have reviewed and approved Gulfstream GV Customer Bulletin 104, dated June 9, 2003 (hereafter referred to as "the service bulletin"), which describes procedures for a one-time inspection of the balance weight installation of the left and right ailerons for correctly installed attachment components, and corrective action if necessary. The corrective action includes ensuring proper engagement of the self-locking nut by verifying that one to three threads of the screw/bolt are protruding, replacing any missing fasteners, and re-torquing any loose fasteners. Accomplishment of the actions specified above is intended to adequately address the identified unsafe condition. Although the Accomplishment Instructions of the service bulletin describe procedures for recording and reporting compliance with the service bulletin, this AD does not require those actions.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD requires accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Difference Between This AD and the Service Bulletin

The service bulletin refers only to an "inspection" of the balance weight installation of the left and right ailerons for correctly installed attachment components. We have determined that

the procedures in the service bulletin should be described as a "general visual inspection." Note 1 has been included in this AD to define this type of inspection.

Changes to 14 CFR Part 39/Effect on the AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance (AMOCs). Because we have now included this material in part 39, only the office authorized to approve AMOCs is identified in each individual AD.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of

the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2003-NM-190-AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

2003–18–11 Gulfstream Aerospace

Corporation: Amendment 39–13302.
Docket 2003–NM–190–AD.

Applicability: Model G–V series airplanes, serial numbers 501 through 667 inclusive, and serial number 699; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent separation of the balance weights of the aileron, which could result in jamming of the pilot's aileron control system, subsequent loss of aileron control and consequent reduced controllability of the airplane, accomplish the following:

One-Time Inspection/Corrective Action if Necessary

(a) Within the next 50 landings or 90 days after the effective date of this AD, whichever is first: Do a one-time general visual inspection of the balance weight installation of the left and right ailerons for correctly installed attachment components (including any corrective actions) by doing all the actions specified in paragraphs II.A. through G. of the Accomplishment Instructions of Gulfstream GV Customer Bulletin 104, dated June 9, 2003. Do the actions per the service bulletin. Any applicable corrective actions must be done before further flight.

Note 1: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Alternative Methods of Compliance

(b) In accordance with 14 CFR 39.19, the Manager, Atlanta Aircraft Certification Office (ACO), FAA, is authorized to approve alternative methods of compliance for this AD.

Incorporation by Reference

(c) The actions shall be done in accordance with Gulfstream GV Customer Bulletin 104, dated June 9, 2003. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Gulfstream Aerospace Corporation, PO Box 2206, M/S D–10, Savannah, Georgia 31402–9980. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia; or at the Office of the Federal

Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(d) This amendment becomes effective on September 26, 2003.

Issued in Renton, Washington, on September 4, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–22991 Filed 9–10–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 39**

[Docket No. 2000–NM–411–AD; Amendment 39–13297; AD 2003–18–06]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A319–131 and –132; A320–231, –232, and –233; and A321–131 and –231 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A319–131 and –132; A320–231, –232, and –233; and A321–131 and –231 series airplanes, that requires installing new anti-swivel plates and weights on the engine fan cowl door latches and a new hold-open device. This action is necessary to prevent separation of the engine fan cowl door from the airplane in flight, which could result in damage to the airplane and hazards to persons or property on the ground. This action is intended to address the identified unsafe condition.

DATES: Effective October 16, 2003.

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

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

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer,

International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A319–131 and –132; A320–231, –232, and –233; and A321–131 and –231 series airplanes was published as a supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on November 21, 2002 (67 FR 70192). That supplemental NPRM proposed to require installing new anti-swivel plates and weights on the engine fan cowl door latches and a new hold-open device.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. One commenter requests two changes and due consideration has been given to the comments received.

Request To Delete Requirement for Installation of Weights/New Anti-Swivel Plates

The commenter asks that the proposed AD be changed to delete the requirement to install new anti-swivel plates and weights on the engine fan cowl door latches. The commenter states that the additional weight on the latch handles has not been found to be useful in preventing undetected unlatched cowls because airline mechanics typically re-latch the latch handle to the hook after opening the engine fan cowl door to avoid being hit on the head. If re-latched, the weight on the handle acts as a counterweight, and the handle swings into the flush position, which causes the handle to appear as stowed and locked.

The commenter also states that the new anti-swivel plates create a clearance problem with the drain lines and are only marginally more effective than the older-style anti-swivel plates. The commenter has found that the new anti-swivel plates are easily bent if the airline mechanic pulls the engine fan cowl door open using the latch handle. Once the plates are bent, they tend to hit and damage engine hardware, including wire harnesses, fire detectors, and drain lines, creating the potential for engine anomalies and in-flight engine shutdowns. Furthermore, the commenter states that the new anti-swivel plates cannot be installed on earlier model engines because the drain tube configuration is different. Prior to

the installation of the new anti-swivel plates, the engines will have to be modified to include the new drain tube configuration, at significant cost to the operator.

The FAA does not concur with the request to delete the requirement to install new anti-swivel plates and weights on the engine fan cowl door latches. We have determined that, if the latches are not properly engaged, the new anti-swivel plates and weights both ensure that the latches will hang down farther than they did with the previous latch design, thus providing greater visibility of non-engaged latches. In addition, even if a mechanic re-latches the latch handle to the hook and the latch swings into the flush position during closing, the hold open device that is also required by this AD will provide a clear indication that the engine fan cowl doors are not closed and latched. Furthermore, the new anti-swivel plates prevent the hook from rising above the keeper ensuring that the hook and latch hang down if not properly engaged. Finally, Airbus has not received any reports of new anti-swivel plates that have been bent in production or in-service. We do agree that the new anti-swivel plates may create a clearance problem at the number 3 latch location on some older airplanes. We have coordinated with Airbus and the Direction Générale de l'Aviation Civile, the airworthiness authority for France, and they are aware of the potential clearance problem. Operators may request approval of an alternative method of compliance if any interference is discovered during accomplishment of this AD. We have not changed this final rule regarding this issue.

Request To Remove Concurrent Service Bulletin Referenced in Secondary Service Information

The same commenter asks that International Aero Engines Service Bulletin V2500-NAC-71-0227 not be included in this final rule. That service bulletin recommends the latch handles of the engine fan cowl doors be painted red. The commenter states that the paint is susceptible to screwdriver scratches and chips during opening of the engine fan cowl doors and is often covered with oil and grease. Furthermore, the commenter states that painting the latches would not increase the level of safety. The commenter also requests that definition be provided as to what percentage of the latch handles should be painted red to provide a minimum level of compliance.

We concur with the commenter. The proposed AD does not require operators

to do the actions of International Aero Engines Service Bulletin V2500-NAC-71-0227. The proposed AD requires accomplishment of the actions of Airbus Service Bulletin A320-71-1028, dated March 23, 2001, which refers to International Aero Engines Service Bulletin V2500-NAC-71-0256, dated June 23, 1999, as an additional source of service information for accomplishment of the actions. Service Bulletin V2500-NAC-71-0256 recommends accomplishment of International Aero Engines Service Bulletin V2500-NAC-71-0227 as a concurrent service bulletin. It was not our intent to require accomplishment of Service Bulletin V2500-NAC-71-0227. Therefore, it is up to the operator to determine whether or not to incorporate Service Bulletin V2500-NAC-71-0227. A new Note 2 has been included in this final rule to clarify that accomplishment of Service Bulletin V2500-NAC-71-0227 is not required; and all subsequent notes have been renumbered accordingly.

Conclusion

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

Changes to 14 CFR Part 39/Effect on the AD

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

Change to Labor Rate Estimate

We have reviewed the figures we have used over the past several years to calculate AD costs to operators. To account for various inflationary costs in the airline industry, we find it necessary to increase the labor rate used in these calculations from \$60 per work hour to \$65 per work hour. The cost impact information, below, reflects this increase in the specified hourly labor rate.

Cost Impact

The FAA estimates that 154 airplanes of U.S. registry will be affected by this AD.

For certain airplanes, it will take approximately 5 work hours per airplane to accomplish the modification (*i.e.*, installation of new anti-swivel plates and weights), at an average labor rate of \$65 per work hour. Required parts will cost approximately \$1,400 per airplane. Based on these figures, the cost impact of the modification required by this AD is estimated to be \$1,725 per airplane.

For all airplanes, it will take approximately 3 work hours per airplane to accomplish the installation of the hold-open device, at an average labor rate of \$65 per work hour. Required parts will cost approximately \$100 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be \$45,430, or \$295 per airplane.

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

Regulatory Impact

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

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

Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

2003-18-06 Airbus: Amendment 39-13297. Docket 2000-NM-411-AD.

Applicability: Model A319-131 and -132; A320-231, -232, and -233; and A321-131 and -231 series airplanes; certificated in any category; except those airplanes on which the following have been incorporated: Airbus Modifications 21948/P6222 and 30869 in production; Airbus Modifications 24259/P6222 and 30869 in production; Airbus Modifications 24259/P6222 and 24259/P6473 in production; or Airbus Service Bulletin A320-71-1028, dated March 23, 2001, in-service.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent separation of the engine fan cowl door from the airplane in flight, which could result in damage to the airplane and hazards to persons or property on the ground, accomplish the following:

Modification and/or Installation

(a) Within 18 months after the effective date of this AD, do the action(s) specified in paragraph (a)(1) or (a)(2) of this AD, as applicable.

(1) For Configuration 01 airplanes identified in Airbus Service Bulletin A320-71-1028, dated March 23, 2001: Modify the

door latches of the fan cowl of both engines (*i.e.*, installation of new anti-swivel plates and weights), and install a new hold-open device, per the service bulletin.

(2) For Configuration 02 airplanes identified in Airbus Service Bulletin A320-71-1028, dated March 23, 2001: Install a new hold-open device per the service bulletin.

Note 2: Airbus Service Bulletin A320-71-1028 refers to International Aero Engines Service Bulletin V2500-NAC-71-0256, dated June 23, 1999, as an additional source of service information for accomplishment of the required actions. International Aero Engines Service Bulletin V2500-NAC-71-0256 recommends that International Aero Engines Service Bulletin V2500-NAC-71-0227 be accomplished concurrently. This AD does not require accomplishment of International Aero Engines Service Bulletin V2500-NAC-71-0227.

Alternative Method of Compliance

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

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM-116.

Special Flight Permits

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

Incorporation by Reference

(d) The actions shall be done in accordance with Airbus Service Bulletin A320-71-1028, dated March 23, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in French airworthiness directive 2001-381(B), dated September 5, 2001.

Effective Date

(e) This amendment becomes effective on October 16, 2003.

Issued in Renton, Washington, on August 29, 2003.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03-22705 Filed 9-10-03; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001-NM-240-AD; Amendment 39-13301; AD 2003-18-10]

RIN 2120-AA64

Airworthiness Directives; Boeing Model 767-200, -300, -300F, and -400ER Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes, that currently requires revising the Airworthiness Limitations Section of the Maintenance Planning Data (MPD) Document (767 Airworthiness Limitations Instructions (ALI)). The revision incorporates into the ALI certain inspections and compliance times to detect fatigue cracking of principal structural elements (PSE). This amendment expands the applicability in the existing AD, and requires incorporating a new revision into the Airworthiness Limitations Section of the MPD Document. The actions specified by this AD are intended to ensure that fatigue cracking of various PSEs is detected and corrected; such fatigue cracking could adversely affect the structural integrity of these airplanes. This action is intended to address the identified unsafe condition.

DATES: Effective October 16, 2003.

The incorporation by reference of Appendix B of Boeing 767 Maintenance Planning Data Document D622T001, Revision December 2002; Subsection B, Section 9, of Boeing 767 Maintenance Planning Data Document D622T001-9, Revision June 2000; Subsection B, Section 9, of Boeing 767 Maintenance Planning Data Document D622T001-9, Revision February 2001; and Subsection B, Section 9, of Boeing 767 Maintenance Planning Data Document D622T001-9, Revision October 2002; is approved by the Director of the Federal Register as of October 16, 2003.

The incorporation by reference of Subsection B of Boeing 767

Maintenance Planning Data Document D622T001-9, Revision June 1997, as listed in the regulations, was approved previously by the Director of the Federal Register as of June 1, 2001 (66 FR 21077, April 27, 2001).

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Suzanne Masterson, Aerospace Engineer, Airframe Branch, ANM-120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 917-6441; fax (425) 917-6590.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 2001-08-28, amendment 39-12205 (66 FR 21077, April 27, 2001), which is applicable to certain Boeing Model 767 series airplanes, was published in the **Federal Register** on March 3, 2003 (68 FR 9951). The action proposed to continue to require revising the Airworthiness Limitations Section of the Maintenance Planning Data (MPD) Document (767 Airworthiness Limitations Instructions (ALI)). The revision incorporates into the ALI certain inspections and compliance times to detect fatigue cracking of principal structural elements (PSE). The action also proposed to expand the applicability in the existing AD, and incorporate a new revision into the Airworthiness Limitations Section of the MPD Document.

Comments

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

One commenter has no issues with the proposed AD and is in the process of incorporating the actions into its Model 767 maintenance program.

Request for Certain Clarification of Certain Paragraphs

One commenter notes that the requirements of AD 2001-08-28 are restated in paragraphs (a) and (b) of the proposed AD, and the new requirements are stated in paragraphs (c) and (d) of the proposed AD. The commenter states

that, since the intent of the proposed AD is for operators to incorporate the new requirements, paragraphs (c) and (d) should be clarified to specify that accomplishment of those paragraphs terminates the requirements specified in paragraphs (a) and (b). We agree with the commenter; however, paragraph (b) merely specifies that no alternative inspections or inspection intervals shall be approved unless an alternative method of compliance (AMOC) is approved, it does not contain any requirements. Therefore, paragraph (c) of this final rule has been changed for clarification to include the statement that accomplishment of paragraph (c) terminates the requirements in paragraph (a) of this AD.

Another commenter asks that paragraph (c) of the proposed AD be changed to clarify that Appendix B is part of Boeing Document D622T001, not D622T001-9. The commenter states that the current wording incorrectly specifies that Appendix B is part of Boeing Document D622T001-9. We agree with the commenter and have changed paragraph (c) of this final rule for clarification.

Request To Delete Paragraph (e)(3)

One commenter states that there has been no change to any airworthiness limitation inspection in the June 2000 revision of the MPD, so that revision is still a valid AMOC for the new requirements specified in the proposed AD. Therefore, the commenter suggests that paragraph (e)(3) of the proposed AD; which specifies that the procedures in Subsection B of Boeing Document D622T001-9, Revision June 2000, are not approved as AMOCs with paragraph (d) of this AD; be deleted.

We agree with the commenter. We have reviewed Revisions June 2000, February 2001, and October 2002, and find the only change to Subsection B, Section 9, is the language describing the requirement to reduce inspection intervals to match those in Section 8, once the inspection threshold is reached. All revisions contain the same inspections and are acceptable to use for accomplishment of the actions required. Therefore, we have deleted paragraph (e)(3) of this final rule, as well as the reference to paragraph (e)(3) that was specified in paragraph (e)(2) of the proposed AD.

Request To Change Applicability

One commenter, the manufacturer, asks that the Model 767-400 series be removed from the applicability specified in the proposed AD. The commenter states that the Model 767-400 is not an "official" type-certificated

minor model, and the type certificate data sheet (TCDS) lists only the Model 767-400ER series. We agree with the commenter; as the TCDS specifies only the Model 767-400ER series, we have removed all references to the Model 767-400 series from this final rule accordingly.

Request To Change Compliance Time

One commenter states that the compliance time in the existing AD was three years from June 1, 2001, as specified in paragraph (a) of the proposed AD, whereas the compliance time in the new requirements, as specified in paragraph (c) of the proposed AD, is within 18 months after the effective date of the AD. The commenter asks that the compliance time for paragraphs (a) and (c) of the proposed AD be changed to allow one of two options. Option 1—The compliance time should be three years from the release date of the AD. Option 2—The compliance time should be three years from the release date of the AD for airplanes having line numbers 670 through 895 inclusive, and 18 months from the release date of the AD for airplanes having line numbers 1 through 669 inclusive. The commenter states that this will give operators more flexibility, while retaining the intent of the existing AD.

We do not agree with the commenter. The commenter provides no technical justification for changing the compliance time as requested. A compliance time of 18 months, rather than 3 years, for incorporating the latest revision of Subsection B, Section 9, of Boeing MPD Document D622T001-9 will ensure the continued safety of aging airplanes. In developing an appropriate compliance time for the actions required by this AD, the FAA considered not only the safety issues, but the manufacturer's recommendations, parts availability, and the practical aspect of accomplishing the required actions within an interval paralleling normal scheduled maintenance for the majority of affected operators. In light of all of these factors, the FAA considers 18 months an appropriate compliance time wherein safety will not be adversely affected. No change to the final rule is necessary in this regard.

Request To Remove New Revisions to MPD

One commenter asks that Revisions June 2000, February 2001, and October 2002 to Subsection B, Section 9, of Boeing Document D622T001-9 of the MPD be removed from paragraph (a) of the proposed AD. The commenter states that the existing AD only referenced

Revision June 1997, and did not include the other revision levels specified in paragraph (a) of the proposed AD. The commenter adds that the other revisions may be approved as AMOCs for the existing AD.

We do not agree with the commenter. The revisions that have been added to paragraph (a) of this AD are alternate revisions that have been previously approved as AMOCs for the requirements in paragraph (a) of this AD, and are acceptable to use for accomplishment of the actions required. In addition, AMOCs have been granted for inspections of individual repairs and alterations that interfered with the inspections specified in Section 9 of Boeing MPD Document D622T001-9. The intent of paragraph (e)(2) of this final rule is to allow operators to continue to use those AMOCs for the accomplishment of the inspections in this final rule. No change to the final rule is necessary in this regard.

Changes to 14 CFR Part 39

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

Conclusion

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

Cost Impact

There are approximately 884 airplanes of the affected design in the worldwide fleet. We estimate that 393 airplanes of U.S. registry will be affected by this AD.

The actions that are currently required by AD 2001-08-28 take approximately 1 work hour per airplane to accomplish, at an average labor rate of \$60 per work hour. Based on these figures, the cost impact of the currently required actions is estimated to be \$60 per airplane.

The new actions that are required by this AD action will take approximately 1 work hour per airplane to accomplish, at an average labor rate of \$60 per work hour. Based on these figures, the cost

impact of the new requirements of this AD on U.S. operators is estimated to be \$23,580, or \$60 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by removing amendment 39-12205 (66 FR 21077, April 27, 2001), and by adding a new airworthiness directive (AD), amendment 39-13301, to read as follows:

2003-18-10 Boeing: Amendment 39-13301. Docket 2001-NM-240-AD. Supersedes AD 2001-08-28, Amendment 39-12205.

Applicability: Model 767-200, -300, -300F, and -400ER series airplanes having line numbers 1 through 895 inclusive, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To ensure that fatigue cracking of various principal structural elements, which could adversely affect the structural integrity of these airplanes, is detected and corrected, accomplish the following:

Restatement of Requirements of AD 2001-08-28

Revise Section 9 of the Boeing 767 Maintenance Planning Data (MPD) Document

(a) For Model 767-200 and -300 series airplanes having line numbers 1 through 669 inclusive: Within 3 years after June 1, 2001 (the effective date of AD 2001-08-28, amendment 39-12205), revise Subsection B, Section 9, of Boeing 767 MPD Document D622T001-9, entitled "Airworthiness Limitations and Certification Maintenance Requirements," to incorporate Revision June 1997, June 2000, February 2001, or October 2002.

Note 2: The referenced Subsection B contains a requirement that cracks found during the specified inspections be reported to the Seattle Aircraft Certification Office (ACO), FAA. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et seq.*) and have been assigned OMB Control Number 2120-0056.

Note 3: For the purposes of this AD, the terms principal structural elements (PSEs) as used in this AD, and structural significant items (SSIs) as used in Section 9 of Model 767 MPD Document, are considered to be interchangeable.

Alternative Inspections and Inspection Intervals

(b) Except as provided by paragraph (e)(1) of this AD: After the actions required by paragraph (a) of this AD have been accomplished, no alternative inspections or inspection intervals shall be approved for the SSIs contained in Section 9 of Boeing 767 MPD Document D622T001-9, Revision June 1997, June 2000, or February 2001.

New Requirements of This AD

Revise Section 9 of the Boeing 767 MPD

(c) For Model 767-200, -300, -300F, and -400ER series airplanes having line numbers 1 through 895 inclusive: Within 18 months after the effective date of this AD, revise Subsection B, Section 9, of Boeing 767 MPD Document D622T001-9, entitled "Airworthiness Limitations and Certification Maintenance Requirements," to incorporate Revision October 2002; and Appendix B of Boeing 767 MPD Document D622T001, Revision December 2002. Accomplishment of

this paragraph terminates the requirements in paragraph (a) of this AD.

Alternative Inspections and Inspection Intervals

(d) Except as provided by paragraph (e)(1) of this AD: After the actions required by paragraph (c) of this AD have been accomplished, no alternative inspections or inspection intervals shall be approved for the SSIs contained in Section 9 of Boeing 767 MPD Document D622T001-9, Revision October 2002.

Alternative Methods of Compliance

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

(2) Alternative methods of compliance, approved previously in accordance with AD 2001-08-28, amendment 39-12205, are approved as alternative methods of compliance with paragraphs (a) and (c) of this AD.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

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

Incorporation by Reference

(g) The actions shall be done in accordance with the applicable documents listed in Table 1 of this AD, as follows:

TABLE 1.—SERVICE DOCUMENTS

Document	Page numbers	Revision
Appendix B of Boeing 767, Maintenance Planning Data Document D622T001.	Forward, Pages A-N	December 2002.
Subsection B of Boeing 767 Maintenance Planning Data Document D622T001-9.	List of Effective Pages, Page 9.0-5	June 1997.
Subsection B, Section 9, of Boeing 767, Maintenance Planning Data Document D622T001-9.	List of Effective Pages, Page 9.0-6	June 2000.
Subsection B, Section 9, of Boeing 767 Maintenance Planning Data Document D622T001-9.	List of Effective Pages, Page 9.0-6	February 2001.
Subsection B, Section 9, of Boeing 767 Maintenance Planning Data Document D622T001-9.	List of Effective Pages, Page 9.0-7	October 2002.

(1) The incorporation by reference of Appendix B of Boeing 767 Maintenance Planning Data Document D622T001, Revision December 2002; Subsection B, Section 9, of Boeing 767 Maintenance Planning Data Document D622T001-9, Revision June 2000; Subsection B, Section 9, of Boeing 767 Maintenance Planning Data Document D622T001-9, Revision February 2001; and Subsection B, Section 9, of Boeing 767 Maintenance Planning Data Document D622T001-9, Revision October 2002; is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of Subsection B of Boeing 767 Maintenance Planning Data Document D622T001-9, Revision June 1997, was approved previously by the Director of the Federal Register as of June 1, 2001 (66 FR 21077, April 27, 2001).

(3) Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(h) This amendment becomes effective on October 16, 2003.

Issued in Renton, Washington, on September 4, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03-22990 Filed 9-10-03; 8:45 am]

BILLING CODE 4910-13-P

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 416

RIN 0960-AF43

Access to Information Held by Financial Institutions

AGENCY: Social Security Administration.

ACTION: Final rule.

SUMMARY: We are revising our regulations to implement a law that will enhance our access to financial account information of Supplemental Security Income (SSI) applicants and recipients and other individuals whose income and resources we consider as being available to the applicant or recipient.

EFFECTIVE DATE: These regulations are effective October 14, 2003.

FOR FURTHER INFORMATION CONTACT:

Martin Sussman, Regulations Officer, Office of Regulations, 100 Altmeyer Building, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235-6401, *regulations@ssa.gov*, (410) 965-1767 or TTY (410) 966-5609 for information about these rules. For information on eligibility or claiming benefits, call our national toll-free numbers, 1-800-772-1213 or TTY 1-800-325-0778 or visit our Internet Web site, Social Security Online, at <http://www.socialsecurity.gov/>.

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

SUPPLEMENTARY INFORMATION:

Background

Section 1631(e)(1)(B) of the Social Security Act (the Act) requires the Commissioner of Social Security to verify all relevant information provided regarding the eligibility of SSI applicants and recipients. Section 213 of the Foster Care Independence Act of 1999, Public Law 106-169, amended section 1631(e)(1)(B) of the Act to grant the Commissioner new authority with respect to verifying financial accounts. Under section 213, the Commissioner may require each SSI applicant or recipient to provide us with permission to obtain any financial record (as defined in section 1101(2) of the Right to Financial Privacy Act) held by any financial institution (as defined in section 1101(1) of the Right to Financial Privacy Act) with respect to the applicant or recipient. This law also allows the Commissioner to require such permission from deemors (*i.e.* individuals whose income and resources we consider as being available to the applicant or recipient).

This law requires us to tell you, or any other person whose income and resources we consider as being available to you, how we will use the permission and how long the permission lasts. It also allows us to request the information from financial institutions without furnishing a copy of the permission to the financial institution. We may request the information from financial institutions at any time we think it is needed to determine your eligibility or payment amount. Requests under this provision are considered to meet the requirements of the Right to Financial Privacy Act regarding identification and description of the financial record to be disclosed.

This law also allows us to deny your SSI eligibility or suspend your SSI eligibility if you, or any person whose income and resources we consider as being available to you, refuses to provide or cancels the permission.

Explanation of Changes

The Commissioner is exercising her authority under section 213 of the Foster Care Independence Act of 1999 by promulgating new rules to make giving permission to contact financial institutions a condition of SSI eligibility. Therefore, we are amending our regulations by adding a new section § 416.207 to explain that in order to receive SSI benefits, you must give us permission to contact any financial institution, and request any financial records that financial institution may have for you. The section further explains that the permission to contact

financial institutions is required from anyone whose income and resources we consider as being available to you, unless there is good cause why the permission cannot be obtained. This section also explains that the permission to contact financial institutions lasts until one of the following terminating events occur:

(1) You cancel the permission in writing and provide the writing to us.

(2) The deemor cancels their permission in writing and provides the writing to us.

(3) The basis on which we consider a deemor's income and resources available to you ends, *e.g.* when spouses separate or divorce or a child attains age 18.

(4) Your application for SSI is denied, and the denial is final. A denial is final when made, unless you appeal the denial timely as described in §§ 416.1400 through 416.1499.

(5) You are no longer eligible for SSI as described in §§ 416.1331 through 416.1335.

This section explains that we will ask financial institutions for this information when we think that it is necessary to determine SSI eligibility and payment amount. This section defines a financial institution as any bank, savings bank, credit card issuer, industrial loan company, trust company, savings association, building and loan, homestead association, credit union, consumer finance institution, or any other financial institution as defined in section 1101(1) of the Right to Financial Privacy Act. The section also defines a financial record as an original of, a copy of, or information known to have been derived from any record held by the financial institution pertaining to your relationship with the financial institution.

In addition, we are revising current § 416.200 to add the new section § 416.207 as a reference, to redesignate current § 416.1321 as § 416.1320, and to add a new section § 416.1321, "Suspension for not giving us permission to contact financial institutions," to Subpart M as a reason for suspending SSI benefits.

Public Comments

On May 2, 2002, we published proposed rules in the **Federal Register** at 67 FR 22021 and provided a 60-day period for interested parties to comment. We received comments from ten organizations and four individuals. Because some of the comments received were quite detailed, we have condensed, summarized or paraphrased them in the discussion below. We address all of the significant issues raised by the

commenters that are within the scope of the proposed rules. We have made revisions to the proposed rules to address some of the concerns of the commenters.

Comment: Ten organizations submitted comments regarding the fact that deemors (*i.e.* individuals whose income and resources we consider as being available to the applicant or recipient) are required to provide us with permission to obtain any financial record held by any financial institution with respect to the deemor as a condition of the applicant's or recipient's eligibility. Specifically, these organizations stated that we should provide a good cause exception for applicants and recipients who act in good faith to obtain the permission from the deemor, but are unable to do so through no fault of their own. In addition, six organizations stated that we should provide a good cause exception from this third party requirement for applicants and recipients who are victims of domestic violence. These organizations believe that it is improper to deny or suspend benefits because of the actions of a third party.

Response: After careful consideration, we have decided to include a limited good cause exception. We believe a good cause exception is warranted because it is consistent with our current policy. Good cause might exist in cases where the applicant or recipient cannot obtain permission from a deemor to access their financial records because the deemor is harassing, abusing, or endangering the life of the applicant or recipient. Good cause may also exist in cases where the applicant or recipient acts in good faith to obtain the permission from certain deemors, but is unable to do so through no fault of their own. We have revised §§ 416.207 (g) and 416.1321(a), and added § 416.207(h) to include the good cause exception. These provisions are consistent with our current policy regarding a third party's failure to cooperate.

In § 416.207(h)(3) we explain that good cause does not apply if certain deemors (*i.e.* someone whose income and resources we consider as available to you) refuse to give us permission to access their financial records. It is our long-standing policy to deny an applicant benefits or suspend a recipient's benefits if the applicant or recipient's prospective or appointed representative payee, who is also the legal guardian or parent with custody of a minor child, or if an alien's sponsor or sponsor's living-with spouse, fails to provide requested information. In these situations, the legal guardian or

custodial parent stands in the shoes of a legally incompetent individual. The sponsor of an alien likewise has taken on a special obligation with respect to the alien by signing an affidavit of support. It is these special legal statuses that distinguish these deemors from others.

Refusal on the part of a parent or legal guardian to comply with an authorization request from us is the same as the applicant or recipient themselves refusing to comply. In the sponsor's situation, a refusal to comply would be inconsistent with their obligation under the affidavit to support the recipient and could undermine the intent of the affidavit of limiting the expenditure of public funds. Thus, the good cause exception is not designed to address such situations, but instead is intended primarily for the situation of a married recipient whose uncooperative spouse lives in the same household but does not stand in the shoes of the recipient nor does the spouse have a delineated obligation of support. However, if a deemor as outlined in § 416.207(h)(3) refuses to provide us access to his or her financial records, we would not find good cause for such a refusal.

Comment: Two organizations submitted comments recommending that we revise our language when we refer to "anyone whose income and resources we consider as being available to you." The organizations believe that it would be useful to insert language, which states that deeming situations are the only circumstances when third party permission will be required.

Response: While we did not adopt this suggestion, we made a clarification to show that the individuals in question are deemors. We believe the language used is appropriate and is consistent with the language in section 213 of the Foster Care Independence Act of 1999. In the background section we state that "individuals whose income and resources we consider as being available to the applicant or recipient" are deemors and the words "i.e. deemors," were inserted in § 416.207(a).

Comment: Two organizations stated that we should include a provision that states that the permission we obtain to access the financial records of third parties (i.e. deemors) will terminate when deeming is no longer required.

Response: We are adopting this suggestion. The regulation states that "you must also provide us with permission from anyone whose income and resources we consider as being available to you, i.e., deemors (see §§ 416.1160, 416.1202, 416.1203, and 416.1204)." We have revised

§ 416.207(f) and added § 416.207(f)(3) to clarify that the permission we obtain to access the financial records of deemors will terminate when deeming is no longer required and to clarify that when a terminating event occurs, the permission to contact financial institutions is not invalidated for past periods. We have also made slight editorial changes to the language in §§ 416.207(a) and (g) for purposes of grammatical consistency.

Regulatory Procedures

Executive Order 12866

The Office of Management and Budget (OMB) has reviewed these final regulations in accordance with Executive Order 12866, as amended by Executive Order 13258.

Regulatory Flexibility Act

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

Paperwork Reduction Act

These final rules contain reporting requirements at § 416.207 and § 416.1321. We solicited comments on these requirements on May 2, 2002 in proposed rules published in the **Federal Register** at 67 FR 22021 and provided a 60-day period for interested parties to comment. Based on comments received, we have made revisions to the proposed rules to address some of the concerns of the commenters (see Public Comments section). However, these revisions did not alter the reporting requirements imposed on the public in the final rule.

The public reporting burden is accounted for in the Information Collection Requests for the various forms that the public uses to submit the information to SSA. Consequently, a 1-hour placeholder burden is being assigned to the specific reporting requirement(s) contained in these rules. The forms used to collect this information will not change as a result of this rule.

An Information Collection Request has been submitted to OMB. We will publish a notice in the **Federal Register** upon OMB approval of the information collection requirement(s).

(Catalog of Federal Domestic Assistance Program No. 96.006, Supplemental Security Income)

List of Subjects in 20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability

benefits, Public Assistance programs, reporting and recordkeeping requirements, Supplemental Security Income (SSI).

Dated: July 11, 2003.

Jo Anne B. Barnhart,
Commissioner of Social Security.

■ For the reasons set out in the preamble, we are amending part 416, subparts B and M of chapter III, title 20, Code of Federal Regulations to read as follows:

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

Subpart B—[Amended]

■ 1. The authority citation for Subpart B of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1110(b), 1602, 1611, 1614, 1615(c), 1619(a), 1631, and 1634 of the Social Security Act (42 U.S.C. 902(a)(5), 1310(b), 1381a, 1382, 1382c, 1382d(c), 1382h(a), 1383, and 1383c); secs. 211 and 212, Pub. L. 93-66, 87 Stat. 154 and 155 (42 U.S.C. 1382 note); sec. 502(a), Pub. L. 94-241, 90 Stat. 268 (48 U.S.C. 1681 note); sec. 2, Pub. L. 99-643, 100 Stat. 3574 (42 U.S.C. 1382h note).

■ 2. Revise the last sentence of § 416.200 to read as follows:

§ 416.200 Introduction.

* * * You continue to be eligible unless you lose your eligibility because you no longer meet the basic requirements or because of one of the reasons given in §§ 416.207 through 416.216.

■ 3. Add a new § 416.207 under the undesignated center heading REASONS WHY YOU MAY NOT GET SSI BENEFITS FOR WHICH YOU ARE OTHERWISE ELIGIBLE, to read as follows:

§ 416.207 You do not give us permission to contact financial institutions.

(a) To be eligible for SSI payments you must give us permission to contact any financial institution and request any financial records that financial institution may have about you. You must give us this permission when you apply for SSI payments or when we ask for it at a later time. You must also provide us with permission from anyone whose income and resources we consider as being available to you, i.e., deemors (see §§ 416.1160, 416.1202, 416.1203, and 416.1204).

(b) *Financial institution* means any:

- (1) Bank,
- (2) Savings bank,
- (3) Credit card issuer,
- (4) Industrial loan company,
- (5) Trust company,
- (6) Savings association,

- (7) Building and loan,
- (8) Homestead association,
- (9) Credit union,
- (10) Consumer finance institution, or
- (11) Any other financial institution as defined in section 1101(1) of the Right to Financial Privacy Act.

(c) *Financial record* means an original of, a copy of, or information known to have been derived from any record held by the financial institution pertaining to your relationship with the financial institution.

(d) We may ask any financial institution for information on any financial account concerning you. We may also ask for information on any financial accounts for anyone whose income and resources we consider as being available to you (see §§ 416.1160, 416.1202, 416.1203, and 416.1204).

(e) We ask financial institutions for this information when we think that it is necessary to determine your SSI eligibility or payment amount.

(f) Your permission to contact financial institutions, and the permission of anyone whose income and resources we consider as being available to you, *i.e.*, a deemor (see §§ 416.1160, 416.1202, 416.1203, and 416.1204), remains in effect until a terminating event occurs. The following terminating events only apply prospectively and do not invalidate the permission for past periods.

(1) You cancel your permission in writing and provide the writing to us.

(2) The deemor cancels their permission in writing and provides the writing to us.

(3) The basis on which we consider a deemor's income and resources available to you ends, *e.g.* when spouses separate or divorce or a child attains age 18.

(4) Your application for SSI is denied, and the denial is final. A denial is final when made, unless you appeal the denial timely as described in §§ 416.1400 through 416.1499.

(5) You are no longer eligible for SSI as described in §§ 416.1331 through 416.1335.

(g) If you don't give us permission to contact any financial institution and request any financial records about you when we think it is necessary to determine your SSI eligibility or payment amount, or if you cancel the permission, you cannot be eligible for SSI payments. Also, except as noted in paragraph (h), if anyone whose income and resources we consider as being available to you (see §§ 416.1160, 416.1202, 416.1203, and 416.1204) doesn't give us permission to contact any financial institution and request any financial records about that person

when we think it is necessary to determine your eligibility or payment amount, or if that person cancels the permission, you cannot be eligible for SSI payments. This means that if you are applying for SSI payments, you cannot receive them. If you are receiving SSI payments, we will stop your payments.

(h) You may be eligible for SSI payments if there is good cause for your being unable to obtain permission for us to contact any financial institution and request any financial records about someone whose income and resources we consider as being available to you (see §§ 416.1160, 416.1202, 416.1203, and 416.1204).

(1) Good cause exists if permission cannot be obtained from the individual and there is evidence that the individual is harassing you, abusing you, or endangering your life.

(2) Good cause may exist if an individual other than one listed in paragraph (h)(3) of this section refuses to provide permission and: you acted in good faith to obtain permission from the individual but were unable to do so through no fault of your own, or you cooperated with us in our efforts to obtain permission.

(3) Good cause does not apply if the individual is your representative payee and your legal guardian, if you are a minor child and the individual is your representative payee and your custodial parent, or if you are an alien and the individual is your sponsor or the sponsor's living-with spouse.

Subpart M—[Amended]

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

Authority: Secs. 702(a)(5), 1129A, 1611–1615, 1619, and 1631 of the Social Security Act (42 U.S.C. 902(a)(5), 1382–1382d, 1382h, 1383 and 1320a–8a).

■ 5. Redesignate § 416.1321 as § 416.1320 and add new § 416.1321 to read as follows:

§ 416.1321 Suspension for not giving us permission to contact financial institutions.

(a) If you don't give us permission to contact any financial institution and request any financial records about you when we think it is necessary to determine your SSI eligibility or payment amount, or if you cancel the permission, you cannot be eligible for SSI payments (see § 416.207) and we will stop your payments. Also, if anyone whose income and resources we consider as being available to you (see §§ 416.1160, 416.1202, 416.1203 and 416.1204) doesn't give us permission to contact any financial institution and

request any financial records about that person when we think it is necessary to determine your SSI eligibility or payment amount, or that person cancels the permission, you cannot be eligible for SSI payments and we will stop your payments. We will not find you ineligible and/or stop your payments if the person whose income and resources we consider as being available to you fails to give or continue permission and good cause, as discussed in § 416.207(h), exists.

(b) We will suspend your payments starting with the month after the month in which we notify you in writing that:

(1) You failed to give us permission to contact any financial institution and request any financial records about you, or

(2) The person(s) whose income and resources we consider as being available to you failed to give us such permission.

(c) If you are otherwise eligible, we will start your benefits in the month following the month in which:

(1) You give us permission to contact any financial institution and request any financial records about you, or

(2) The person(s) whose income and resources we consider as being available to you gives us such permission.

■ 6. Revise references from “§ 416.1321” to read “§ 416.1320” in the following sections:

- a. § 416.421(a);
- b. § 416.640(e)(5)(iii);
- c. § 416.1231(b)(9);
- d. § 416.1242(d);
- e. § 416.1245(b)(5);
- f. § 416.1247(b);
- g. § 416.1335;
- h. § 416.1337(b)(3)(ii);
- i. § 416.1618(d)(3)(i);
- j. § 416.1618(d)(3)(ii); and
- k. § 416.1618(d)(3)(iv).

[FR Doc. 03–23134 Filed 9–10–03; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

27 CFR Part 555

[ATF No. 2; AG Order No. 2683–2003 and Docket No. ATF2002R–341P]

RIN 1140–AA20

Implementation of the Safe Explosives Act, Title XI, Subtitle C of Public Law 107–296—Delivery of Explosive Materials by Common or Contract Carrier

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives; Department of Justice.

ACTION: Interim final rule with request for comments.

SUMMARY: The Department of Justice is amending current regulations of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) to remove the requirement that common or contract carriers taking possession of explosive materials for delivery to a licensee or permittee complete ATF Form 5400.8 (Explosives Delivery Record) prior to taking possession of explosive materials, regardless of whether they are hired by the distributor or by the distributee. ATF believes that this requirement is unduly burdensome and unnecessary. Furthermore, ATF does not believe that the elimination of this form will result in diversion of explosive materials to criminal or terrorist use. ATF will continue to require distributors of explosive materials to verify the identity of persons accepting possession of explosive materials for common or contract carriers, and will require distributors to record the name of the common or contract carrier and the full name of the driver in their permanent records.

The interim rule will remain in effect until superseded by final regulations.

DATES: *Effective date:* This interim rule is effective September 11, 2003.

Comment date: Comments must be submitted on or before October 14, 2003.

ADDRESSES: Send written comments to: James P. Ficaretta, Program Manager; Room 5150; Bureau of Alcohol, Tobacco, Firearms and Explosives; P.O. Box 50221; Washington, DC 20091-0221; *ATTN:* ATF No. 2. Written comments must include your mailing address and be signed, and may be of any length.

E-mail comments may be submitted to: *nprm@atf.gov*. E-mail comments must contain your name, mailing address, and e-mail address. They must also reference this document number, as noted above, and be legible when printed on 8½" x 11" paper. ATF will treat e-mail as originals and ATF will not acknowledge receipt of e-mail. See the Public Participation section at the end of the **SUPPLEMENTARY INFORMATION** section for requirements for submitting written comments by facsimile.

FOR FURTHER INFORMATION CONTACT: James P. Ficaretta; Firearms, Explosives and Arson; Bureau of Alcohol, Tobacco, Firearms and Explosives; U.S. Department of Justice; 650 Massachusetts Avenue, NW., Washington, DC 20226, telephone (202) 927-8203.

SUPPLEMENTARY INFORMATION:

Background

On March 20, 2003, ATF published in the **Federal Register** an interim final rule (68 FR 13768) implementing the Safe Explosives Act (SEA) (Title XI, Subtitle C of Public Law 107-296). The SEA, among other things, requires that all persons receiving explosives on and after May 24, 2003, obtain a Federal license or permit, and creates a new type of permit, the "limited permit." Except as otherwise provided, the interim rule became effective upon the date of publication in the **Federal Register**.

Delivery of Explosive Materials by Common or Contract Carrier

In the preamble of the interim rule, ATF stated that on and after May 24, 2003, all common or contract carriers taking possession of explosive materials for delivery to a Federal explosive licensee or permittee (including a limited permittee) must complete an ATF Form 5400.8 (Explosives Delivery Record) prior to taking possession of the explosive materials. Specifically, ATF required common or contract carriers to document and certify certain identifying information. ATF also required distributors to verify the identity of the driver and to provide information regarding the distributee. This form is required only when delivery occurs by common or contract carrier and is not dependent on whether the carrier is hired by the distributor or distributee. Regulations that implement these requirements are contained in 27 CFR 555.103(b)(3) and 555.105(b)(6)(iii) and (iv). The form is not required when employees of distributors or distributees make delivery.

The primary purpose of ATF Form 5400.8 is to require verification of the identity of employees of common or contract carriers taking possession of explosive materials. 68 FR at 13771. Under ATF's longstanding position since 1970, employees of common or contract carriers have been subject to prohibitions under 18 U.S.C. 842(i) proscribing the transportation, shipment, receipt, or possession of explosives by persons convicted of or under indictment for felony offenses, fugitives, substance abusers, and mental defectives. The SEA, among other things, expanded these categories of prohibited persons to include aliens (with limited exceptions), dishonorable dischargees, and renunciants. However, there is no authority in the SEA for ATF to conduct background checks on employees of common or contract carriers to ensure that such persons are not, for example, convicted felons,

fugitives, or aliens. ATF believes that, absent background checks, ATF should collect information to properly document and verify identities of commercial drivers to reduce the potential for diversion to criminal or terrorist use.

On May 5, 2003, shortly after publication of ATF's interim rule, the Department of Transportation (DOT) and the Department of Homeland Security promulgated three interim final rules generally exempting persons engaged in the commercial transportation of explosives from the application of 18 U.S.C. 842(i) while they are engaged in such transportation by motor carrier, water, and air. See 68 FR 23832 (Research and Special Programs Administration, DOT), 23844 (Federal Motor Carrier Safety Administration, DOT), 23852 (Transportation Security Administration (TSA), DHS) (to be codified at 49 CFR). On June 9, 2003, DOT and TSA also published a notice that extended this exemption to persons engaged in the commercial transportation of explosives via rail (68 FR 34470).

Additionally, on February 3, 2003, TSA, then an agency of DOT, promulgated regulations effectively allowing aliens to transport, ship, receive, and possess explosives incident to and in connection with the commercial transport of explosives by motor carrier or rail into the United States from Canada. This rule generally exempted such persons from the general prohibitions of 18 U.S.C. 842(i)(5). See 68 FR 6083 (February 6, 2003) (to be codified at 49 CFR Part 1572).

As a consequence, upon publication of the DOT and TSA rules, certain employees of motor, water, air, and rail carriers are no longer subject to 18 U.S.C. 842(i) while they are engaged in the commercial transportation of explosives. Rather, these employees are subject to DOT and TSA security threat assessment standards. To evaluate relevant security threat assessments, DOT and TSA now collect specific information to ensure that employees of common or contract carriers transporting explosives do not pose a security threat. Thus, ATF finds that there is a significantly diminished need to collect similar information via the ATF Form 5400.8 to ensure that explosives are not placed in the hands of prohibited persons for possible diversion to criminal or terrorist use.

In addition, while not explicitly stated in the interim rule, ATF also collects certain information on ATF Form 5400.8 to enable tracing of explosives deliveries by a distributor to a common or contract carrier. For

example, if a distributee reports a shipment of explosives as lost or stolen, ATF can request the ATF Form 5400.8 from the distributor in order to properly identify the trucking company and the name of the specific employee who initially picked up the explosives. ATF believes that this information, documenting the movement of explosives from the distributor to the carrier, assists in reducing possible diversion of explosives to criminal or terrorist use.

Since 1971, ATF has imposed certain identification requirements upon common or contract carrier employees. For example, ATF has required documentation of the name, resident address, and identifying information of common or contract carrier employees. ATF also has required information related to the employee's driver's license number and identification document. ATF has provided the employees the option, however, to omit the latter information if the driver was "known" to the distributor. In the interim rule, ATF strengthened these requirements to ensure that the driver's identity in each case was properly and adequately documented and verified. ATF believes that this additional information further assists in documenting explosives movement and reduces possible criminal or terrorist diversion.

Based on preliminary comments on the initial interim rule, ATF has concluded that some of the information required on the ATF Form 5400.8 is not needed to trace delivery of explosives to a common or contract carrier. In light of this conclusion, as well as the recent DOT/TSA interim rules, ATF finds that there is no longer a significant reason to collect all of the information required by the ATF Form 5400.8. ATF will continue to require that distributors verify the identity of persons accepting possession of explosive materials for common or contract carriers, and record the name of the common or contract carrier and the full name of the driver. However, ATF will no longer require that this information be recorded on the ATF Form 5400.8. Instead, ATF will allow distributors to record the information in their permanent records. Because all pertinent information will be recorded in a distributor's permanent records, ATF does not believe that the elimination of this form will result in diversion of explosive materials to criminal or terrorist use.

Distributors will be required to verify the identity of the person accepting possession for the common or contract carrier by examining such person's valid, unexpired driver's license issued

by any State, Canada, or Mexico. Distributors must record the name of the common or contract carrier and the full name of the driver in the distributor's permanent records that are required by 27 CFR 555.121. Current regulations governing required records also mandate the recording of, among other things, the date of disposition. See, e.g., 27 CFR 555.124(c)(1).

In the event of an ATF investigation of lost or stolen explosives, ATF has the statutory right to examine the permanent records of Federal explosives licensees and permittees without a warrant under 18 U.S.C. 843(f). Requiring distributors to record the full name of the driver and the name of the common or contract carrier in their permanent records will enable ATF to conduct a trace of explosive materials quickly and efficiently. Therefore, eliminating the Form 5400.8 will decrease the burden on distributors and common and contract carriers, yet the additional information required by that form still will be collected.

Discussion of This Interim Final Rule

This interim final rule removes the procedures set forth in 27 CFR 555.103(b)(3) and 555.105(b)(6)(iii) and (iv), which require transactions among licensees, user permittees, and limited permittees, on and after May 24, 2003, involving delivery of explosive materials by a common or contract carrier, to utilize the ATF Form 5400.8, Explosives Delivery Record. Specifically, this interim final rule removes the procedures related to the use of Form 5400.8, thereby removing any requirement to use the form in any and all explosives transactions on and after May 24, 2003. This interim final rule requires that distributors of explosive materials verify the identity of the person accepting possession for the common or contract carrier by examining such person's valid unexpired driver's license issued by any State, Canada, or Mexico. In addition, distributors must record in the permanent records they are required to keep pursuant to 27 CFR 555.121 the name of the common or contract carrier and the full name of the driver. This rule also provides related clarification to § 555.103(b)(2)(ii).

This rule does not revise provisions related to the required use of ATF Form 5400.8 as described in 27 CFR 555.103(a)(1)(iv) (addressing use of the form in transactions among licensees and permittees prior to May 24, 2003) and in 27 CFR 555.105(a)(6) (addressing use of the form in distributions to nonlicensees and nonpermittees prior to

May 24, 2003). The reasons for this are as follows:

(1) As ATF has explained in its internet postings, immediately after January 24, 2003, ATF suspended until further notice mandatory use of the revised ATF Form 5400.8, Explosives Delivery Record. ATF's internet posting required that, until May 24, 2003, the old form (in use since 1998) continue to be used in transactions as described on the form. See <http://www.atf.gov/forms/pdfs/f54008old.pdf> (ATF F 5400.8 (7-98)).

(2) On and after May 24, 2003, the new ATF Form 5400.8 was required to be used in transactions as described herein. See <http://www.atf.gov/forms/pdfs/f54008may2003.pdf> (ATF Form 5400.8, Revised May 2003).

(3) Upon the publication date of this rule, the form is not required in any transaction whatsoever.

Licensees and permittees who have completed ATF Forms 5400.8 prior to the effective date of this interim final rule should continue to maintain them as part of their permanent records in accordance with section 555.121.

How This Document Complies With the Federal Administrative Requirements for Rulemaking

A. Executive Order 12866

The Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives has determined that this rule is not a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review. Therefore, a Regulatory Assessment is not required. Accordingly, this rule has not been reviewed by the Office of Management and Budget.

B. Executive Order 13132

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

C. Executive Order 12988: Civil Justice Reform

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

D. Administrative Procedure Act (APA)

Because this rule eliminates the use of a particular form while maintaining the

requirement that most of the information covered by the form be collected and retained elsewhere, its only effect is to lessen a small administrative burden. Therefore, the Attorney General has found it to be unnecessary and contrary to the public interest to provide notice and seek prior public comment regarding this rule. See 5 U.S.C. 553(b)–(c). Furthermore, because this rule merely constitutes relief from a restriction on certain transactions, it is not subject to the delayed-effective-date provision of the APA. See 5 U.S.C. 553(d)(1).

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. The Attorney General has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities. Although it removes a requirement that a government form be prepared and submitted, most of this information still must be recorded in the distributor's permanent records.

F. Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 804). This rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. A copy of this interim rule, however, has been provided to the Small Business Administration for its review.

G. Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were

deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

H. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, Pub. L. 104–13, all Departments are required to submit to the Office of Management and Budget (OMB), for review and approval, any reporting requirements inherent in a final/interim rule. The collections of information in this regulation have been approved by OMB under control numbers 1140–0079 and 1140–0075. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB. The collections of information in this regulation are in 27 CFR 555.103 and 555.105. This rule decreases existing recordkeeping requirements for distributors of explosive materials and common and contract carriers by abolishing the use of ATF Form 5400.8, by limiting the information that distributors are required to record to the name of the common or contract carrier and the full name of the driver, and by allowing distributors to record such information in their permanent records rather than on a separate ATF form.

Public Participation

ATF is requesting comments on the interim regulations from all interested persons. ATF is also specifically requesting comments on the clarity of this interim rule and how it could be made easier to understand.

Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date.

ATF will not recognize any material in comments as confidential. Comments may be disclosed to the public. Any material that the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of the person submitting a comment is not exempt from disclosure.

You may submit written comments by facsimile transmission to (202) 927–0506. Facsimile comments must:

- Be legible;
 - Include your mailing address;
 - Reference this document number;
 - Be 8½" x 11" in size;
 - Contain a legible written signature;
- and
- Be not more than five pages long.

ATF will not acknowledge receipt of facsimile transmissions. ATF will treat facsimile transmissions as originals.

Any interested person who desires an opportunity to comment orally at a public hearing should submit his or her request, in writing, to the Director within the 30-day comment period. The Director, however, reserves the right to determine, in light of all circumstances, whether a public hearing is necessary.

Disclosure

Copies of this interim rule and the comments received will be available for public inspection by appointment during normal business hours at: ATF Reference Library, Room 6480, 650 Massachusetts Avenue, NW., Washington, DC 20226, telephone (202) 927–7890.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in the **Federal Register** in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

Drafting Information

The author of this document is James P. Ficaretta; Firearms, Explosives and Arson; Bureau of Alcohol, Tobacco, Firearms and Explosives.

List of Subjects in 27 CFR Part 555

Administrative practice and procedure, Authority delegations, Customs duties and inspection, Explosives, Hazardous materials, Imports, Penalties, Reporting and recordkeeping requirements, Safety, Security measures, Seizures and forfeitures, Transportation, and Warehouses.

Authority and Issuance

■ For the reasons discussed in the preamble, 27 CFR Part 555 is amended as follows:

PART 555—COMMERCE IN EXPLOSIVES

■ 1. The authority citation for 27 CFR Part 555 continues to read as follows:

Authority: 18 U.S.C. 847.

■ 2. Section 555.103 is amended by revising the last sentence in paragraph (b)(2)(ii) and by revising paragraph (b)(3) to read as follows:

§ 555.103 Transactions among licensees/ permittees and transactions among licensees and holders of user permits.

* * * * *

(b) * * *

(2) * * *

(ii) * * * Except as provided in paragraph (b)(3) of this section, in all instances the distributor must verify the identity of the distributee, or the employee of the distributee accepting possession of explosive materials on behalf of the distributee, by examining an identification document (as defined in § 555.11) before relinquishing possession.

* * * * *

(3) *Delivery of explosive materials by common or contract carrier.* When a common or contract carrier will transport explosive materials from a distributor to a distributee who is a licensee or holder of a user permit, the distributor must take the following actions before relinquishing possession of the explosive materials:

(i) Verify the identity of the person accepting possession for the common or contract carrier by examining such person's valid, unexpired driver's license issued by any State, Canada, or Mexico; and

(ii) Record the name of the common or contract carrier (*i.e.*, the name of the driver's employer) and the full name of the driver. This information must be maintained in the distributor's permanent records in accordance with § 555.121.

* * * * *

■ 3. Section 555.105 is amended by revising paragraphs (b)(6)(iii) and (b)(6)(iv) to read as follows:

§ 555.105 Distributions to nonlicensees, nonpermittees, and limited permittees.

* * * * *

(b) * * *

(6) * * *

(iii) *Delivery by common or contract carrier hired by the distributor.* Where a common or contract carrier hired by the distributor will transport explosive materials from the distributor to a holder of a limited permit:

(A) The limited permittee must, prior to delivery of the explosive materials, complete the appropriate section on Form 5400.4, affix to the Form 5400.4 one of the six IPECs he has been issued, and provide the form to the distributor in person or by mail.

(B) The distributor must, before relinquishing possession of the explosive materials to the common or contract carrier:

(1) Verify the identity of the person accepting possession for the common or

contract carrier by examining such person's valid, unexpired driver's license issued by any State, Canada, or Mexico; and

(2) Record the name of the common or contract carrier (*i.e.*, the name of the driver's employer) and the full name of the driver. This information must be maintained in the distributor's permanent records in accordance with § 555.121.

(C) At the time of delivery of the explosive materials, the common or contract carrier, as agent for the distributor, must verify the identity of the person accepting delivery on behalf of the distributee, note the type and number of the identification document (as defined in § 555.11) and provide this information to the distributor. The distributor must enter this information in the appropriate section on Form 5400.4.

(iv) *Delivery by common or contract carrier hired by the distributee.* Where a common or contract carrier hired by the distributee will transport explosive materials from the distributor to a holder of a limited permit:

(A) The limited permittee must, prior to delivery of the explosive materials, complete the appropriate section on Form 5400.4, affix to the Form 5400.4 one of the six IPECs he has been issued, and provide the form to the distributor in person or by mail.

(B) Before the delivery at the distributor's premises to the common or contract carrier who will transport explosive materials to the holder of a limited permit, the distributor must:

(1) Verify the identity of the person accepting possession for the common or contract carrier by examining such person's valid, unexpired driver's license issued by any State, Canada, or Mexico; and

(2) Record the name of the common or contract carrier (*i.e.*, the name of the driver's employer) and the full name of the driver. This information must be maintained in the distributor's permanent records in accordance with § 555.121.

* * * * *

Dated: September 5, 2003.

John Ashcroft,

Attorney General.

[FR Doc. 03-23093 Filed 9-10-03; 8:45 am]

BILLING CODE 4410-FY-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD08-03-011]

RIN 1625-AA09

Drawbridge Operation Regulation; Mississippi River, Iowa and Illinois

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is changing the regulation governing the Rock Island Railroad & Highway Drawbridge, across the Upper Mississippi River at Mile 482.9, at Rock Island, Illinois. The drawbridge need not open for river traffic and may remain in the closed-to-navigation position from 7:30 a.m. to 11:30 a.m. on September 28, 2003. This rule would allow the annually scheduled running of a foot race as part of a local community event.

DATES: This rule is effective 7:30 a.m. to 11:30 a.m., September 28, 2003.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [CGD08-03-011] and are available for inspection or copying at room 2.107f in the Robert A. Young Federal Building at Eighth Coast Guard District, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Roger K. Wiebusch, Bridge Administrator, (314) 539-3900, extension 2378.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On July 29, 2003, we published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulation; Mississippi River, Iowa and Illinois in the **Federal Register** (68 FR 44506). We received no comment letters on the proposed rule. No public hearing was requested, and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Hundreds of foot race participants will cross the bridge during the effective period of this rule. As a matter of public safety, it is essential that the bridge remain in the closed to navigation position during the effective period.

Background and Purpose

The Department of the Army Rock Island Arsenal requested a temporary change to the operation of the Rock Island Railroad & Highway Drawbridge across the Upper Mississippi River, Mile 482.9 at Rock Island, Illinois to allow the drawbridge to remain in the closed to navigation position for a four hour period while a foot race is run across the drawbridge. Navigation on the waterway consists primarily of commercial tows and recreational watercraft that will be minimally impacted by the limited closure period of four hours. Presently, the draw opens on signal for passage of river traffic. The Rock Island Arsenal requested the drawbridge be permitted to remain closed-to-navigation from 7:30 a.m. until 11:30 a.m. on Sunday, September 28, 2003.

Discussion of Comments and Changes

The Coast Guard received no comment letters. No changes will be made to this final rule.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

The Coast Guard expects that this temporary change to operation of the Rock Island Railroad & Highway Drawbridge to have minimal economic impact on commercial traffic operating on the Upper Mississippi River. This temporary change has been written in such a manner as to allow for minimal interruption of the drawbridge's regular operation.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities. This rule will be in effect for only 4

hours early on a Sunday morning, and the Coast Guard expects the impact of this action to be minimal.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking. Small businesses may send comments on the actions of Federal employees who enforce or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-800-REG-FAIR (1-800-734-3247).

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Environment

We have considered the environmental impact of this rule and concluded that under figure 2-1, paragraph (32)(e), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. Paragraph 32(e) excludes the promulgation of operating regulations or procedures for drawbridges from the environmental documentation requirements of the National Environmental Policy Act (NEPA). Since this regulation would alter the normal operating conditions of the drawbridge, it falls within this exclusion. A "Categorical Exclusion Determination" is available in the

docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

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

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

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

■ 2. Effective 7:30 a.m. to 11:30 a.m. on September 28, 2003, § 117.2395 is added to read as follows:

§ 117.2395 Upper Mississippi River.

Rock Island Railroad and Highway Drawbridge, Mile 482.9, Upper Mississippi River.

From 7:30 a.m. to 11:30 a.m. on September 28, 2003 the drawspan need not open for river traffic and may be maintained in the closed-to-navigation position.

Dated: September 2, 2003.

R.F. Duncan,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 03–23183 Filed 9–10–03; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[PA189–4300; FRL–7556–4]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Redesignation of the Liberty Borough PM₁₀ Nonattainment Area to Attainment and Approval of the Associated Maintenance Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a request for Pennsylvania to redesignate the Liberty Borough area of Allegheny County, Pennsylvania (the Liberty Borough area) from nonattainment to attainment for the national ambient air quality standard (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 microns

(PM₁₀). EPA is also approving a maintenance plan for the Liberty Borough area. Both the redesignation request and maintenance plan were submitted by the Pennsylvania Department of Environmental Protection (PADEP) on behalf of the Allegheny County Health Department (ACHD). Approval of the maintenance plan, as a revision to the Pennsylvania State Implementation Plan (SIP), puts a plan in place for maintaining the PM₁₀ standard for the next ten years in the Liberty Borough area. This action is being taken in accordance with the Clean Air Act (CAA).

EFFECTIVE DATE: This final rule is effective on October 14, 2003.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 1301 Constitution Avenue, NW., Room B108, Washington, DC 20460; Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105; and Allegheny County Health Department, Bureau of Environmental Quality, Division of Air Quality, 301 39th Street, Pittsburgh, Pennsylvania 15201.

FOR FURTHER INFORMATION CONTACT: Ruth Knapp, (215) 814–2191, or by e-mail at knapp.ruth@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On July 18, 2003 (68 FR 42657), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Pennsylvania. The NPR proposed to redesignate the Liberty Borough area of Allegheny County, Pennsylvania (the Liberty Borough area) from nonattainment to attainment for the national ambient air quality standard (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 microns (PM₁₀) and also proposed approval of a maintenance plan for the Liberty Borough area as a SIP Revision. The formal SIP revision along with the redesignation request was submitted by PADEP on behalf of the ACHD on October 28, 2002. Other specific requirements of this action pertaining to the redesignation of the Liberty Borough area to attainment for the PM₁₀ NAAQS and approval of the maintenance plan as a SIP revision, and the rationale for

EPA's proposed action are explained in the NPR and will not be restated here. No public comments were received on the NPR.

II. Final Action

EPA is redesignating the Liberty Borough area of Allegheny County, Pennsylvania from nonattainment to attainment for the national ambient air quality standard (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 microns (PM₁₀) and is also approving a maintenance plan for the Liberty Borough area as a SIP Revision to the Pennsylvania SIP.

III. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a “significant regulatory action” and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in

Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 10, 2003. Filing a petition for reconsideration by the Administrator of this final rule which redesignates the Liberty Borough area to attainment for PM₁₀ and approves a maintenance plan for the Liberty Borough area 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

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements,

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: September 2, 2003.

James W. Newsom,

Acting Regional Administrator, Region III.

■ 40 CFR parts 52 and 81 are 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 NN—Pennsylvania

■ 2. Section 52.2020 is amended by adding paragraph (c)(215) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(215) The PM₁₀ Redesignation and Maintenance Plan for the Liberty Borough area of Allegheny County,

Pennsylvania nonattainment area submitted on October 28, 2002 by the Pennsylvania Department of Environmental Protection:

(i) Incorporation by reference.

(A) Letter of October 28, 2002 from the Pennsylvania Department of Environmental Protection transmitting the redesignation request and maintenance plan for the PM₁₀ nonattainment area in the Liberty Borough area of Allegheny County, Pennsylvania.

(B) Maintenance Plan for the Liberty Borough PM₁₀ nonattainment area consisting of Part IV, "Maintenance Plan—Redesignation Criterion 4"; Part I, "Attainment of the Standard—Redesignation Criterion I," Section B, Figure 3a—"Countywide Network of PM₁₀ Monitors, (Current)"; Section C "Modeled Attainment"; Part VI "Documentation of Administrative Procedures," Section F "Certification of Approval and Adoption"; Appendix B : "Attainment Inventory"; Appendix C: "Mon-Fayette Expressway Alignment"; Appendix D: "Employment Forecasts"; Appendix E: "Census and Population Forecasts," dated October 4, 2002 and effective September 14, 2002.

(ii) Additional material.

(A) Remainder of the October 28, 2002 State submittal(s) pertaining to the revisions listed in paragraph (c)(215)(i) of this section.

(B) Additional material submitted by the State on June 20, 2003 which consisted of minor corrections to the PM₁₀ ambient air quality data included in the redesignation request.

PART 81—[AMENDED]

■ 1. The authority citation for Part 81 continues to read as follows:

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

Subpart C—Section 107 Attainment Status Designations

■ 2. In § 81.339, the table for "Pennsylvania—PM-10" is amended by revising the entry for Allegheny County to read as follows:

§ 81.339 Pennsylvania.

* * * * *

PENNSYLVANIA—PM-10

Designated area	Designation		Classification	
	Date	Type	Date	Type
Allegheny County: The area including Liberty, Lincoln, Port Vue, and Glassport Boroughs and the City of Clairton.	10/14/03	Attainment.		

PENNSYLVANIA—PM—10—Continued

Designated area	Designation		Classification	
	Date	Type	Date	Type
* * * * *	*	*	*	*

* * * * *
 [FR Doc. 03-23265 Filed 9-10-03; 8:45 am]
 BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW-FRL-7557-5]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA, also the Agency or we in this preamble) today is granting a petition submitted by the Southeastern Public Service Authority (SPSA) and Onyx Environmental Services (Onyx) to exclude (or delist), on a one-time basis, a combustion ash from the lists of hazardous wastes.

After careful analysis, we have concluded that the petitioned waste does not present an unacceptable risk when disposed of in a Subtitle D (nonhazardous waste) landfill. This exclusion applies to combustion ash previously generated at the SPSA Power Plant in Portsmouth, Virginia, which is currently located at the SPSA Regional Landfill in Suffolk, Virginia. Accordingly, this final rule conditionally excludes a specific volume of the petitioned waste from the requirements of the hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA) when the petitioned waste is disposed of in a Subtitle D landfill which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste.

EFFECTIVE DATE: September 11, 2003.

ADDRESSES: The official docket for this rule is located at the offices of U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA, 19103-2029, and is available for you to view from 8:30 a.m. to 5 p.m., Monday through Friday, except on Federal holidays. Please call David M. Friedman at (215) 814-3395 for appointments. The public may copy

material from the docket at \$0.15 per page.

FOR FURTHER INFORMATION CONTACT: For information concerning this document, please contact David M. Friedman at the address above, at (215) 814-3395, or via e-mail at *friedman.davidm@epa.gov*.

SUPPLEMENTARY INFORMATION:

Docket

EPA has established an official docket for this action. The official docket consists of the petition submitted by SPSA/Onyx, the results of a risk assessment which evaluates the potential impact of the petitioned waste on human health and the environment, any public comments received, and other information related to this action. The official docket for this action is kept in a paper format, and is maintained at the address in the **ADDRESSES** section at the beginning of this document.

Outline

- I. Overview Information
- II. Background
 - A. What is a delisting petition?
 - B. What regulations allow a hazardous waste generator to petition for a delisting of its waste?
 - C. What information must the generator supply?
- III. SPSA/Onyx's Delisting Petition
 - A. What waste is the subject of SPSA/Onyx's petition?
 - B. What information did SPSA/Onyx submit to support this petition?
- IV. EPA's Evaluation and Final Decision
 - A. Why is EPA approving this petition?
 - B. What limitations are associated with this exclusion?
 - C. When is the final rule effective?
 - D. How does this action affect States?
- V. Public Comments Received on the Proposed Exclusion
 - A. Who submitted comments on the proposed rule?
 - B. Comments and responses by EPA.
- VI. Administrative Assessments

I. Overview Information

On June 18, 2003, we proposed to grant a petition submitted by SPSA/Onyx to exclude (or delist) from the definition of hazardous waste on a one-time basis, a combustion ash previously generated at the SPSA Power Plant in Portsmouth, Virginia, which is currently located at the SPSA Regional Landfill in Suffolk, Virginia. Today we are finalizing the decision to grant a

conditional exclusion as described in the June 18, 2003, proposed rule.

II. Background

A. What Is a Delisting Petition?

A delisting petition is a formal request from a generator asking EPA to exclude a specific waste from the lists of hazardous waste contained in the RCRA regulations, because the generator believes that its waste should not be considered hazardous.

In order for a petition to succeed, a petitioner must first show that a waste generated at its facility does not meet any of the criteria for which the waste was listed. The criteria which we use to list wastes are found in 40 CFR 261.11. An explanation of how these criteria apply to a particular waste is contained in the background document for that listed waste.

In addition, the petitioner must demonstrate that the waste does not exhibit any of the hazardous waste characteristics defined in subpart C of 40 CFR part 261 (*i.e.*, ignitability, corrosivity, reactivity, and toxicity), and must present sufficient information for us to determine whether any other factors (including additional constituents) warrant retaining the waste as a hazardous waste.

A generator remains obligated under RCRA to confirm that its waste remains non-hazardous based on the hazardous waste characteristics defined in subpart C of 40 CFR part 261, even if EPA has delisted its waste.

B. What Regulations Allow a Hazardous Waste Generator To Petition for a Delisting of Its Waste?

Under 40 CFR 260.20 and 260.22, a generator may petition EPA to remove its waste from hazardous waste regulation by excluding it from the lists of hazardous wastes contained in 40 CFR part 261, subpart D. Specifically, 40 CFR 260.20 allows any person to petition the Administrator to modify or revoke any provision of parts 260 through 266, 268 and 273 of Title 40 of the Code of Federal Regulations. 40 CFR 260.22 provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste lists.

C. What Information Must the Generator Supply?

A petitioner must provide sufficient information to allow EPA to determine that the waste to be excluded does not meet any of the criteria under which the waste was listed as a hazardous waste. In addition, the Administrator must determine that the waste is not hazardous for any other reason.

III. SPSA/Onyx's Delisting Petition

A. What Waste Is the Subject of SPSA/Onyx's Petition?

SPSA is the regional solid waste management agency for southeastern Virginia, where it operates a resource recovery facility consisting of a Refuse Derived Fuel (RDF) Plant and a Power Plant, and a disposal facility consisting of a Regional Landfill.

Onyx Environmental Services is a company that provides a wide range of environmental services to other companies. These services include hazardous and non-hazardous waste management.

On April 7, 2003, SPSA/Onyx petitioned EPA to exclude on a one-time basis a combustion ash generated at SPSA's waste-to-energy facility in Portsmouth, Virginia. The ash which is the subject of this petition is currently located at SPSA's Regional Landfill in Suffolk, Virginia. The total volume of the subject combustion ash at the Regional Landfill was determined by SPSA/Onyx to be 1410 cubic yards.

The ash was produced by the routine combustion of a batch of municipal and commercial solid waste which was processed in SPSA's RDF plant and burned in SPSA's Power Plant in Portsmouth, Virginia. Due to a shipping error, a small amount of this waste consisted of materials containing the spent non-halogenated solvent, methyl ethyl ketone (EPA Hazardous Waste Number F005). See the June 18, 2003, **Federal Register**, (68 FR 36528) for more details.

In the June 18, 2003 **Federal Register**, we described how a portion of the combustion ash had been used as daily cover in the Regional Landfill before SPSA was notified that the ash was subject to regulation as a hazardous waste. Furthermore, we stated that the area of the Landfill where the combustion ash was used as cover was cordoned off and that operations were suspended in this area. While this statement was true at the time that the petition was submitted, we have since been informed by SPSA that the Virginia Department of Environmental Quality has allowed operations to resume in this portion of the Landfill.

However, the area in which the subject combustion ash is located has been marked in case removal of the ash is required. The resumption of operations does not impact the results of EPA's evaluation of the risks associated with management of this waste.

B. What Information Did SPSA/Onyx Submit To Support This Petition?

In order to support the petition, SPSA/Onyx submitted detailed information related to the shipments of materials received for destruction at SPSA's Power Plant and detailed analytical results from representative samples of the ash obtained by SPSA/Onyx on October 15, 2002, and January 28, 2003.

IV. EPA's Evaluation and Final Decision

A. Why Is EPA Approving This Petition?

SPSA/Onyx petitioned EPA to exclude or delist on a one-time basis, the 1410 cubic yards of combustion ash currently located at the SPSA Regional Landfill because SPSA/Onyx believes that the petitioned waste does not meet the criteria for which it was listed as a hazardous waste, nor does it exhibit any characteristic of a hazardous waste. SPSA/Onyx also believes that the waste does not contain other constituents in concentrations that would cause it to be hazardous.

Review of this petition included consideration of the original listing criteria, as well as factors (including additional constituents) other than those for which the waste was listed, as required by the Hazardous and Solid Waste Amendments (HSWA) of 1984 to RCRA. See, section 3001 of RCRA, 42 U.S.C. 6921(f), and 40 CFR 260.22(a)(1) and (2).

On June 18, 2003, we proposed to conditionally exclude SPSA/Onyx's combustion ash from the list of hazardous wastes in 40 CFR 261.31, and requested public comment on the proposed rule. For reasons stated in both the proposed rule and this document, we believe that SPSA/Onyx's combustion ash should be excluded from hazardous waste regulation.

B. What Limitations Are Associated With This Exclusion?

This exclusion applies only to the estimated 1410 cubic yards of ash currently located at the SPSA Regional Landfill as described in SPSA/Onyx's petition. No ash other than the ash described in this petition could be managed as nonhazardous waste under this exclusion.

SPSA/Onyx state in their petition that the waste, if delisted, will remain at the

SPSA Regional Landfill. However, as a matter of policy, EPA does not specify a specific location for disposal of a delisted waste, only that it be disposed of in a Subtitle D landfill. In order to adequately track wastes that have been delisted, in the event that a decision is made to dispose of all or part of the ash off-site, we will require that SPSA/Onyx provide a one-time notification to any State regulatory agency to which or through which the delisted waste will be transported for disposal at least sixty (60) calendar days prior to commencing these activities.

C. When Is the Final Rule Effective?

This rule is effective September 11, 2003. HSWA amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here because this rule reduces, rather than increases, the existing requirements for persons generating hazardous wastes. For these same reasons, this rule can and will become effective immediately (that is, upon publication in the **Federal Register**) under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

D. How Does This Action Affect States?

Because EPA is issuing today's exclusion under the Federal RCRA delisting program, only States subject to Federal RCRA delisting provisions would be directly affected. This would exclude two categories of States: States having a dual system that includes Federal RCRA requirements and their own requirements, and States which have received EPA's authorization to make their own delisting decisions. We describe these two situations below.

We allow states to impose their own non-RCRA regulatory requirements that are more stringent than EPA's under section 3009 of RCRA. These more stringent requirements may include a provision that prohibits a Federally-issued exclusion from taking effect in the State, or that prohibits a Federally-issued exclusion from taking effect in the State until the State approves the exclusion through a separate State administrative action. Because a dual system (that is, both Federal and State programs) may regulate a petitioner's waste, we urge petitioners to contact the applicable State regulatory authorities or agencies to establish the status of their waste under that State's program.

We have also authorized some States to administer a delisting program in place of the Federal program; that is, to make State delisting decisions.

Therefore, this exclusion does not necessarily apply within those authorized States. If SPSA/Onyx transports the petitioned waste to, or manages the waste in, any State with delisting authorization, SPSA/Onyx must obtain delisting approval from that State before it can manage the waste as nonhazardous in that State.

V. Public Comments Received on the Proposed Exclusion

A. Who Submitted Comments on the Proposed Rule?

We received public comments on the June 18, 2003, proposed exclusion from one individual in Portsmouth, Virginia.

B. Comments and Responses From EPA

Comment: The solvent rags were incorrectly classified as a spent solvent waste (F005), and, therefore, are not hazardous waste. In order to be a F005 listed waste, the spent solvent would have to contain any concentration of the solvents specified in the F005 listing, and contain at least 10 percent by volume of any of the solvents listed in F001, F002, F003, or F004. A solvent consisting of 100 percent methyl ethyl ketone would not be considered an F005 listed waste.

Response: The commenter incorrectly reads the spent solvent listings. On May 19, 1980, EPA promulgated the first phase of the hazardous waste regulations including the spent solvent listings (Hazardous waste nos. F001–F005) (See 40 CFR 261.31). These listings applied only to spent solvents resulting from the use of individual solvents that were technical grade or in pure form, and the still bottoms from the recovery of these spent solvents. EPA soon recognized that limiting the universe of the spent solvent listings to wastes resulting from the use of only single ingredient solvents created a regulatory loophole by allowing wastes resulting from the use of mixtures containing one or more of the listed solvents to remain unregulated. In the final rule published in the **Federal Register** on December 31, 1985 (50 FR 53315), EPA amended these listings to include spent solvents resulting from the use of solvent mixtures or blends which contained, before use, 10 percent or more total listed solvent by volume in addition to spent solvents resulting from the use of listed single ingredient solvents. Therefore, the current listings for spent solvents (such as the F005 listing) apply to the following three (3) categories: spent solvents resulting from the use of individual (single ingredient) listed solvents that are technical grade or in pure form, spent solvents resulting

from the use of solvent mixtures or blends which contain, before use, 10 percent or more total listed solvent by volume, and still bottoms from the recovery of any of these spent solvents.

Comment: The commenter noted that although lead and chromium were present in detectable concentrations in the total constituent analysis, they were not present above the reporting limit when the Toxicity Characteristic Leaching Procedure (TCLP) analysis was performed on this waste. The commenter theorized that the presence of iron in the combustion ash was masking the TCLP analysis for lead and chromium, and requested that EPA require that the ash be analyzed for total iron concentration.

Response: After careful consideration, we have decided not to ask SPSA/Onyx to collect additional samples for iron analysis. There are a number of factors that affect the leaching potential of inorganic constituents. Among them are the pH, redox conditions, liquid-to-solid ratio, and solubility. While the addition of iron in the form of fines, filings, or dust, may temporarily retard the leaching of lead, it does not provide long-term treatment. Therefore, EPA determined that this practice constitutes “impermissible dilution” when done for the purpose of achieving a treatment standard for lead under the land disposal restrictions regulations. (See 40 CFR 268.3(d)).

However, this is not the case at SPSA’s waste-to-energy facility where SPSA aggressively removes ferrous (and aluminum) metals from the waste stream. Large pieces of metal are manually removed from the waste stream both at SPSA’s transfer stations and on the tipping floor of the RDF Plant. Then, a system of magnets removes the small ferrous metal items from the waste stream prior to it being sent to the power plant for combustion, thereby significantly reducing levels of iron in the combustion ash. SPSA performs TCLP metals analysis on the ash generated by its waste-to-energy facility on a quarterly basis.

VI. Administrative Assessments

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a rule of general applicability and therefore is not a “regulatory action” subject to review by the Office of Management and Budget. Because this action is a rule of particular applicability relating to a particular facility, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995

(UMRA) (Pub. L. 104–4). Because the rule will affect only one facility, it will not significantly or uniquely affect small governments, as specified in section 203 of UMRA, or communities of Indian tribal governments, as specified in Executive Order 13175 (65 FR 67249, November 6, 2000). For the same reason, this rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

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

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. Section 804 exempts from section 801 the following types of rules (1) rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties (5 U.S.C. 804(3)). EPA is not required to submit a rule report regarding today’s action under section 801 because this is a rule of particular applicability.

List of Subjects in 40 CFR Part 261

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

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

Dated: September 2, 2003.
 Donald S. Welsh,
 Regional Administrator, Region III.

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

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

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

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

Appendix IX of Part 261—[Amended]

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

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

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
* * * * *	* * * * *	* * * * *
Southeastern Public Service Authority (SPSA) and Onyx Environmental Service (Onyx).	Suffolk, Virginia	Combustion ash generated from the burning of spent solvent methyl ethyl ketone (Hazardous Waste Number F005) and disposed in a Subtitle D landfill. This is a one-time exclusion for 1410 cubic yards of ash and is effective after September 11, 2003. (1) <i>Reopener Language</i> (a) If SPSA and/or Onyx discovers that any condition or assumption related to the characterization of the excluded waste which was used in the evaluation of the petition or that was predicted through modeling is not as reported in the petition, then SPSA and/or Onyx must report any information relevant to that condition or assumption, in writing, to the Regional Administrator and the Virginia Department of Environmental Quality within 10 calendar days of discovering that information. (b) Upon receiving information described in paragraph (a) of this section, regardless of its source, the Regional Administrator will determine whether the reported condition requires further action. Further action may include repealing the exclusion, modifying the exclusion, or other appropriate action deemed necessary to protect human health or the environment. (2) <i>Notification Requirements</i> In the event that the delisted waste is transported off-site for disposal, SPSA/Onyx must provide a one-time written notification to any State Regulatory Agency to which or through which the delisted waste described above will be transported at least sixty (60) calendar days prior to the commencement of such activities. Failure to provide such notification will be deemed to be a violation of this exclusion and may result in revocation of the decision and other enforcement action.
* * * * *	* * * * *	* * * * *

[FR Doc. 03-23161 Filed 9-10-03; 8:45 am]
 BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 281

[FRL-7557-4]

Pennsylvania: Final Approval of State Underground Storage Tank Program

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Commonwealth of Pennsylvania (Commonwealth or State) has applied for final approval of its underground storage tank (UST) program under Subtitle I of the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed Pennsylvania's application and has made a determination that the Commonwealth's UST program satisfies all of the

requirements necessary to qualify for final approval.

EFFECTIVE DATE: Final approval of Pennsylvania's UST program shall be effective on September 11, 2003.

FOR FURTHER INFORMATION CONTACT: Carletta Parlin, Mailcode 3WC21, RCRA State Programs Branch, U.S. EPA Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029, telephone number (215) 814-3380.

SUPPLEMENTARY INFORMATION:

A. Background

Section 9004 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6991c, authorizes EPA to approve state underground storage tank programs to operate in lieu of the Federal UST program. EPA may approve a state program if the Agency finds pursuant to RCRA section 9004(b), 42 U.S.C. 6991c(b), that the state's program is "no less stringent" than the Federal program in all seven elements set forth at RCRA section 9004(a) (1) through (7), 42 U.S.C. 6991c(a)(1) through (7), meets the notification requirements of RCRA

section 9004(a)(8), 42 U.S.C. 6991c(a)(8), and also provides for adequate enforcement of compliance with UST standards in accordance with RCRA section 9004(a), 42 U.S.C. 6991c(a).

On November 25, 2002, Pennsylvania submitted to EPA a complete program application, in accordance with 40 CFR part 281, seeking authorization of its UST program. On January 3, 2003, EPA published a proposed rule announcing its tentative determination to approve Pennsylvania's UST program. EPA announced that the proposed rule was subject to a thirty-day public comment period. The public comment period ended on February 13, 2003. Further, EPA stated that if it received adverse comments on its intent to authorize Pennsylvania's UST program, it would subsequently publish a final determination responding to such comments and announce its final decision as to whether or not to authorize Pennsylvania's program. EPA received adverse written comments during the public comment period. Today's action responds to those

adverse public comments EPA received and announces EPA's final determination to approve Pennsylvania's UST program.

B. What Were the Comments and Responses to EPA's Proposal?

Two parties submitted written comments regarding EPA's tentative approval of Pennsylvania's UST program during the 30-day public comment period. One party requested that EPA conduct a public hearing, but later withdrew that request. A third party submitted comments and requested a public hearing after the close of the comment period. EPA had already taken steps to cancel the tentatively scheduled public hearing and, as a result, no public hearing was held on EPA's tentative determination to approve Pennsylvania's UST Program. All three sets of comments EPA received questioned EPA's tentative decision to approve the Commonwealth of Pennsylvania's UST program asserting that Pennsylvania does not provide for adequate public participation.

Collectively, the three parties submitting comments asserted that Pennsylvania's UST program has deficiencies in three areas: (1) Public notification of releases from USTs, (2) public participation in UST cleanup activities, and (3) public involvement in UST enforcement cases initiated by the Pennsylvania Department of Environmental Protection (PADEP). EPA's responses to each of these comments are set forth below. EPA has determined that none of the concerns raised warrants disapproval of Pennsylvania's UST program.

1. Comments Regarding Public Notification of UST Releases

All three parties asserted that Pennsylvania's UST Program does not meet the federal requirements for state program approval at 40 CFR 281.35(f) regarding public notification of UST releases. This regulation provides as follows: "In accordance with § 280.67, the state must notify the affected public of all confirmed releases requiring a plan for soil and ground water remediation, and upon request provide or make available information to inform the interested public of the nature of the release and the corrective measures planned or taken."

The referenced regulation at 40 CFR 280.67(a) states the following: "For each confirmed release that requires a corrective action plan, the implementing agency must provide notice to the public by means designed to reach those members of the public

directly affected by the release and the planned corrective action. This notice may include, but is not limited to, public notice in local newspapers, block advertisements, public service announcements, publication in a state register, letters to individual households, or personal contacts by field staff."

One of the parties noted as follows: "The Commonwealth acknowledges in the General Counsel and Attorney General Verification and Legal Statement included with the application that EPA does not believe notifying the municipality satisfies the objective of §§ 281.35(f) and 280.67 to 'notify the affected public.'" Two of the commenters expressed their concern about Pennsylvania using the State Program Approval Memorandum of Agreement (MOA) with EPA to address an inadequate public notification process for UST releases, which they perceive as a "flaw" or "deficiency" in Pennsylvania's UST Program.

During the review of Pennsylvania's UST Program, EPA did discuss public notification procedures for UST releases with PADEP. In its assessment, EPA recognized that, in accordance with § 245.305(e) of Pennsylvania's UST regulations, owners and operators are required to inform the Commonwealth and affected municipalities of confirmed releases. EPA believes this is a suitable first step toward public notification, because once local and state governments are informed, they can subsequently take steps to notify the affected public. During its review, EPA asked PADEP to clarify how such notification to the state would result in notification of the public directly affected by UST releases. EPA recognized that, pursuant to § 245.305(g) of Pennsylvania's rules, PADEP may "implement reasonable procedures to provide the public with appropriate information." For the purpose of state program approval, PADEP has the legal authority to notify the affected public of UST releases. However, EPA recognized that this authority provided PADEP with a certain discretion of the type contemplated when EPA published its original UST regulations at § 280.67 on September 23, 1988 (see 53 FR 37180-37181). Specifically, EPA noted in the preamble to its regulations that "* * * mandating public participation for all CAPs (*Corrective Action Plans*) could divert implementing agency resources from other cleanup activities such as oversight of ongoing cleanup operations." The preamble went on to say: "EPA agrees with the party who urged that implementing agencies strike a balance between the involvement of

the public and the sometimes competing need to protect human health and the environment through quick and effective responses to an UST release. To acknowledge these sometimes conflicting objectives, the final rule for public participation establishes a flexible approach that ensures public access to available information on UST cleanups, although the public need not be involved, as a matter of routine, in all CAPs."

During EPA's evaluation of the Commonwealth's UST program, PADEP described to EPA that it intended to exercise its discretion to notify the public about UST releases by posting relevant information on the internet. Although the internet was not in existence at the time EPA published its regulations in 1988, today, EPA believes the internet is a powerful and effective mechanism for providing the public with information. EPA believes that providing public access to information about UST releases on the internet is a means designed to reach those members of the public directly affected by the release and the planned corrective action. The internet has revolutionized how the public can gain access to all kinds of information. The internet can be accessed from home, at work, at school, and at local libraries. Information on the internet can be updated more easily, timely and cost-effectively than printed publications. One party who provided comments on EPA's proposed state program approval decision stated that he: "* * * supports the use of the internet to educate and inform the public about DEP's regulatory programs and the status of confirmed releases and planned cleanups* * *" PADEP and EPA have dedicated significant resources to provide the public with timely and comprehensive information about their numerous programs through the internet. Recognizing the need for PADEP to balance its responsibilities to clean up expeditiously UST releases and inform the public, EPA and PADEP used the MOA to specify and clarify how PADEP will exercise its discretion in striking this balance and to acknowledge formally PADEP's commitment to internet notification of UST releases. EPA does not believe that use of the MOA to describe Pennsylvania's approach to public notification is intended to "fix" a flaw or deficiency in Pennsylvania's UST program, but rather the MOA is an appropriate means to define how PADEP will exercise its responsibilities, within its discretion and authorities, to

notify the public of UST releases under an EPA-authorized UST program.

To establish specific provisions in the MOA to define appropriate public notification, EPA and PADEP relied on provisions of 40 CFR 280.67(a). Therefore, the MOA provides the following commitments: "In addition to placing notices of confirmed releases requiring corrective action on its internet site, DEP agrees to use additional mechanisms to notify the affected public of those releases, which may have the potential to cause a more immediate or serious risk to public health and the environment. Furthermore, DEP agrees to use additional methods of public notification and outreach as a particular situation may warrant. Pursuant to 40 CFR 280.67 (Public Participation), such notices may include, but are not limited to, public notice in local newspapers, block advertisements, public service announcements, publication in the Pennsylvania Bulletin, letters to individual households, and/or personal contacts by field staff." Having drawn the provisions for the MOA directly from EPA's regulations, EPA is satisfied that PADEP's authorities and procedures for public notification of UST releases, as prescribed in the MOA, meet the requirements for state program approval found at 40 CFR 281.35(f).

On a separate but related point, one commenter referenced RCRA section 9004(a) stating that RCRA enumerates "* * * criteria that a State Program must meet in order to receive delegation of authority." EPA points out that, beyond the federal regulations discussed extensively above, section 9004 of RCRA does not include any independent requirements for States to include public notification in their UST Programs in order to be approved by EPA.

The commenter who supported using the internet to inform the public did note, however, that, the internet "* * *" is no substitute for direct notice by DEP to the affected public." EPA points out, however that neither RCRA nor its implementing regulations requires "direct notice to the affected public." These regulations state that notice to the public must be designed "* * *" to reach those members of the public directly affected by the release and the planned corrective action" but not necessarily by a direct (or personal) notice as was suggested by the commenter.

One commenter expressed a concern over a failed attempt to access PADEP's information about a particular fuel distribution facility via the internet and questioned the effectiveness of PADEP's

internet notification process. EPA is aware that PADEP had experienced some technical difficulties with its Web site and Internet access while efforts were underway to upgrade its system. Such temporary difficulties with gaining access to electronic data systems during maintenance activities are not uncommon. In May and August 2003, EPA Region III accessed PADEP's Web site and determined site accessibility, as well as the scope and content of site information about UST releases, to be complete and acceptable for public notification purposes.

The final comment regarding inadequate public notification of UST releases asserted that federal regulations require "the affected public be notified of all confirmed releases." EPA disagrees, since EPA's state program approval regulations do not require state programs to have provisions to notify the public of *all* confirmed releases, only those requiring a plan for soil and ground water remediation. See 40 CFR 281.35(f) which states that "In accordance with § 280.67, the state must notify the affected public of *all confirmed releases requiring a plan for soil and ground water remediation*" * * * (emphasis added).

Summary: With respect to public comments alleging deficiencies in Pennsylvania's program regarding public notification of UST releases, EPA has determined that Pennsylvania's UST program, as described in its State Program Approval Application, provides for adequate notification procedures to inform the public about confirmed UST releases requiring a plan for remediation. PADEP's reliance on the internet to post information on UST releases has been determined by EPA to be an acceptable means of informing the public.

2. Comments Regarding Public Participation in UST Cleanup Activities

The second set of concerns voiced by all three commenters related to the public's inability to be informed about, and to participate in, corrective measure activities. With regard to concerns about "public notification" of planned corrective measure activities, EPA refers to its previous discussion which addresses this issue. The MOA commits PADEP to maintain on its internet site the status of all corrective measures planned or taken, and PADEP agrees to make information available to the public, upon request, about the nature of identified releases and corrective measures planned or taken.

With regard to public participation in the corrective action process, EPA notes that its regulations focus on public

notification, yet rely on state administrative procedures to provide the public the opportunity to participate in the decision-making process associated with cleaning up UST releases. The preamble to EPA's September 23, 1988 UST regulations (53 FR 37233) states, "EPA does not intend to prescribe the nature and extent of the public involvement procedures to be followed by the state. Rather, EPA's intention is that a forum be provided that is in keeping with the state's administrative procedures for the interested public to express its views on the proposed corrective actions for *serious* (emphasis added) UST releases." The preamble goes on to say that this objective is intended to be met by ensuring states provide for open access to information on UST releases and planned corrective actions. Pennsylvania's UST program meets this obligation by providing for the public availability of this information. The MOA is PADEP's assurance that such information will be available via the internet for notification purposes, and more detailed information on site activities will be made available upon public request. PADEP has also agreed in the MOA to expand its method of public notification and involvement activities, as particular situations may warrant, specifically in those instances where releases may have the potential to cause an immediate or "serious risk" to public health and the environment. EPA believes there is adequate opportunity for the public to be notified of UST releases and to participate in UST cleanup activities.

Summary: EPA has evaluated Pennsylvania's UST authorities and PADEP's commitment in the MOA to provide for public notification of UST releases and public access to related information. Based on EPA's State Program Approval regulations and relevant preamble language which rely on a state's own administrative procedures for the interested public to express its views on proposed corrective actions, EPA has determined that Pennsylvania's UST program meets EPA's state program approval requirements for public notification and public involvement regarding UST releases and their cleanups.

3. Comments Regarding Public Involvement in UST Enforcement Cases

The third area on which EPA received comments related to public participation in Pennsylvania's enforcement process. One commenter questioned whether the Commonwealth's program meets the state program approval requirements of

40 CFR 281.42 ("Requirements for public participation"), which provides that "Any state administering a program must provide for public participation in the state enforcement process by providing *any one of the following three options*: (emphasis added) (a) Authority that allows intervention analogous to Federal Rule 24(a)(2), and assurance by the appropriate state enforcement agency that it will not oppose intervention under the state analogue to Rule 24(a)(2) on the ground that the applicant's interest is adequately represented by the State. (b) * * * (c) * * *" The Commonwealth chose the option set forth in 40 CFR 281.42(a) to support its State Program Approval Application. The party submitting the comments stated that "* * * it is not clear how the affected public is supposed to receive notice when such actions are taken so they may decide whether to exercise their right to intervene" and suggested that the Commonwealth * * * should be required to publish notice in the Pennsylvania Bulletin whenever a formal enforcement action is commenced and when it is resolved."

In its application for program approval, the Commonwealth provided an explanation of how its authorities meet the requirements of 40 CFR 281.42(a), but it did not discuss any procedures it may have for public notice of enforcement actions. Such notice is not required for state program approval, as such notice is not a component of Rule 24(a)(2) of the Federal Rules of Civil Procedure. Therefore, the lack of a provision in Pennsylvania's regulations to provide for public notice of enforcement actions and the absence of a related discussion in Pennsylvania's UST State Program Approval Application are not valid reasons for EPA to disapprove Pennsylvania's UST Program.

Summary: Since PADEP is not required to provide for, or explain in its State Program Approval Application, how the public is notified about enforcement actions initiated by the state, EPA has determined that this is no basis for disapproving Pennsylvania's UST program.

Conclusion: Based on the above responses to all of the adverse comments received, EPA sees no basis for disapproving Pennsylvania's UST program pursuant to 40 CFR part 281 and is hereby proceeding with a final determination to approve Pennsylvania's UST program.

Statutory and Executive Order Reviews

This rule will only approve State underground storage tank requirements

pursuant to RCRA Section 9004 and imposes no requirements other than those imposed by State law (*see* Supplementary Information, section A. Background). Therefore, this rule complies with applicable executive orders and statutory provisions as follows:

1. *Executive Order 12866: Regulatory Planning Review*—The Office of Management and Budget has exempted this rule from its review under Executive Order 12866. 2. *Paperwork Reduction Act*—This rule will not impose an information collection burden under the Paperwork Reduction Act. 3. *Regulatory Flexibility Act*—After considering the economic impacts of today's rule on small entities under the Regulatory Flexibility Act, I certify that this proposed rule will not have a significant economic impact on a substantial number of small entities. 4. *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. 5. *Executive Order 13132: Federalism*—Executive Order 13132 does not apply to this rule because it will not have federalism implications (*i.e.*, 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). 6. *Executive Order 13175: Consultation and Coordination with Indian Tribal Governments*—Executive Order 13175 does not apply to this rule because it will not have tribal implications (*i.e.*, substantial direct effects 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). 7. *Executive Order 13045: Protection of Children from Environmental Health & Safety Risks*—This rule is not subject to Executive Order 13045 because it is not economically significant and it is not based on health or safety risks. 8. *Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use*—This rule is not subject to Executive Order 13211 because it is not a significant regulatory action as defined in Executive Order 12866. 9. *National Technology Transfer Advancement Act*—EPA approves State programs as long as they meet criteria

required by RCRA, so it would be inconsistent with applicable law for EPA, in its review of a State program, to require the use of any particular voluntary consensus standard in place of another standard that meets the requirements of RCRA. Thus, section 12(d) of the National Technology Transfer and Advance Act does not apply to this rule. 10. *Congressional Review Act*—EPA will submit a report containing this rule and other information required by the Congressional Review Act (5 U.S.C. 801 *et seq.*) to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication 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). This action will be effective September 11, 2003.

List of Subjects in 40 CFR Part 281

Environmental protection, Administrative practice and procedures, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Authority: This document is issued under the authority of section 9004 of the Resource Conservation and Recovery Act as amended 42 U.S.C. 6991c.

Thomas Voltaggio,

Acting Regional Administrator,

[FR Doc. 03-23164 Filed 9-10-03; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[MD Docket No. 03-83; FCC 03-184]

Assessment and Collection of Regulatory Fees for Fiscal Year 2003; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: The Commission corrects the *Assessment and Collection of Regulatory Fees for Fiscal Year 2003, Report and Order*, adopted on July 21, 2003 and released on July 25, 2003.

DATES: Effective September 11, 2003.

FOR FURTHER INFORMATION CONTACT: Roland Helvajian, Office of Managing Director, (202) 418-0444.

SUPPLEMENTARY INFORMATION: The Office of the Managing Director wishes to make the following correction in our

recently released *Assessment and Collection of Regulatory Fees for Fiscal Year 2003, Report and Order* (68 FR 48445 (August 13, 2003)). The corrections are as follows:

1. On page 48466, in the third column of § 1.1152, the fee amounts in the first four entries, in the second column of the table, immediately following the 220 MHz Nationwide heading is corrected to read \$10.00 instead of \$5.00.

Federal Communications Commission

Marlene H. Dortch,

Secretary.

[FR Doc. 03-23131 Filed 9-10-03; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 51

[CC 95-185 and 96-98; WT 97-207; FCC 03-215]

Cost-Based Terminating Compensation for CMRS Providers

AGENCY: Federal Communications Commission.

ACTION: Final rule; interpretation.

SUMMARY: In this document, the Commission responds to an application for review of a May 9, 2001, letter issued jointly by the Wireless Telecommunications Bureau and the Common Carrier Bureau (now the Wireline Competition Bureau) (Joint Letter) in response to a request for clarification of our reciprocal compensation rules. The Commission concludes that the Joint Letter is consistent with the interpretation of the Communications Act that the Commission adopted in the August 1996 Local Competition Order and reflected in the Commission's rules and prior orders and, accordingly, affirms the interpretation of our rules stated therein.

FOR FURTHER INFORMATION CONTACT: Peter Trachtenberg, Wireless Telecommunications Bureau, Policy Division, (202) 418-7369, or via the Internet at Peter.Trachtenberg@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Order in CC Docket Nos. 95-185 and 96-98, and WT Docket No. 97-207, FCC 03-215, adopted on August 27, 2003, and released on September 3, 2003. The complete text of this Order is available on the Commission's website in the Electronic Comment Filing System and for public inspection during regular business hours in the FCC Reference Center, Room CY-A257, 445 Twelfth Street,

SW., Washington, DC 20554. A copy of the Order may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone (202) 863-2893, facsimile (202) 863-2898, or via e-mail qualexint@aol.com.

1. On February 2, 2000, Sprint PCS filed a letter and legal memorandum requesting that the Commission confirm and clarify Commercial Mobile Radio Service (CMRS) providers' entitlement to reciprocal compensation for all the additional costs of switching or delivering to mobile customers "local traffic originated on other networks." On April 27, 2001, in the context of seeking comment on a unified intercarrier compensation scheme, the Commission issued the Unified Intercarrier Compensation Notice of Proposed Rulemaking (NPRM), 66 FR 28410, (May 23, 2001), which, among other things, reviewed and sought comment on the application of its current orders and rules regarding asymmetric reciprocal compensation to Local Exchange Carrier (LEC)-CMRS interconnection.

2. On May 9, 2001, WTB and WCB responded to the Sprint PCS Letter, relying on clarifications of the reciprocal compensation rules in the NPRM. The Joint Letter stated that, based on the language of section 252(d)(2)(A) of the Communications Act, CMRS carriers are entitled to the opportunity to demonstrate that their termination costs exceed those of ILECs, that the "equivalent facility" language of § 51.701(c) and (d) of the Commission's rules does not require that wireless network components be reviewed on the basis of their relationship to wireline network components or bar a CMRS carrier from receiving compensation for the additional costs that it incurs in terminating traffic on its network if those costs exceed the ILEC's costs, and that if a CMRS carrier can demonstrate that the costs associated with spectrum, cell sites, backhaul links, base station controllers and mobile switching centers vary, to some degree, with the level of traffic that is carried on the wireless network, a CMRS carrier can submit a cost study to justify its claim to asymmetric reciprocal compensation that includes additional traffic sensitive costs associated with those network elements. The Joint Letter also stated that a CMRS carrier is entitled to the tandem interconnection rate under § 51.711(a)(3) of the Commission's rules if it can satisfy a comparable geographic area test, and need not also satisfy a functional equivalency test.

3. On June 8, 2001, SBC submitted an application for review of the Joint Letter contending that the Joint Letter could be read as establishing a broader definition of additional costs for CMRS networks than the Commission previously established for LEC networks and that the Joint Letter improperly read the functional equivalency test out of the rules for purposes of deciding whether a new entrant should be compensated at the tandem interconnection rate.

4. We reaffirm that, under the current rules, a CMRS carrier can seek a compensation rate that includes the traffic-sensitive costs associated with its network elements. We conclude that the Joint Letter correctly addressed the questions raised in the Sprint PCS request.

5. The Joint Letter correctly reflected the Commission's interpretation of section 252(d)(2)(A) of the Act in the Local Competition Order, 61 FR 47284, (September 6, 1996), in stating that, based on the language of section 252(d)(2)(A), carriers are entitled to recover all of their additional forward-looking costs of terminating traffic to the extent they demonstrate such costs. Further, § 51.711(b) of our rules expressly permits connecting carriers, including CMRS carriers, an opportunity to prove that their additional costs justify a higher rate than the rate charged by the incumbent LEC. Such additional costs must be established through a cost study using a forward-looking economic cost model.

6. The Joint Letter also correctly explained that the determination of the additional costs of terminating traffic over a wireless network element does not involve an inquiry into whether the wireless network element is "equivalent" to a recoverable wireline element. The term "equivalent facility" in §§ 51.701(c) and 51.701(d) of our rules was not intended to preclude the recovery by CMRS carriers of the "additional costs" of wireless components that might be regarded as functionally equivalent to wireline elements whose costs are non-recoverable, such as a wireline LEC's local loop. Rather, the term was used to ensure that the costs of non-LEC facilities would be included in transport and termination rates even if such facilities did not precisely track the network facilities architecture of a LEC. Thus, while equivalence does, in part, define what facilities are involved in the function of "termination," it is simply not relevant to determining which of those terminating facilities imposes costs that can be recovered through reciprocal compensation charges.

7. We also conclude that our interpretation here does not apply a different standard of additional cost to CMRS carriers than the standard applicable to LECs. The “additional cost” standard applicable to both is whether an element is traffic-sensitive. In asserting that the Commission applied a different standard of recoverable costs in the Local Competition Order when it found that loop costs were not recoverable, SBC misconstrues the Commission’s reasoning. The Commission excluded loop costs because it found that “[t]he costs of local loops and line ports associated with local switches do not vary in proportion to the number of calls terminated over these facilities’ and concluded that “such non-traffic sensitive costs should not be considered “additional costs” when a LEC terminates a call that originated on the network of a competing carrier.” Because loop costs were excluded from “additional costs” on the basis of a finding of non-traffic sensitivity, we are not creating a different standard for CMRS carriers by permitting them to recover all costs that are traffic-sensitive.

8. We also find that the Joint Letter’s interpretation of the tandem interconnection rate rule is correct. Section 51.711(a)(3) of our rules governs when the tandem interconnection rate is applicable, and requires only a comparable geographic area test to be met for a carrier to receive the tandem interconnection rate. SBC argues that § 51.711(a)(3) of our rules must be interpreted to require both a functional equivalence test and a comparable geographic area test based on discussion in the Local Competition Order addressing this issue. As the Joint Letter correctly noted, however, the Commission has previously addressed the import of this language in the NPRM, and stated that “although there has been some confusion stemming from additional language in the text of the Local Competition Order regarding functional equivalency, § 51.711(a)(3) is clear in requiring only a geographic area test.” We reaffirm this interpretation.

9. Accordingly, it is ordered that, pursuant to 47 U.S.C. 154(i), and 47 CFR 1.115(c), the Application for Review filed by SBC Communications Inc. on June 8, 2001, is denied.

Federal Communications Commission.

Marlene H. Dortch,
Secretary.

[FR Doc. 03–23129 Filed 9–10–03; 8:45 am]

BILLING CODE 6712–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 1804

RIN 2700–AC61

Format and Numbering of Award Documents

AGENCY: National Aeronautics and Space Administration.

ACTION: Final rule.

SUMMARY: This final rule revises the NASA FAR Supplement (NFS) to change the scheme used for numbering procurement award instruments. This change is required to comply with the General Services Administration (GSA) requirement that each agency establish unique document numbers on award instruments.

EFFECTIVE DATE: October 1, 2003.

FOR FURTHER INFORMATION CONTACT: William Childs, NASA, Office of Procurement, Analysis Division (Code HC), (202) 358–0454, e-mail: wchilds@nasa.gov.

SUPPLEMENTARY INFORMATION:

A. Background

Effective October 1, 2003, each agency is required to have unique document numbers on contracts, BPA calls, and other procurement instruments. Document numbers must be unique within the agency and between agencies. The General Services Administration (GSA) has established a register of agency numbering schemes to assure they do not conflict. On May 21, 2003, the Assistant Administrator for Procurement approved a new numbering scheme to be used by NASA to comply with the GSA requirement. This final rule implements that scheme.

B. Regulatory Flexibility Act

This final rule does not constitute a significant revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comment is not required. However, NASA will consider comments from small entities concerning the affected NFS Part 1804 in accordance with 5 U.S.C. 610.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes do not impose recordkeeping or information collection requirements which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 1804.

Government Procurement.

Tom Luedtke,

Assistant Administrator for Procurement.

■ Accordingly, 48 CFR Part 1804 is amended as follows:

■ 1. The authority citation for 48 CFR Part 1804 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1804—ADMINISTRATIVE MATTERS

■ 2. Revise sections 1804.7101 and 1804.7102 to read as follows:

1804.7101 Policy.

(a) Contractual documents shall be numbered with approved prefixes, suffixes, and serial numbers as prescribed in this subpart. If other identification is required for center purposes, it shall be placed on the document in such a location as to clearly separate it from the identification number.

(b) The identification number shall consist of exactly 10 alpha-numeric characters positioned as prescribed in this subpart and shall be retained unchanged for the life of the particular instrument.

(c) Identification numbers shall be serially assigned to the extent feasible. Installations may designate blocks of numbers to offices for future use.

(d) Solicitations shall be numbered in accordance with installation procedures, except that in all cases the identifying number shall begin with the three characters specified in 1804.7102(a)(1) and (2).

1804.7102 Numbering scheme.

(a) General.

(1) The first two characters shall be NN.

(2) The third character shall be the same letter as used in the Integrated Financial Management Program (IFMP), *i.e.*, the first letter of Center name, except for GRC which uses “C”.

(3) The fourth and fifth characters shall be 2 numeric characters for the FY in which the award is expected to be signed by the Government.

(4) The sixth through ninth characters shall be 4 digits for action number; 2 alphas, 2 numbers (AA01, AA02 . . . AA99, AB01, AB02, . . . AZ99, BA01, BA02, etc. through ZZ99)

(5) The tenth character shall be 1 alpha character for type of action.

(b) Codes for Type of Action:

A—Cooperative agreement.

B—BOA, GWAC, or other indefinite delivery type contract.

C—Contract (except Facilities or indefinite delivery type).

- D—Delivery order or call against a supply contract (BOA, FSS, or other indefinite delivery contract or BPA).
- F—Facilities contract.
- G—Grant (other than training).
- H—Training grant.
- I—Intragovernmental transaction, *i.e.*, request to another Government agency to furnish supplies or services. It does not include an award by NASA to fulfill a request from another agency.
- P—Purchase order. (This does not include a call or task or delivery order, regardless of whether it is issued on a purchase order form. It also does not include other types of actions listed in this paragraph, notwithstanding that they are referred to as purchase orders in IFMP.)
- S—Space Act agreement.
- T—Task order against a service (including R&D) contract (BOA, FSS, or other indefinite delivery contract or BPA).
- Z—BPA.

(c) Sample.

NNG04AA01C would be a GSFC action issued in FY04. It would be the first one issued at the Center (or the first of its type), and the action type would be a contract:

NN	G	04	AA01	C
NASA	GSFC	FY04	Serial No. 1	Contract

1804.7103 [Removed]

1804.7104 [Redesignated as 1804.7103]

■ 3. Remove section 1804.7103 and redesignate section 1804.7104 as section 1804.7103.

[FR Doc. 03-23176 Filed 9-10-03; 8:45 am]

BILLING CODE 7510-01-P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 195

[Docket No. RSPA-97-2717; Amdt. 195-78]

RIN 2137-AD10

Pipeline Safety: Recommendations To Change Hazardous Liquid Pipeline Safety Standards

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: The Research and Special Programs Administration's (RSPA) Office of Pipeline Safety (OPS) is changing several safety standards for hazardous liquid and carbon dioxide pipelines. The changes, which concern welder qualifications, backfilling, records, training, and signs, are based on recommendations by the National

Association of Pipeline Safety Representatives (NAPSR). RSPA/OPS believes the changes will improve the clarity and effectiveness of the present standards.

DATES: This Final Rule takes effect October 14, 2003.

FOR FURTHER INFORMATION CONTACT: L. M. Furrow by phone at 202-366-4559, by fax at 202-366-4566, by mail at U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC, 20590, or by e-mail at buck.furrow@rspa.dot.gov.

SUPPLEMENTARY INFORMATION:

Background

NAPSR is a non-profit association of officials from state agencies that participate with RSPA/OPS in the Federal pipeline safety regulatory program. RSPA/OPS asked NAPSR to review the hazardous liquid pipeline safety standards in 49 CFR part 195 and recommend any changes needed to make the standards more explicit, understandable, and enforceable. NAPSR compiled the results of its review in a report titled "Part 195 Project."

The report includes 30 different recommendations for changes to Part 195, of which RSPA/OPS has adopted or proposed to adopt 18 in earlier rulemaking actions. In the **Federal Register** of September 6, 2002, RSPA/OPS published a notice of proposed rulemaking (NPRM) in which RSPA/OPS proposed to adopt five more recommendations (67 FR 56970). The NPRM also described the earlier actions and explained why RSPA/OPS had declined to adopt seven recommendations.

Disposition of Comments

This section of the preamble summarizes the written comments RSPA/OPS received in response to the NPRM. It also describes how RSPA/OPS treated those comments in developing this Final Rule. If a proposed section is not mentioned, no significant comments were received on that section and RSPA/OPS is adopting it as final.

RSPA/OPS invited the public to comment by November 5, 2002, on proposed changes to five sections in Part 195: § 195.222, Welders; Qualification of welders; § 195.252, Backfilling; § 195.310, Records; § 195.403, Training; and § 195.434, Signs. The only comments RSPA/OPS received were from the Florida Department of Transportation (FDOT) and the Washington Utilities and Transportation Commission (WUTC).

FDOT was concerned that part 195 could be construed to supersede its more stringent requirements on backfilling and abandonment. For example, FDOT said it does not allow abandonment of utility facilities, whereas § 195.402(c)(10) permits operators to abandon pipelines under appropriate procedures. FDOT recommended that RSPA/OPS state in Part 195 that the part does not supersede state requirements unless those requirements are less stringent.

RSPA/OPS has not added this statement to part 195 because it may not be in accord with the preemption provisions of Federal pipeline safety law (49 U.S.C. 60104(c)). Those provisions prohibit state agencies from establishing any safety standards for interstate pipeline facilities. And although state agencies that meet certain requirements may establish additional or more stringent safety standards for intrastate pipeline facilities, the state standards must be compatible with the federal safety standards. The preemption provisions do not allow state agencies to establish less stringent safety standards for intrastate pipeline facilities. To say that Part 195 does not supersede state requirements unless they are less stringent would incorrectly imply that states may have safety standards for interstate pipeline facilities or may have less stringent standards for intrastate pipeline facilities. In addition, such a statement would incorrectly imply that Part 195 does not supersede a state agency's more stringent intrastate standards that are incompatible with Part 195.

Having said this, RSPA/OPS does not want to leave the impression that it considers FDOT's more stringent requirements on backfilling and abandonment to be inoperative in view of the Federal preemption provisions. As RSPA/OPS construes those provisions, they apply only to generally applicable state safety standards. They do not apply to safety requirements that a state or local agency may attach to specific construction permits as a condition of exercising the permit. It is in this vein that RSPA/OPS believes FDOT applies its more stringent requirements.

WUTC generally supported the NPRM, but made specific comments on the backfilling standard proposed in § 195.252. RSPA/OPS proposed that backfilling must provide firm support under the pipe and prevent damage to the pipe and pipe coating from equipment and backfill material. As explained in the NPRM, RSPA/OPS did not propose to adopt NAPSR's recommendation that backfill material

not contain objects that could damage the pipe or pipe coating. RSPA/OPS reasoned that such material may not always be available near construction sites, and under the proposed standard, material with such objects could only be used if damage is prevented by means such as a sufficient initial layer of material that is free of potentially damaging rocks. Nevertheless, WUTC was concerned that operators could still use large rocks that could later cause damage to the pipe. WUTC suggested that backfill material not contain either rocks larger than six inches or organic material, such as wood, that may decay and cause subsidence or erosion.

WUTC is correct that the proposed standard would not preclude operators from using backfill material that contains large rocks. However, to do so operators would have to take steps to insure that the rocks do not damage the pipeline. RSPA/OPS said in the NPRM that one means of protection is an initial layer of rock-free material. WUTC implied that this method may not be adequate in the presence of large rocks. If so, operators would have to use some other means of protection. For example, they could install a durable rock shield either by itself or in addition to a layer of rock-free material. Because reasonable means are available to protect against rock damage, RSPA/OPS does not think a restrictive standard like WUTC suggested is necessary for safety. The performance nature of proposed § 195.252 would also require operators to take protective action if backfill material contains enough organic material to cause damage through subsequent decay. Therefore, RSPA/OPS has adopted proposed § 195.252 as final.

Advisory Committee Consideration

The Technical Hazardous Liquid Pipeline Safety Standards Committee (THLPSSC) considered the NPRM and the associated evaluation of costs and benefits at a meeting in Washington, DC on March 25, 2003 (68 FR 11176; March 7, 2003). The committee is a statutorily mandated advisory committee that advises us on proposed safety standards and other policies for hazardous liquid pipelines. The committee has an authorized membership of 15 persons, five each representing government, industry, and the public. Each member is qualified to consider the technical feasibility, reasonableness, cost-effectiveness, and practicability of proposed pipeline safety standards. A transcript of the meeting as well as other material related to the committee's consideration of the NPRM are available in Docket No. RSPA-98-4470.

At the meeting, the THLPSSC voted on whether the proposed rules are technically feasible, reasonable, cost-effective, and practicable, and whether the evaluation of costs and benefits is satisfactory. The THLPSSC voted unanimously to approve the proposed rules and the evaluation.

Regulatory Analyses and Notices

Executive Order 12866 and DOT Policies and Procedures. RSPA/OPS does not consider this rulemaking to be a significant regulatory action under Section 3(f) of Executive Order 12866 (58 FR 51735; Oct. 4, 1993). Therefore, the Office of Management and Budget (OMB) has not received a copy of this rulemaking to review. RSPA/OPS also does not consider this rulemaking to be significant under DOT regulatory policies and procedures (44 FR 11034; February 26, 1979).

RSPA/OPS prepared a Regulatory Evaluation of the final rules and a copy is in the docket. The evaluation concludes there should be only minimal additional cost, if any, for operators to comply with the rules. No comments were received on the draft evaluation that accompanied the NPRM.

Regulatory Flexibility Act

The final rules are consistent with customary practices in the hazardous liquid and carbon dioxide pipeline industry. Therefore, based on the facts available about the anticipated impacts of this rulemaking, I certify, pursuant to Section 605 of the Regulatory Flexibility Act (5 U.S.C. 605), that this rulemaking will not have a significant impact on a substantial number of small entities.

Executive Order 13084

The final rules have been analyzed in accordance with the principles and criteria contained in Executive Order 13084, "Consultation and Coordination with Indian Tribal Governments." Because the rules will not significantly or uniquely affect the communities of the Indian tribal governments and will not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13084 do not apply.

Paperwork Reduction Act

Title: Transportation of Hazardous Liquids by Pipeline Recordkeeping and Accident Reporting Requirements. OMB Number: 2137-0047

Summary: Section 195.310(b)(10) adds minor information collection requirements to an already existing information collection requirement. Operators are required to record the temperature during testing and keep the

records for as long as the pipeline concerned is in service. However, RSPA/OPS believes most operators already maintain records of temperature. Also, RSPA/OPS believes the burden of retaining temperature records is minimal. These records are largely computerized. Maintaining these records on a floppy disk or computer file represents very minimal costs. Because the additional paperwork burdens of this rule are likely to be minimal, RSPA/OPS believes that submitting an analysis of the burdens to OMB under the Paperwork Reduction Act is unnecessary.

Use: Records are kept to help RSPA/OPS determine compliance with pipeline safety requirements.

Respondents (including the number of): There are 200 hazardous liquid pipeline operators that could potentially be subject to this rule.

Annual Burden Estimate: 51,011 hours per year.

Frequency: Variable.

Unfunded Mandates Reform Act of 1995

This rulemaking will not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It will not result in costs of \$100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rulemaking proceeding.

National Environmental Policy Act

RSPA/OPS has analyzed the final rule for purposes of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*). Because the final rule parallels present requirements or practices, RSPA/OPS has determined that the rule will not significantly affect the quality of the human environment. An environmental assessment document is available for review in the docket.

Executive Order 13132

The final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). The rule does not establish any regulation that (1) has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government; (2) imposes substantial direct compliance costs on State and local governments; or (3) preempts state law. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

List of Subjects in 49 CFR Part 195

Ammonia, Carbon dioxide, Petroleum, Pipeline safety, Reporting and recordkeeping requirements.

■ For the reasons discussed in the preamble, RSPA/OPS amends 49 CFR part 195 as follows:

PART 195—TRANSPORTATION OF HAZARDOUS LIQUIDS BY PIPELINE

■ 1. The authority citation for part 195 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60118; and 49 CFR 1.53.

■ 2. Amend § 195.222 as follows:

- a. Redesignate the existing text as paragraph (a); and
- b. Add paragraph (b) to read as follows:

§ 195.222 Welders: Qualification of welders.

* * * * *

(b) No welder may weld with a particular welding process unless, within the preceding 6 calendar months, the welder has—

- (1) Engaged in welding with that process; and
- (2) Had one weld tested and found acceptable under Section 6 of API 1104.

■ 3. Revise § 195.252 to read as follows:

§ 195.252 Backfilling.

When a ditch for a pipeline is backfilled, it must be backfilled in a manner that:

- (a) Provides firm support under the pipe; and
- (b) Prevents damage to the pipe and pipe coating from equipment or from the backfill material.

■ 4. Amend § 195.310 as follows:

- a. Remove the word “and” at the end of paragraph (b)(8);
- b. Remove the period at the end of paragraph (b)(9) and add “; and” in its place; and
- c. Add paragraph (b)(10) to read as follows:

§ 195.310 Records.

* * * * *

(b) * * *
(10) Temperature of the test medium or pipe during the test period.

■ 5. Revise § 195.403(a)(5) to read as follows:

§ 195.403 Training.

(a) * * *
(5) Learn the potential causes, types, sizes, and consequences of fire and the appropriate use of portable fire extinguishers and other on-site fire

control equipment, involving, where feasible, a simulated pipeline emergency condition.

* * * * *

■ 6. Revise § 195.434 to read as follows:

§ 195.434 Signs.

Each operator must maintain signs visible to the public around each pumping station and breakout tank area. Each sign must contain the name of the operator and a telephone number (including area code) where the operator can be reached at all times.

Issued in Washington, DC on September 2, 2003.

Samuel G. Bonasso,

Acting Administrator.

[FR Doc. 03–23180 Filed 9–10–03; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 021017238–2314–02; I.D. 090503E]

Fisheries of the Northeastern United States; Atlantic Surfclam and Ocean Quahog Fishery; Quota Harvested for Maine Mahogany Quahog Fishery

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

ACTION: Closure.

SUMMARY: NMFS announces that the annual quota for the Maine mahogany quahog fishery has been harvested. Commercial vessels operating under a Maine mahogany quahog permit may not harvest Maine mahogany quahogs from the Maine mahogany quahog zone for the remainder of the fishing year (through December 31, 2003). Regulations governing the Maine mahogany quahog fishery require publication of this notification to advise the public of this closure.

DATES: Effective 0001 hrs local time, September 12, 2003, through 2400 hrs local time, December 31, 2003.

FOR FURTHER INFORMATION CONTACT: Douglas W. Christel, 978–281–9141; fax 978–281–9135; e-mail *Douglas.Christel@noaa.gov*.

SUPPLEMENTARY INFORMATION: The regulations governing the Maine

mahogany quahog fishery appear at 50 CFR section 648.76. The annual quota for the harvest of mahogany quahogs within the Maine mahogany quahog zone for the 2003 fishing year was established at 100,000 Maine bu (35,150 hL). The quota may be revised annually by the Mid-Atlantic Fishery Management Council (Council) within the range of 17,000 to 100,000 Maine bu (5,975 and 35,150 hL, respectively). The Maine mahogany quahog zone is defined as the area bounded on the east by the U.S.-Canada maritime boundary, on the south by a straight line at 43°50’ N. lat., and on the north and west by the shoreline of Maine.

The Administrator, Northeast Region, NMFS (Regional Administrator) monitors the commercial Maine mahogany quahog quota for each fishing year using dealer and other available information to determine when the quota is projected to have been harvested. NMFS is required to publish notification in the **Federal Register** informing commercial vessel permit holders that, effective upon a specific date, the Maine mahogany quahog quota has been harvested and no commercial quota is available for harvesting mahogany quahogs by vessels possessing a Maine mahogany quahog permit for the remainder of the year, from within the Maine mahogany quahog zone.

The Regional Administrator has determined, based upon dealer reports and other available information, that the 2003 Maine mahogany quahog quota has been harvested. Therefore, effective 0001 hrs local time, September 12, 2003, further landings of Maine mahogany quahogs harvested from within the Maine mahogany quahog zone by vessels possessing a Maine mahogany quahog Federal fisheries permit are prohibited through December 31, 2003. The 2004 fishing year for Maine mahogany quahog harvest will open on January 1, 2004.

Classification

This action is required by 50 CFR part 648 and is exempt from review under E.O. 12866.

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

Dated: September 8, 2003.

Bruce C. Morehead,
Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–23197 Filed 9–8–03; 4:30 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register

Vol. 68, No. 176

Thursday, September 11, 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 JUSTICE

Drug Enforcement Administration

21 CFR Part 1301

[Docket No. DEA-192P]

RIN 1117-AA56

Exemption From Import/Export Requirements for Personal Medical Use

AGENCY: Drug Enforcement Administration (DEA), Department of Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Controlled Substances Import and Export Act (CSI&EA) authorizes the Drug Enforcement Administration (DEA) to accommodate travelers who have a legitimate medical need for controlled substances during their journey. The CSI&EA allows DEA to issue a regulation exempting travelers from application of the CSI&EA requirements regarding importation and exportation of controlled substances. Such a regulation has existed since the CSI&EA came into effect in 1971. However, in recent years, Congress became aware that this regulation was being exploited by some individuals as a means of bringing controlled substances into the United States for illicit use. For this reason, Congress amended the CSI&EA in 1998 to place additional restrictions on the importation of controlled substances for personal use.

In this document, DEA is proposing to amend its regulations to expressly incorporate the restrictions on personal use importation imposed by Congress in 1998 and to expand upon those restrictions to curtail diversion that has continued even after the 1998 congressional amendment. Specifically, DEA is proposing to limit to 50 dosage units the total amount of controlled substances that a United States resident may bring into the United States for legitimate personal medical use when returning from travel abroad.

DATES: Comments must be postmarked by November 10, 2003.

ADDRESSES: Comments should be submitted to the Deputy Administrator, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative/CCR.

FOR FURTHER INFORMATION CONTACT: Patricia M. Good, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Telephone (202) 307-7297.

SUPPLEMENTARY INFORMATION:

What Does This Rule Accomplish and by What Authority Is It Being Issued?

Background

The CSI&EA (21 U.S.C. 951 *et seq.*) prohibits the importation of controlled substances into the United States, and the exportation of controlled substances from the United States, except as authorized by the Act. 21 U.S.C. 952, 953, 957, 960. In general, only persons who are registered with DEA to import or export controlled substances may do so. *Id.* In addition, depending on the schedule of the controlled substance being imported or exported, the CSI&EA requires the appropriate permit, notification, or declaration, as specified in the DEA regulations. *Id.*; 21 CFR 1312.11-1312.30. These requirements are necessary and appropriate to ensure that international shipments of controlled substances are limited to that which is necessary to meet the medical, scientific, and other legitimate needs of the country of destination and to prevent diversion of dangerous drugs into illicit channels. In addition, these requirements are necessary to meet United States obligations to control drugs of abuse in accordance with international treaties to which the United States is a party, including the Single Convention on Narcotic Drugs, 1961 (Single Convention), and the Convention on Psychotropic Substances, 1971 (Psychotropic Convention).

The CSI&EA makes a limited allowance, however, for travelers entering and departing the United States who have a legitimate medical need for controlled substances during their journey. As set forth in 21 U.S.C. 956,

the Administrator of DEA¹ may, by regulation, exempt an individual traveler from application of the CSI&EA requirements regarding importation and exportation of controlled substances where such traveler possesses a controlled substance (except a substance in Schedule I) for the traveler's personal medical use, provided the controlled substance was obtained lawfully and the traveler makes the appropriate declaration or notification to the United States Customs Service, as specified in the DEA regulation. Such regulation has been in place since the CSI&EA was enacted in 1970. The regulation currently appears in 21 CFR 1301.26.

The allowance for personal use importation and exportation is consistent with United States treaty obligations. Article 4(a) of the Psychotropic Convention states: "In respect of psychotropic substances other than those in Schedule I, the Parties may permit * * * the carrying by international travellers of small quantities of preparations for personal use; each Party shall be entitled, however, to satisfy itself that these preparations have been lawfully obtained."

The Official Commentary to the Psychotropic Convention explains the purpose and meaning of article 4(a): "Paragraph (a) applies only to small quantities needed for personal use, *i.e.*, to such quantities as the traveller may require during his journey or voyage and until he is able to provide himself with the medicine in question in the country of destination."

It bears emphasis that 21 U.S.C. 956 does not require DEA to permit any minimum amount of controlled substances to be imported or exported for personal medical use. Rather, consistent with article 4(a) of the Psychotropic Convention, Congress gave DEA permissive authority to issue a regulation allowing personal use importation/exportation under such conditions as DEA finds are necessary to prevent diversion of controlled substances into illicit channels and which are consistent with Congressional intent.

Another critical factor is that transporting controlled substances across international borders entails a

¹ The Attorney General has delegated to the Administrator of DEA functions vested in the Attorney General by the CSA. 28 CFR 0.100.

heightened risk of diversion. Because of this inherent risk of diversion, United States drug control laws and international drug control treaties have, for most of the past century, placed paramount focus on international shipments of drugs of abuse. For example, the CSI&EA has, in general, always prohibited the commercial importation into the United States of controlled substances manufactured abroad, except where domestic production is inadequate to supply the legitimate medical, scientific, research, and industrial needs of the United States. In this manner, drug control authorities in the United States can maintain oversight over the handling of controlled substances from the point of manufacture to the point of dispensing to the ultimate user. Such complete oversight is essential to preventing diversion of controlled substances. This is precisely why Congress made the "closed" system of drug distribution the hallmark of the CSA.²

The allowance of importation and exportation of controlled substances for personal medical use (first established by Congress in 1970 and codified in 21 U.S.C. 956) was meant to strike a balance between the significant risk of diversion associated with the carrying of controlled substances across international borders and the desire to accommodate the legitimate medical needs of travelers during their actual travel between countries. Stated alternatively, the allowance was meant to accommodate those who have an unavoidable legitimate medical need to import (or export) controlled substances as a result of their travel. The allowance was *not* meant to encourage United States residents to travel abroad to obtain their controlled substances for use in this country. To encourage such obtaining of controlled substances abroad would be to diminish the closed system of drug distribution intended by Congress under the CSA.

Why Congress Amended the Law in 1998

In 1998, Congress became concerned that 21 U.S.C. 956 and the DEA regulation implementing this provision were being misused by individuals—particularly United States residents—whose true intent was to divert controlled substances obtained abroad

for illicit use in the United States (rather than to import controlled substances for legitimate personal medical use). Due to this concern, Congress amended 21 U.S.C. 956 to limit to 50 dosage units the amount of a controlled substance that a United States resident may bring into the country through an international land border for personal medical use without a prescription. This amendment was contained in a bill entitled the "Controlled Substances Trafficking Prohibition Act" (Pub. L. 105-357), which was enacted November 10, 1998.

The sponsor of the bill in the House of Representatives, Representative Chabot of Ohio, explained the purpose of the amendment as follows:

This important initiative [the amendment to 21 U.S.C. 956] will close a loophole in Federal law that allows dangerous drugs, particularly drugs used in connection with date rape, to be legally imported into the United States.

Federal, State and local law enforcement agencies have raised serious concerns about the trafficking of controlled substances from Mexico. Right now uppers, downers, hallucinogens and date rape drugs similar to Rohypnol may be easily obtained from so-called health care providers or pharmacists in Mexico with no documentation of medical need whatsoever.

According to DEA, these drugs are frequently resold illegally in the United States. This situation is especially dangerous because these powerful drugs may be used in connection with date rapes. While Rohypnol, the most well-known date rape drug, has been banned in the U.S., it is still being used to rape young women, and many other dangerous controlled substances have taken its place. Jane Maxwell, director of the Texas Commission on Alcohol and Drug Abuse, says that this loophole continues to allow date rape drugs to cross the border.

For example, the drug Rivotril is everywhere, according to Maxwell, and is now being used by juveniles, just as Rohypnol has been used. A 1996 study documented the controlled substance drug trafficking problems along the U.S.-Mexico border. The study found that in just one year at the Laredo border crossing over 60,000 drug products were brought into the U.S. by more than 24,000 people. All of the top 15 drug products, which represented 94 percent of the total quantity of declared drugs, were controlled substances. These dangerous drugs, classified as prescription tranquilizers, stimulants and narcotic analgesics, are potentially addictive and subject to abuse. Specifically, Valium was declared by 70 percent of the people, with the average person bringing in 237 tablets. Rohypnol was brought in by 43 percent of those who declared their prescription medication. Over a full year that means that over 4 million doses of Valium and almost 1.5 million doses of Rohypnol were brought in at one single border crossing.

The median age for those who declared Valium and Rohypnol is 24 and 26 years old

respectively. The large quantity of dangerous drugs passing through a single border crossing underscores the seriousness of the problem. The quantity and types of pills discovered also back up DEA's view that these drugs are being used for illegal purposes.

While this problem is most notable in communities along the U.S.-Mexico border, it impacts communities well outside the Southwest. The study in Laredo found that residents from 39 States crossed the border and returned to the United States with a variety of drug products.

Around the country, prescription drug abuse is a growing problem, especially among our youth. The purity and low price of prescription drug pills makes them an attractive alternative to traditional street drugs. At a recent Subcommittee on Crime hearing on date rape drugs, experts testified that GHB, Rohypnol and other date rape drugs are rapidly becoming the drug of choice in various communities and among the different types of users, particularly among teenagers.

Mr. Speaker, this legislation will help close the loophole which allows these dangerous drugs into our communities.

144 Cong. Rec. H 6903-01, H6904 (August 3, 1998).

Will the Proposed Rule Eliminate Any of the Current Requirements for Personal Use Importation?

The proposed rule will expand upon, but not eliminate, the requirements currently in effect as a result of Congress's 1998 amendment to 21 U.S.C. 956. The current requirements are as follows:

Under 21 CFR 1301.26, any individual may enter or depart the U.S. with a controlled substance listed in Schedule II, III, IV, or V, which he/she has lawfully obtained for his/her personal medical use, or for administration to an animal accompanying him/her, provided that the following conditions are met:

(a) The controlled substance is in the original container in which it was dispensed to the individual; and

(b) The individual makes a declaration to an appropriate official of the U.S. Customs Service stating:

(1) That the controlled substance is possessed for his/her personal use, or for an animal accompanying him/her; and

(2) The trade or chemical name and the symbol designating the schedule of the controlled substance if it appears on the container label, or, if such name does not appear on the label, the name and address of the pharmacy or practitioner who dispensed the substance and the prescription number, if any; and

(c) The importation of the controlled substance for personal medical use is authorized or permitted under other Federal laws and state law.

² See House Report No. 91-1444, 1970 U.S.C.C.A.N. 4566-4572. "The [CSA] provides for control by the Justice Department of problems related to drug abuse through registration of manufacturers, wholesalers, retailers, and all others in the legitimate distribution chain, and makes transactions outside the legitimate distribution chain illegal." *Id.*

21 CFR 1301.26.

The 1998 amendments to the CSI&EA made by Congress added restrictions that are *in addition to* the foregoing requirements in the DEA regulations. These amendments are contained in 21 U.S.C. 956(a)(2). This subsection provides that, where a United States resident is returning to this country through a land border (*i.e.*, returning by land from Mexico or Canada), and such person seeks to bring into the country a controlled substance obtained abroad for personal medical use (not obtained pursuant to a prescription issued by a DEA registrant), such person may bring in no more than 50 dosage units of the controlled substance.

The rule proposed here would specify that the 50-dosage-unit limit mandated by Congress under 956(a)(2) applies to *the combined total of all controlled substances that the returning traveler seeks to import for personal medical use* (rather than up to 50 dosage units of each of a variety of controlled substances). [A dosage unit is considered by DEA to be the basic unit used to quantify the amount to be taken in normal usage (*i.e.*, tablet, capsule, milliliter, or teaspoon).] This limitation applies whether or not the controlled substances were obtained using a prescription issued by a DEA-registered practitioner.

The rule, as proposed here, would also be applied to all United States residents who return to the United States at any location and by any means (not just travelers returning to the United States through a land border with Canada or Mexico). The United States Customs Service has advised DEA that it would be beneficial to have the rule written in a manner that is applied uniformly at all United States border checkpoints.

Does the 50-Dosage-Unit Limit Mean That a Returning Traveler May Bring Into the United States Up to 50 Dosage Units of Controlled Substances “No Questions Asked”?

Many persons appear to be under the mistaken impression that Congress's 1998 amendment to 21 U.S.C. 956 was intended to allow United States residents to travel to Mexico or Canada, purchase controlled substances, then return to the United States with up to 50 dosage units “no questions asked.” It is DEA's intention, through this publication, to end any such misconceptions. In 1998 Congress placed a *limit* of 50 dosage units on the amount of a controlled substance that may be imported by United States residents entering from Mexico or

Canada; Congress did not eliminate any of the existing requirements established by DEA in its regulation governing personal use importation (21 CFR 1301.26). It remains true that *all persons who wish to import controlled substances for personal medical use may do so only for legitimate personal medical use and must satisfy all of the requirements in 21 CFR 1301.26*. The requirements found in § 1301.26 are necessary to ensure that the drugs possessed by the traveler will actually be used by the traveler for legitimate personal medical use; Congress had no intention of eliminating these appropriate safeguards against diversion.

In all instances, if there is evidence that the traveler is attempting to bring into the United States controlled substances (in any amount) for other than legitimate personal medical use, the importation does not comport with either the statute (21 U.S.C. 956) or the DEA regulation (21 CFR 1301.26) and must be disallowed. The Customs official should, of course, take into account all facts and circumstances of a particular case in determining whether the traveler is attempting to bring in controlled substances for legitimate personal medical use or attempting to do so in order to divert the drugs for illicit use. Though neither dispositive nor exhaustive, the following factors may, depending on the circumstances, be indicative of diversion: (i) The same traveler has made repeated attempts over a short period of time to import controlled substances for claimed personal medical use; (ii) the traveler is carrying a variety of different controlled substances that are either contraindicated or in a combination that is commonly used by drug abusers.

Does the 50-Dosage-Unit Limit Apply to Foreign Travelers?

By its express terms, Congress's 1998 amendment, which imposed the 50-dosage-unit limit, applies only to United States residents; it does *not* apply to foreign travelers entering the United States. Likewise, the DEA regulation proposed here will apply only to United States residents.

Having made this distinction, it must be emphasized that all travelers—United States residents or non-United States residents—may only import (or export) controlled substances for *legitimate personal medical use* and must comply fully with all of the current provisions of 21 CFR 1301.26.

How Does the Combined 50-Dosage-Unit Limit Contained in the Proposed Rule Comport With Congress's 1998 Amendment to the CSI&EA?

On its face, the 1998 amendment to the CSI&EA (contained in 21 U.S.C. 956(a)(2)) does not mandate that United States residents be allowed to bring into the United States 50 dosage units of each of a variety of controlled substances purchased abroad. Rather, 50 dosage units is the *maximum* amount of a controlled substance that DEA may permit, through regulation, to be imported for personal medical use without a prescription. As explained above, Congress in 1998 was responding to the exploitation of the personal use allowance by persons seeking to divert controlled substances. Congress recognized that DEA would continue to monitor the situation and, if necessary, modify its regulation to impose tighter controls. As Senator Leahy stated during consideration of the bill:

Such abuses have increased dramatically in recent years, and there is a need to address this problem now. [The 1998 amendment] does this by limiting the personal use exemption in certain circumstances to 50 dosage units. But this is only a stopgap measure. What constitutes “personal use” is a complicated issue that will turn on a number of circumstances, including the nature of the controlled substance and the medical needs of the individual. It is the sort of issue that should be addressed not through single-standard legislation but through measured regulations passed by an agency with the expertise in this matter. For this reason, * * * I [will] direct the Department of Justice to study the problems at our borders and to pass regulations that are more finely tuned to address those problems.

144 Cong. Rec. S 12680–04, 12681 (October 20, 1998).

Indeed, recently obtained information indicates that the misuse of the personal use importation allowance persists even after the 1998 amendment by Congress. Thus, revising the DEA regulations such that the 50-dosage-unit limit enacted by Congress applies to the combined total of all controlled substances in the traveler's possession is a necessary and appropriate step to further curtail the misuse of the personal use importation exception. DEA will continue to monitor the situation to determine whether future revisions to the regulation are needed to maintain adequate safeguards against diversion.

What Is the Meaning of “Lawfully Obtained” In the Context of Personal Use Importation?

Both the statute (21 U.S.C. 956) and the DEA regulation (21 CFR 1301.26) allow personal use importation only

where the controlled substances was "lawfully obtained" by the traveler abroad. In harmony with international drug control treaties, many countries, including Canada and Mexico, have laws that govern the prescribing and dispensing of controlled substances. For example, as is the case in the United States, Canadian law allows pharmacies to dispense controlled substances only pursuant to a prescription issued by a practitioner licensed to prescribe controlled substances in the province in which the controlled substance is dispensed.

The traveler seeking to import into the United States controlled substances obtained abroad for personal medical use may only do so if the controlled substances were dispensed in full compliance with the laws of the country in which they were obtained. It is the duty of the individual seeking to import a controlled substance for personal medical use pursuant to 21 U.S.C. 956(a) and DEA's regulation to know and comply with the laws of the jurisdiction in which the controlled substance was dispensed. Additionally, compliance with the CSI&EA and DEA's regulation does not excuse noncompliance with other Federal laws and state laws that may regulate the importation of controlled substances.

Regulatory Certifications

Regulatory Flexibility Act

The Administrator hereby certifies that this rulemaking has been drafted in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities. This proposed regulation affects only individual travelers and personal use quantities of controlled substances. Small businesses are subject to other DEA regulations for the importation and exportation of controlled substances, including registration, recordkeeping, reporting and security requirements. Businesses would not be using the personal use importation exemption to bring controlled substances into the United States. In fact, this rule could help small businesses as United States residents will purchase controlled substances from United States pharmacies rather than traveling outside the United States to make such purchases.

Executive Order 12866

The Administrator further certifies that this rulemaking has been drafted in accordance with the principles of Executive Order 12866, section 1(b).

This action has been determined to be a significant regulatory action. Therefore, this regulation has been reviewed by the Office of Management and Budget.

Executive Order 12988

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

Executive Order 13132

This rulemaking does not preempt or modify any provision of State law; nor does it impose enforcement responsibilities on any State; nor does it diminish the power of any State to enforce its own laws. Accordingly, this rulemaking does not have federalism implications warranting the application of Executive Order 13132.

Unfunded Mandates Reform Act of 1995

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

Small Business Regulatory Enforcement Fairness Act of 1996

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

List of Subjects in 21 CFR Part 1301

Administrative practice and procedure, Drug traffic control, Security measures.

For the reasons set out above, 21 CFR Part 1301 is proposed to be amended as follows:

PART 1301—[AMENDED]

1. The authority citation for 21 CFR Part 1301 is proposed to be amended to read as follows:

Authority: 21 U.S.C. 821, 822, 823, 824, 871(b), 875, 877, 951, 952, 953, 956, 957.

2. Section 1301.26 is proposed to be revised to read as follows:

§ 1301.26 Exemptions from import or export requirements for personal medical use.

Any individual who has in his/her possession a controlled substance listed in schedules II, III, IV, or V, which he/she has lawfully obtained for his/her personal medical use, or for administration to an animal accompanying him/her, may enter or depart the United States with such substance notwithstanding sections 1002–1005 of the Act (21 U.S.C. 952–955), provided the following conditions are met:

(a) The controlled substance is in the original container in which it was dispensed to the individual; and

(b) The individual makes a declaration to an appropriate official of the U.S. Customs Service stating:

(1) That the controlled substance is possessed for his/her personal use, or for an animal accompanying him/her; and

(2) The trade or chemical name and the symbol designating the schedule of the controlled substance if it appears on the container label, or, if such name does not appear on the label, the name and address of the pharmacy or practitioner who dispensed the substance and the prescription number.

(c) In addition to (and not in lieu of) the foregoing requirements of this section, a United States resident may import into the United States no more than 50 dosage units combined of all such controlled substances in the individual's possession.

Dated: September 4, 2003.

Karen P. Tandy,
Administrator.

[FR Doc. 03–23169 Filed 9–10–03; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 179

Munitions Response Site Prioritization Protocol

AGENCY: Department of Defense.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects the proposed rule published in the **Federal Register** on Friday, August 22, 2003 to correct typos and a Web address.

FOR FURTHER INFORMATION CONTACT: If there are specific questions, please contact Ms. Patricia Ferrebee, Office of the Deputy Under Secretary of Defense (Installations & Environment) (ODUSD(I&E)), 703–695–6107. This

proposed rule along with relevant background information is available on the World Wide Web at the Defense Environmental Network & Information eXchange Web site, <https://www.denix.osd.mil/MMRP>.

Correction

In the proposed rule, on page 50900 in the issue of August 22, 2003 (68 FR 50900), make the following correction in the Addresses section of the preamble. On page 50900 in the first column, correct the Web address in the second sentence of the **ADDRESSES** section to read: <https://www.denix.osd.mil/MMRP>.

In the proposed rule, on page 50926 in the issue of August 22, 2003, make the following correction in section XII.F. of the preamble. On page 50926 in the first column, correct the Web address in last sentence of section XII.F. to read: <https://www.denix.osd.mil/MMRP>.

§ 179.3 [Corrected]

In the proposed rule, on page 50930 in the issue of August 22, 2003, make the following correction in § 179.3. On page 50930 in the first column, correct the term Chemical Warfare Material in § 179.3 to read: Chemical Warfare Materiel.

Dated: September 2, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03-23136 Filed 9-10-03; 8:45 am]

BILLING CODE 5001-08-M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD07-03-032]

RIN 1625-AA08

Special Local Regulations; Child SMILE American Tour Fort Lauderdale Offshore Gran Prix, Fort Lauderdale Beach, FL

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to create temporary special local regulations for the Child SMILE American Tour Fort Lauderdale Offshore Gran Prix held offshore of Fort Lauderdale Beach, Florida. These special local regulations restrict the movement of non-participating vessels operating in the vicinity of the race course located off Fort Lauderdale Beach, Florida. This rule is needed to

provide for the safety of life on navigable waters during the event.

DATES: Comments and related material must reach the Coast Guard on or before September 26, 2003.

ADDRESSES: You may mail comments and related material to Coast Guard Group Miami, 100 MacArthur Causeway, Miami Beach, Florida 33139 attention of Chief D. Vaughn. Coast Guard Group Miami maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Coast Guard Group Miami between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: BMC D. Vaughn, Coast Guard Group Miami, Florida at (305) 535-4317.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD07-03-032), indicated the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

In order to allow the public the maximum time to comment on this proposed rule, we intend to make this proposed temporary final rule effective less than thirty days after it is published in the **Federal Register**. Due to the date of this event, we have reduced the public comment period to 15 days to allow us to process all public comments before deciding to publish a temporary final rule.

Public Meeting

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

Background and Purpose

North Star Lady Inc., doing business as Over the Edge Motorsport Marketing and the H20 Performance Marketing Group, is sponsoring a high-speed power boat race that will take place on October 3 and 4 of 2003, in the Atlantic Ocean off Fort Lauderdale Beach, Florida. The race organizers anticipate 70 participants and 50 spectator watercraft for this event. The event will take place outside of the marked channel and will not interfere with commercial shipping. Recreational vessels and fishing vessels normally operate in the waters being used for the event but will be able to safely operate around the regulated areas with minimal delay. This rule is required to provide for the safety of life on navigable waters because of the inherent danger associated with a power boat race.

Discussion of Proposed Rule

This proposed rule would create two regulated areas, a race course and a viewing area. The race course would encompass all waters located shoreward of a line connecting the following positions located offshore of Fort Lauderdale Beach, Florida:

Beginning with Point 1: 26 08.228' N-080 06.255' W, thence to
 Point 2: 26 08.231' N-080 05.936' W, thence to
 Point 3: 26 08.178' N-080 05.799' W, thence to
 Point 4: 26 08.055' N-080 05.752' W, thence to
 Point 5: 26 07.565' N-080 05.790' W, thence to
 Point 6: 26 07.022' N-080 05.827' W, thence to
 Point 7: 26 06.780' N-080 05.843' W, thence to
 Point 8: 26 06.671' N-080 05.869' W, thence to
 Point 9: 26 06.602' N-080 06.343' W, then back to the original point.

The viewing area would encompass all waters located within the following positions located offshore of Fort Lauderdale Beach, Florida:

Beginning with Corner point 1: 26 06.738' N-080 05.047' W, thence to
 Corner point 2: 26 06.738' N-080 05.125' W, thence to
 Corner point 3: 26 08.100' N-080 05.125' W, thence to
 Corner point 4: 26 08.100' N-080 05.047' W, then back to the original point.

All coordinates reference Datum NAD: 1983.

Non-participant vessels are prohibited from entering the race course unless authorized by the Coast Guard Patrol

Commander. Spectator craft may remain in the designated viewing area but must follow the directions of the Coast Guard Patrol Commander.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a) (3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. The event will take place outside of the marked channel and will not interfere with commercial shipping. Recreational vessels and fishing vessels normally operate in the waters being used for the event but will be able to safely operate around the regulated areas with minimal delay.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in a portion of the Atlantic Ocean near Fort Lauderdale Beach, Florida from 11 a.m. until 4 p.m. on October 3 and 4, 2003.

This proposed rule would not have a significant economic impact on a substantial number of small entities for the following reasons because this rule would only be in effect for 5 hours over the course of two days, the race will take place outside of the marked channel and will not interfere with commercial shipping, and recreational vessels will be able to safely transit around the regulated areas with minimal delay.

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise

have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under

figure 2-1, paragraph (34) (h), of the Instruction, from further environmental documentation.

Under figure 2-1, paragraph (34) (h), of the Instruction, an "Environmental Analysis Check List" and a "Categorical Exclusion Determination" are not required for this rule. Comments on this section will be considered before we make the final decision on whether to categorically exclude this rule from further environmental review.

List of Subjects in 33 CFR Part 100

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100, as follows:

PART 100—SAFETY OF LIVE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; Department of Homeland Security Delegation No. 0170.1.

2. Add temporary § 100.35–T07–032 to read as follows:

§ 100.35–T07–032 Child SMILE American Tour Fort Lauderdale Offshore Gran Prix, Fort Lauderdale Beach, Florida.

(a) *Regulated areas.* (1) *The race course* encompasses all waters located inside of a line connecting the following positions located offshore of Fort Lauderdale Beach, Florida: Beginning with Point 1: 26 08.228' N–080 06.255' W, thence to Point 2: 26 08.231' N–080 05.936' W, thence to Point 3: 26 08.178' N–080 05.799' W, thence to Point 4: 26 08.055' N–080 05.752' W, thence to Point 5: 26 07.565' N–080 05.790' W, thence to Point 6: 26 07.022' N–080 05.827' W, thence to Point 7: 26 06.780' N–080 05.843' W, thence to Point 8: 26 06.671' N–080 05.869' W, thence to Point 9: 26 06.602' N–080 06.343' W, then back to the original point.

All coordinates referenced use Datum: NAD 1983.

(2) *The viewing area* encompasses all waters located within the following positions located offshore of Fort Lauderdale Beach, Florida:

Beginning with Corner point 1: 26 06.738' N–080 05.047' W, thence to Corner point 2: 26 06.738' N–080 05.125' W, thence to Corner point 3: 26 08.100' N–080 05.125' W, thence to Corner point 4: 26 08.100' N–080 05.047' W, then back to the original point.

All coordinates reference Datum NAD: 1983.

(b) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by Commanding Officer, Coast Guard Group Miami, Florida.

(c) *Special local regulations.* From 11 a.m. until 4 p.m. on October 3 and 4, 2003, non-participant vessels are prohibited from entering the race-course unless authorized by the Coast Guard Patrol Commander. Spectator craft may remain in the designated viewing area but must follow the directions of the Coast Guard Patrol Commander.

(d) *Effective dates.* This rule is effective from 11 a.m. on October 3, 2003 until 4 p.m. on October 4, 2003.

Dated: August 25, 2003.

H.E. Johnson, Jr.,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 03–23186 Filed 9–10–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 385 and 390

[Docket No. FMCSA–97–2180; formerly FHWA–97–2180]

RIN 2126–AA07

Federal Motor Carrier Safety Regulations: Hazardous Materials Safety Permits; Correction

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Proposed Rule; correction.

SUMMARY: This document corrects the CFR text to a proposed rule published in the **Federal Register** on August 19, 2003, regarding Hazardous Materials Safety Permits. The CFR text includes multiple incorrect cross-references to § 385.403(a) and a single incorrect cross-reference to § 385.405(e). This action corrects these errors.

FOR FURTHER INFORMATION CONTACT: Mr. James Simmons, (202) 493–0496.

Correction

In proposed rule FR Doc. 03–49737, beginning on page 49737 in the issue of August 19, 2003, make the following corrections, in the CFR text. On page 49752 in the first column, in § 385.401, in the ninth paragraph, under the *Safety permit* definition, on line 5, remove “§ 385.403(a)” and add, in its place, “§ 385.403.”

On page 49752 in the third column, in § 385.407, paragraph (b)(2), on line 4, remove “§ 385.403(a)” and add, in its place, “§ 385.403.”

On page 49753 in the first column, in § 385.415, paragraph (a), on line 5, paragraph (c)(1), on line 4, and paragraph (c)(2), on line 7, remove “§ 385.403(a)” and add, in its place, “§ 385.403.”

On page 49753 in the third column, in § 385.417, on line 4, remove “§ 385.403(a)” and add, in its place, “§ 385.403.”

On page 49754 in the first column, in § 385.421, paragraph (a)(2), on line 6, remove “§ 385.405(e)” and add, in its place, “§ 385.405(d).”

On page 49754 in the first column, in § 385.421, paragraphs (a)(5) and (a)(7), on line 9, remove “§ 385.403(a)” and add, in its place, “§ 385.403.”

On page 49755 in the third column, in § 390.3, paragraph (g)(1), on line 3, and paragraph (g)(4), on line 4, remove “§ 385.403(a)” and add, in its place, “§ 385.403.”

Dated: September 3, 2003.

Annette M. Sandberg,
Administrator.

[FR Doc. 03–23187 Filed 9–10–03; 8:45 am]

BILLING CODE 4910–EX–P

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

Center for Nutrition Policy and Promotion; Notice of Availability of Proposed Food Guide Pyramid Daily Food Intake Patterns and Technical Support Data and Announcement of Public Comment Period

AGENCY: Center for Nutrition Policy and Promotion, USDA.

ACTION: Notice.

SUMMARY: The Food Guide Pyramid is based on current science, which continues to increase our knowledge about healthy eating. In keeping with this, USDA has initiated a broad-based review and update of the Pyramid's food patterns based on current nutritional standards, to serve as a framework that can help consumers assess and improve their diets. The USDA Center for Nutrition Policy and Promotion (CNPP) solicits written comments on proposed revisions to the daily food intake patterns that serve as the technical basis for the Food Guide Pyramid. The proposed daily food intake patterns and technical support data are available electronically and in hard copy; for availability, refer to Section I of the **SUPPLEMENTARY INFORMATION** below.

DATES: Written comments on the proposed daily food intake patterns and technical support documents can be submitted and must be received by the Agency on or before October 27, 2003. Please provide technical data, citations, or other information to substantiate your comments, if needed.

ADDRESSES: Submit written comments to Food Guide Pyramid Reassessment Team, USDA Center for Nutrition Policy and Promotion, 3101 Park Center Drive, Room 1034, Alexandria, VA 22302.

SUPPLEMENTARY INFORMATION:

I. Obtaining Copies of the Proposed Daily Food Intake Patterns and Technical Support Data

The proposed daily food intake patterns and technical support data can be downloaded from the Internet in .PDF file format at www.cnpp.usda.gov/pyramid-update. Hard copies of the information are available for review at the Reference section of the National Agricultural Library located at 10301 Baltimore Avenue, Beltsville, MD, 20705. The telephone number is (301) 504-5755. Additional background information on the Food Guide Pyramid is also available on the Internet at www.cnpp.usda.gov/pyramid-update and at the National Agricultural Library. This additional information includes a bibliography of prior technical publications.

II. Context for the Revision Process and Relationship to the Dietary Guidelines

CNPP is requesting comments on the proposed daily food intake patterns and the supporting technical data for the Food Guide Pyramid. CNPP is asking for comments on the adequacy, methodology, and use of the data. The Food Guide Pyramid is an educational tool that interprets and helps Americans implement the Dietary Guidelines for Americans. The process for updating the Pyramid is being coordinated with the upcoming review and potential revision of the Guidelines. Proposed food intake patterns and a summary of comments received in response to this notice will be presented to and discussed with the 2005 Dietary Guidelines Advisory Committee before the patterns are finalized, to seek Committee input into the process and outcomes. After these technical documents have been finalized, revisions to the graphic presentation of the Pyramid and consumer materials will proceed. CNPP anticipates that proposed revisions to the graphic presentation will also be posted for public comment at a later time.

III. Background on the Food Guide Pyramid

The Food Guide Pyramid is based on the latest scientific standards for healthful eating. USDA has provided food guidance to the American public for over 100 years, and the Food Guide Pyramid is the current graphic representation of this guidance. The

Pyramid is a food-based dietary guidance tool to help Americans make daily food choices that are *adequate* in meeting nutritional standards but *moderate* in energy level and in food components often consumed in excess. What is "adequate" and "moderate" is determined by recommendations from established authoritative bodies, expert panels such as the Dietary Guidelines Advisory Committee and the National Academy of Sciences' Institute of Medicine (IOM) Dietary Reference Intake committees.

The Pyramid itself is a graphic representation of science-based daily food intake patterns. These daily food intake patterns form the foundation for both the graphic presentation of the Pyramid and for consumer messages about what and how much to eat. This notice announces the availability of proposed updates to these food intake patterns, which identify amounts to consume from each food group and subgroup at a variety of energy levels. These patterns have been developed to meet current nutritional standards for adequacy and moderation, and they will form the basis for the development of the graphic presentation as well as consumer messages and materials. CNPP is not seeking comments on the graphic presentation of the Pyramid at this time. Development of the consumer presentation and public comment on it will occur at a later time.

The Pyramid was originally released in 1992. It was designed to demonstrate food intake patterns that were both *adequate* and *moderate*. The goal of designing "total diet" recommendations differed from previous food guides that were concerned with adequacy only and were presented as "foundation diets" to which other foods could be added. The adequacy and moderation of the Pyramid's original food patterns were assessed by comparing nutrients in these patterns to nutritional goals determined from the IOM Recommended Dietary Allowances (RDA), the Dietary Guidelines for Americans, and other widely accepted standards that were current at the time.

Another goal for the original food intake patterns was that they would be based on foods commonly consumed by Americans, as determined from national food consumption surveys, to make the recommendations realistic and practical. Thus, food groups and

subgroups were established based on nutritional similarities among foods, similar uses of the foods in meals, and consumer perceptions of the foods as similar. The food intake patterns, then, included the types of foods Americans most commonly eat, grouped in familiar ways, but with the amounts from each food group and subgroup modified to represent healthful proportions. To determine these proportions, nutrient profiles were calculated for each food group and subgroup by using a weighted average of the nutrients supplied by the foods in that group, with weights based on nationwide consumption of the food items. The nutrient profiles were used to determine the amount that the Pyramid should include from each group or subgroup in order to meet the nutritional goals at various calorie levels. Nutrient profiles were calculated by using forms of each food in the group with the lowest fat content and without added sugars. Additional fat and added sugars for each food intake pattern were calculated and listed separately from the food groups, in amounts to meet energy and nutrient goals for the pattern. This permitted individuals to select some foods containing additional fats or sugars, such as whole milk, sweetened cereals, or cookies, or to use the additional fats and sugars in food preparation.

When the Food Guide Pyramid was released in 1992, its accompanying consumer booklet focused on three food intake patterns, at 1600, 2200, and 2800 calories, to illustrate diets spanning the range of numbers of servings recommended. These three patterns covered average energy needs of many age/gender groups as suggested by the 1989 RDA. Adjustments to those patterns were suggested for young children, who require fewer calories, and for teens and young adults for whom higher amounts of calcium were recommended. Technical reports on development of the Pyramid described analyses of food intake patterns at additional calorie levels, ranging from 1200 to 3200 calories. (See bibliography of technical publications at www.cnpp.usda.gov/pyramid-update.)

Proposed revisions to the daily food intake patterns are based on the same philosophical goals that were used in developing the original Pyramid—including the goals to represent a total diet that is both *adequate* and *moderate*, as well as to reflect current food consumption choices in determining nutrient sources. The data sources for the revision were the most current versions available at the time the analysis was conducted. They include the IOM Dietary Reference Intakes

released between 1997 and 2002 and the *2000 Dietary Guidelines for Americans*, for setting nutritional goals, and the USDA Continuing Survey of Food Intakes by Individuals 1994–96, for food consumption information. CNPP is presently analyzing data from the 1999–2000 National Health and Nutritional Examination Survey, released in August 2002 by the Department of Health and Human Services, to corroborate the adequacy of the proposed food intake patterns.

IV. Daily Food Intake Patterns

Daily Food Intake Patterns identify the types and variety of foods suggested for Americans to eat for health, and the general proportions in which these foods should be eaten. Individuals with higher energy needs would eat more from all food groups than would those with lower energy needs. Therefore, the daily intakes are presented as food patterns at a number of energy levels. These are provided in Table 1. Each pattern identifies specific amounts of foods from each food group and subgroup for an individual whose needs match that energy level. To ensure that foods of this variety and proportion will meet nutrient needs, the total nutrients from all foods in each food intake pattern are compared with specific nutrient goals.

The nutrient goals for the proposed Daily Food Intake Patterns shown in Table 1 were set to meet new nutritional standards, including the year 2000 *Dietary Guidelines for Americans* and the IOM Dietary Reference Intakes for vitamins, minerals, and macronutrients released between 1997 and 2002. The specific targeted energy levels and nutritional goals for each proposed food pattern, using these current reference standards, are provided in Table 2 and Table 3. The specific goals for each food pattern were set to meet the nutritional needs of the age and gender group(s) whose average energy needs approximately matched the energy level of the pattern.

With the prevalence of overweight and obesity rising, and with a predominantly sedentary population, it is of utmost importance to select suggested energy levels for each age/gender group that will not overestimate needs. Therefore, the decision was made to create food patterns for each age/gender group appropriate for several levels of physical activity. The pattern for each group at the lowest energy level, appropriate for sedentary individuals, was used as the target pattern to compare with the nutrient goals for that age/gender group. Both target patterns used for comparison with

nutritional goals and suggested patterns for more physically active individuals are provided in Table 2. The food patterns at the higher energy levels will also meet nutrient goals, and will provide more food for an active individual's energy needs.

To determine if each food intake pattern meets its nutrient goals, CNPP calculated the overall nutrient content of each pattern. For these calculations, nutrient profiles for each food group were revised based on the most recent data available on food consumption patterns of Americans. Nutrient profiles are weighted averages of the nutrient content of foods in each food group or subgroup. Weights are based on consumption by Americans of various foods in the group. Nutrient profiles for a reference amount (e.g., ½ cup or 1 ounce) of each food group and subgroup are provided in Table 4. Based on these nutrient profiles and the proposed daily intakes from each food group and subgroup, the total nutrients in each pattern were determined and compared to the nutritional goals set for that pattern. The nutrients in each pattern and comparison with goals are provided in Table 5.

The following Tables are available for review and comment at www.cnpp.usda.gov/pyramid-update:

1. *Proposed Daily Food Intake Patterns*. This document lists the daily amounts of food from each group and subgroup in proposed food patterns at multiple energy levels.

2. *Energy Levels for Proposed Food Intake Patterns*. This document lists the target and suggested energy levels for the food intake patterns (shown in Table 1) for various age/gender groups, based on Estimated Energy Requirements set by the IOM. Target patterns are designed for sedentary individuals of reference body size within various age/gender groups and are used in determining the nutrient adequacy of each pattern. Higher suggested food pattern energy levels are also presented for individuals in each age/gender group who are “low active” or “active” according to the IOM definitions.

3. *Nutritional Goals for Proposed Daily Food Intake Patterns*. This document lists the nutritional goals for each proposed food intake pattern. These goals include targets for vitamins, minerals, and macronutrients and acceptable intake ranges for macronutrients for various age/gender groups. Goals were set based on Dietary Reference Intakes reports for various vitamins, minerals, and macronutrients that have been released by the IOM from 1997 to 2002; on quantitative recommendations in the year 2000

Dietary Guidelines; for sodium and cholesterol on Daily Values set by the Food and Drug Administration (FDA) for use on food labels; and for potassium on the estimated minimum requirement from the 1989 RDAs.

4. *Nutrient Profiles of Food Guide Pyramid Food Groups and Subgroups.* These profiles identify the nutritional composition of foods in each group or subgroup, weighted by their average consumption by Americans. Nutrient profiles are also included for additional solid fats, oils and soft margarines, and for added sugars. Consumption data for food groups were calculated from the 1994–96 USDA Continuing Survey of Food Intakes by Individuals. The nutrient profiles are used in determining whether the nutritional goals for each Pyramid food pattern are met.

5. *Nutrients in Proposed Food Intake Patterns.* This table identifies the overall nutrient composition for each proposed food pattern and how this nutrient composition compares to the nutritional goals set for that pattern. First, the total amount of each nutrient in the pattern is calculated by using the nutrient profile for each food group or subgroup (Table 4) multiplied by the amount to be consumed from that group (Table 1). Then, the total amount of each nutrient is compared to the nutritional goal for that nutrient reported in Table 3. The result of that comparison is shown in Table 5 as a percent of the nutrient goal or as a percent of calories.

V. Topics of Particular Interest to CNPP for Comments

Comments are welcomed on all aspects of the proposed Daily Food Intake Patterns and the accompanying technical support data tables. CNPP has particular interest in receiving comments from the public on the following issues and questions:

1. Appropriateness of using *sedentary, reference-sized individuals* in assigning target calorie levels (Table 2) for assessing the nutritional adequacy and moderation of each food intake pattern.

Reference heights and weights are set in Dietary Reference Intakes reports. Reference heights are the median heights for each age/gender group. Reference weights are weights that should approximate “ideal” weights based on low risk of chronic disease and adequate growth for children. For most adults, the reference weight used in these calculations represents a weight that is less than their actual weight. Use of average weights would increase the estimated energy requirements, and their use could promote consumption of food at a level that would increase

weight or maintain weight above what is healthy.

The calorie levels for food patterns used in comparing intakes with nutritional goals are those that are appropriate, on average, for sedentary individuals in each age/gender group. Use of these calorie levels does not require the assumption that a person needs to be active in order to meet nutrient needs. Given the sedentary lifestyles of many Americans, it was considered better not to assume any specific level of physical activity. However, CNPP does plan to encourage physical activity in Food Guide Pyramid materials designed for consumers.

2. Appropriateness of the *selection of nutritional goals* for the daily food intake patterns. The nutritional goals and their sources are identified in Table 3. For most nutrients, the *adequacy goal* is based on the RDA or Adequate Intake set by the IOM in recent Dietary Reference Intake reports. RDAs rather than Estimated Average Requirements, also set by the IOM, were used as the criteria for the nutritional goals because the food intake patterns are designed for use by individuals rather than for planning group intakes. The goal for each pattern is to have an intake at the RDA or Adequate Intake level or higher, but less than the Upper Limit of intake for that nutrient. In light of the inherent limitations of the data used to set the RDA and to create nutrient profiles, small deviations below the target of 100% RDA were considered acceptable. Because of the way nutrients are distributed in foods, levels of some nutrients in the food patterns (protein and vitamins C and A, for example) will likely exceed recommended quantities, while the pattern provides just the recommended quantities of other nutrients (folate and zinc, for example). Amounts of a nutrient in excess of the RDA or Adequate Intake were considered acceptable as long as they did not exceed the Upper Limits for that nutrient. For potassium, no recent Dietary Reference Intake report was available, so the 1989 minimum requirement was used.

For *moderation goals*, the standards used were the Acceptable Macronutrient Distribution Ranges (AMDR) from the IOM macronutrients report, quantitative recommendations from the 2000 Dietary Guidelines, or Daily Values set by FDA for use on Nutrition Facts Labels. In the case of the AMDRs, the goals were for nutrient levels to be within the range specified. An intake goal for trans fats was not set because no quantified standard is provided in the Dietary Reference Intakes or the Dietary Guidelines. In addition, data on the

current amount of trans fats in many food items are not available. CNPP does plan to provide information about limiting consumption of trans fats in materials designed for consumers.

Nutritional goal for total fiber: For total fiber, the IOM set Adequate Intake (AI) levels for each age/gender group based on the median caloric intake for that group. Since the food intake patterns are planned to meet nutrient needs at lower calorie levels—for sedentary, reference-sized individuals—the AIs were not considered to be appropriate goals. Therefore, the nutritional goal for total fiber is 14 grams total fiber per 1000 calories, the value used by the IOM as the basis for setting AI levels. In addition, the AI for fiber is set for “total” fiber rather than the “dietary” fiber that is available in food composition tables. The IOM report suggests that the amount of total fiber in an average diet, about 2000 calories, may be approximately 5.1 grams more than the amount of dietary fiber. Therefore, to convert the dietary fiber amounts from food composition data to estimates of total fiber, 2.5 grams were added to the calculated amount of dietary fiber for each 1000 calories in the food intake pattern.

Nutritional goal for vitamin E: The RDA for vitamin E in the 2000 IOM report increased substantially over the 1989 RDA. Typical intakes of vitamin E, as measured in food consumption surveys, are far less than the new RDA. Meeting the new RDA, especially at lower calorie intakes, would require substantial changes from typical intakes and would require the use of foods not commonly consumed. This is not consistent with the philosophical goal of being realistic and practical. While not reaching the RDA, vitamin E levels in the revised food intake patterns are higher than current consumption and are also higher than in the original food intake patterns. The major sources of vitamin E in American diets are fats and oils (20%) and vegetables (15%). Sunflower and safflower oils are especially rich in vitamin E, but the majority of vitamin E from fats and oils in American diets comes from soybean oil, which is much more widely consumed. The proposed daily food intake patterns include higher levels of dark green vegetables, legumes, and oils and soft margarines (replacing some solid fats) than the original Pyramid. Specifying the use of nuts and seeds to meet the vitamin E RDA was not considered to be feasible, since they contribute only 4% of the total vitamin E in American diets. In addition, peanuts or peanut butter, which together represent about 80% of all nut

consumption, are not especially rich sources of vitamin E.

Nutritional goal for added sugars: The amounts of added sugars listed for each food intake pattern represent the amounts that can be included in each pattern without overconsuming calories. In the Dietary Reference Intakes macronutrients report, a suggestion was made to limit added sugars to less than 25% of calories as a maximal level. This is well above the amounts of added sugars in the proposed food patterns, which range from about 6% of calories at intakes of 1600 calories or less to 13% of calories at an intake of 3,200 calories. The amounts in each proposed pattern are set to balance energy intake with needs, given (1) that selections are made from all food groups in accordance with the suggested amounts, and (2) that additional fats are used in the amounts shown, which together with the fats in the core food groups represent about 30% of calories from fat.

3. Appropriateness of the proposed *food intake patterns for educating Americans* about healthful eating patterns.

Are the proposed patterns reasonable intakes to expect for the various age/gender groups? Are the proposed intakes of some food groups or subgroups feasible? While the proportions of food items in each food group or subgroup are based on typical food choices, amounts suggested to be eaten from the group are altered to be nutritionally appropriate—for example, the amounts of whole grains, dark-green vegetables, legumes, and fruits suggested are higher than current intakes. Amounts of whole grains, dark-green vegetables, and legumes are also higher than in the original Pyramid food patterns at similar calorie levels. “Additional fats” are provided in each proposed pattern to allow choice of some added fat in food preparation or higher fat options within each food group. These “additional fats” have been separated into solid fats (more saturated) and oils and soft margarines (more unsaturated). Suggested intakes of solid fats are lower than the proportion now eaten and suggested intakes of oils and soft margarines higher than the proportion now eaten, to encourage substitution of solid fats with oils and soft margarines. Will professionals be able to use these proposed new patterns to help educate Americans about healthful eating patterns? Will individuals or families be able to use these patterns in making food choices?

4. Appropriateness of using “cups” and “ounces” vs. “servings” in consumer materials to suggest daily amounts to choose from each food group

and subgroup. The proposed patterns in Table 1 show both quantity and servings information—they are not inconsistent. However, use of both in consumer materials would be confusing. CNPP would like to receive comments on this issue prior to the development of consumer materials.

There are advantages and disadvantages of each method of representing the amounts suggested for each food group. Using the term “serving” to mean a standardized amount of food is widely misunderstood by consumers; many believe that the portion of a food they choose, whatever the size, is “one serving.” This may lead to misinterpretation that the Pyramid encourages too much food. In addition, it is often difficult to harmonize Pyramid serving sizes with those used by FDA on Nutrition Facts labels. The serving sizes used on labels are not necessarily equivalent within a food group in terms of calories or nutrients, while Pyramid serving sizes within a group must be approximately equivalent in both calories and nutrients. In addition, for some products the serving size listed on Nutrition Facts labels may vary from 50 to 200% of the FDA-determined standard.

However, listing a single quantity, such as “2 cups” or “5 ounces” as a suggested daily intake for a food group may suggest that choosing a variety of foods within the group is not important. Also, identifying a single quantity measure appropriate for foods in the grains group may be difficult. Can consumers understand, for example, that 2 slices of bread are equivalent to 1 cup of grains? In addition, some consumers may not be familiar with total quantity or weight terms. We recognize that with either system, information about equivalents is needed and would have to be provided to consumers. Equivalents within each group will be needed to explain, for example, that 1½ ounces of cheese equals 1 cup of milk, or that 1½ ounces of cheese equals 1 *serving* of milk.

5. *Selection of appropriate illustrative food patterns* for various consumer materials. The original Food Guide Pyramid provided food intake patterns at three calorie levels: 1600, 2200, and 2800 calories. The proposed food intake patterns are provided at twelve calorie levels, to offer more specific guidance and help identify appropriate food intake levels to maintain or improve weight status. CNPP would like to receive comments on the selection of smaller subsets of these food patterns for various uses prior to the development of consumer materials.

For development of consumer materials, what criteria should be used to select a smaller number of illustrative food intake patterns? Which subset(s) of patterns would be most useful for various audiences? Different groups of food intake patterns could be selected for specific target audiences, such as adolescents or older Americans. Alternatively, a common group of food intake patterns could be selected based on a determination of the most common overall estimated calorie needs for the population, by using estimates of actual activity levels.

VI. Public Disclosure and Availability of Comments

All comments submitted in response to this notice will be included in the record and will be made available to the public. Please be advised that the substance of the comments and the identities of the individuals or entities submitting the comments will be subject to public disclosure. CNPP plans to make the comments publicly available by posting a copy of all comments on the CNPP Web site at www.cnpp.usda.gov/pyramid-update.

Dated: August 29, 2003.

Eric J. Hentges,

Executive Director, Center for Nutrition Policy and Promotion.

[FR Doc. 03-22763 Filed 9-10-03; 8:45 am]

BILLING CODE 3410-30-P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 03-041-1]

Secretary's Advisory Committee on Foreign Animal and Poultry Diseases

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of reestablishment.

SUMMARY: We are giving notice that the Secretary of Agriculture has reestablished the Secretary's Advisory Committee on Foreign Animal and Poultry Diseases for a 2-year period. The Secretary of Agriculture has determined that the Committee is necessary and in the public interest.

FOR FURTHER INFORMATION CONTACT: Dr. Joe Anelli, Director, Emergency Programs, Veterinary Services, APHIS, 4700 River Road Unit 41, Riverdale, MD 20737-1231; (301) 734-8073.

SUPPLEMENTARY INFORMATION: The purpose of the Secretary's Advisory Committee on Foreign Animal and Poultry Diseases is to advise the

Secretary of Agriculture regarding program operations and measures to suppress, control, or eradicate an outbreak of foot-and-mouth disease, or other destructive foreign animal or poultry diseases, in the event these diseases should enter the United States. The Committee also advises the Secretary of Agriculture of means to prevent these diseases.

Done in Washington, DC, this 4th day of September, 2003.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03-23126 Filed 9-10-03; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 03-028-1]

National Wildlife Services Advisory Committee; Notice of Renewal

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of renewal.

SUMMARY: We are giving notice that the Secretary of Agriculture has renewed the National Wildlife Services Advisory Committee for a 2-year period. The Secretary has determined that the Committee is necessary and in the public interest.

FOR FURTHER INFORMATION CONTACT: Ms. Joanne Garrett, Director, Operational Support Staff, WS, APHIS, 4700 River Road Unit 87, Riverdale, MD 20737-1234; (301) 734-5149.

SUPPLEMENTARY INFORMATION: The purpose of the National Wildlife Services Advisory Committee (the Committee) is to advise the Secretary of Agriculture on policies, program issues, and research needed to conduct the Wildlife Services program. The Committee also serves as a public forum enabling those affected by the Wildlife Services program to have a voice in the program's policies.

Done in Washington, DC, this 3rd day of September 2003 .

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03-23127 Filed 9-10-03; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Resource Advisory Committee Meeting

AGENCY: North Central Idaho Resource Advisory Committee, Kamiah, Idaho, USDA, Forest Service.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Public Law 92-463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106-393) the Nez Perce and Clearwater National Forests' North Central Idaho Resource Advisory Committee will meet Thursday, October 2, 2003 in Kooskia, Idaho for a business meeting. The meeting is open to the public.

SUPPLEMENTARY INFORMATION: The business meeting on October 2, begins at 10 a.m. (pst), at the Clearwater National Forest, Supervisor's Office, 12730 Highway 12, Orofino, Idaho. Agenda topics will include discussion of potential projects. A public forum will begin at 2:30 p.m. (pst).

FOR FURTHER INFORMATION CONTACT. Ihor Mereszczak, Staff Officer and Designated Federal Officer, at (208) 935-2513.

Dated: September 4, 2003.

Ihor Mereszczak,

Acting Forest Supervisor.

[FR Doc. 03-23195 Filed 9-10-03; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Notice of Funding Availability and Invitation To Apply for Agriculture Innovation Center Demonstration Program Grants

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Business-Cooperative Service (RBS or Agency) provides notice of the availability of \$10,000,000 in fiscal year (FY) 2003 funds (NOFA) to fund the establishment of agriculture innovation centers that are to provide assistance to agriculture producers in the development of value-added businesses. This NOFA lists the information needed to submit an application for these grants.

DATES: The deadline for receipt of an application is 4 p.m. eastern time on September 16, 2003.

ADDRESSES: Hand-delivered applications or applications submitted using an express mail or overnight courier service should be sent to: Marc Warman, USDA Rural Business-Cooperative Service, 1400 Independence Ave., SW., Room 4016, Washington, DC 20250; Telephone: (202) 720-8460. Applications sent via the U.S. Postal Service must be sent to: Marc Warman, USDA Rural Business-Cooperative Service, STOP 3252, 1400 Independence Ave., SW., Washington, DC 20250-3252. Applications sent via email attachment must be sent to: marc.warman@usda.gov. Please note that due to recent security concerns, packages sent to the Agency have suffered significant delays. Entities wishing to apply for assistance should contact Marc Warman to receive further information and copies of the application package.

FOR FURTHER INFORMATION CONTACT: Jim Haskell, Acting Deputy Administrator, Rural Business-Cooperative Service, USDA, Stop 3250, Room 4016, 1400 Independence Ave., SW., Washington, DC 20250-3250, telephone: (202) 720-8460, or email: james.haskell@usda.gov.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The Agency published a notice requesting comments on the collection requirements contained in this NOFA concurrent with the publication of the related proposed rule on June 13, 2003 (68 FR 35321). No comments were received on the paperwork burden. OMB granted a standard approval of the paperwork burden under control number 0570-0045 for this program.

Background

Section 6402 of the Farm Security and Rural Investment Act of 2002 (Pub. L. 107-171) (2002 Farm Bill) authorizes the Secretary of Agriculture to establish up to 10 agriculture innovation demonstration centers (Agriculture Innovation Centers or AICs) in Fiscal Year 2003. The purpose of these centers is to foster the ability of agricultural producers to reap the benefits of producing and marketing value-added products.

Relationship between this NOFA and the earlier published Advance RFP Recognizing that the time requirements for publishing the final rule were very tight, the Agency published a notice on August 1, 2003 (Advance RFP) outlining all of the requirements for applying for FY 2003 grants that were then known. While the Advance RFP anticipated the publication of a final rule implementing the AIC grant program before the end of

FY 2003, we now recognize that it is not likely that a final rule will be published in time to obligate FY 2003 funds under terms and conditions established in a final rule. Accordingly, we are publishing this NOFA now in order to be able to implement this program before the end of FY 2003.

The Advance RFP advised the public that in order to fund AIC grants for FY 2003 there would be an extremely short deadline for the submission of applications. In the Advance RFP interested parties were offered the opportunity of receiving notice of the timing for submission of applications via electronic mail. All parties who requested such electronic notification are receiving an electronic version of this notice.

The policies and procedures incorporated in this NOFA are the same as those outlined in the Advance RFP published on August 1, 2003; the only differences that pertain to this NOFA are that the deadline is firmly established for the receipt of applications and the paperwork burden associated with this program has been approved by OMB.

In the event the RBS is not able to timely obligate FY 2003 funds, applications received will be held for consideration for FY 2004 funding if and when funding is available and after a Final Rule is published. Applicants will then be allowed to revise their applications if the requirements of the Final Rule are different from the policies and procedures outlined for FY 2003 in this NOFA.

Restrictions on Awards

1. RBS will not award more than ten grants for FY 2003.
2. RBS will not make a grant to more than one entity in any one State.
3. A grant award may not exceed the lesser of \$1,000,000 or twice the dollar amount (in cash or in kind) of the resources committed to the Center's operations apart from the program grant funds.

Application

Applicants must file an original and one copy of the required forms and a proposal.

(1) *Required forms.* The following forms must be completed, signed and submitted as part of the application package.

(a) "Application for Federal Assistance."

(b) "Budget Information/Non-Construction Programs."

(c) "Assurances/Non-Construction Programs."

(2) *Proposal.* Each proposal must contain the following elements.

(a) Title Page.

(b) Table of Contents.

(c) Executive Summary. A summary of the proposal should briefly describe the project including goals, tasks to be completed and other relevant information that provides a general overview of the project and the amount requested.

(d) Eligibility. A detailed discussion describing how the applicant meets the eligibility requirements.

(e) Proposal Narrative. The narrative portion of the proposal must include, but is not limited to, the following:

(i) Project Title. The title of the proposed project must be brief, not to exceed 75 characters, yet describe the essentials of the project.

(ii) Information Sheet. A separate one page information sheet listing each of the evaluation criteria followed by the page numbers of all relevant material and documentation contained in the proposal that address or support the criteria.

(iii) Goals of the Project. The first part of this section should list each Provider Service to be offered by the Center. The second part of this section should list one or more specific goals relating to increasing and improving the ability of identified local agricultural producers to develop a market or process for value-added agricultural commodities or products.

(iv) Work Plan. Actions that must be taken in order for the Provider Services to be available from the Center. Each action listed should include a target date by which it will be completed. General start up tasks should be listed, followed by specific tasks listed for each Provider Service to be offered, as well as tasks associated with the start of operations. The tasks associated with the start of operations should include a focused marketing and delivery plan directed to the local agricultural producers that were identified in paragraph (2)(e)(iii) above. The actions to be taken should include steps for identifying customers, acquiring personnel and contracting for services to the Center, including arrangements for strategic alliances.

(v) Performance Evaluation Criteria. Performance criteria suggested by the applicant for incorporation in the grant award in the event the proposal receives grant funding under this subpart. These suggested criteria are not binding on USDA.

(vi) Agricultural Community Support. Evidence of support from the local agricultural community should be included in this section. Letters in

support should reflect that the writer is familiar with the provisions of the Plan for the Center, including the stated goals. Evidence of support can take the form of making employees available to the Center, service as a board member and other in-kind contributions.

(vii) Strategic Coordination and Alliances. Describe arrangements in place or planned with end users (processing and distribution companies and regional grocers) as well as arrangements with entities having technical research capabilities, broad support from the agricultural community in the state or region, significant coordination with end users (processing and distribution companies and regional grocers), strategic alliances with entities having technical research capabilities and a focused delivery plan for reaching out to the producer community. (viii) Capacity. Evidence of the ability of the grantee(s) to successfully establish and operate a Center. A description of the grantee's track record in providing services similar to those listed for Producer Services or evidence that the entity has the capability to provide Producer Services. Resumes of key personnel should be included in this section. Past successes should be described in detail, with a focus on lessons learned, best practices, familiarity with producer problems in value-added ventures, and how these barriers are best overcome should be elaborated on in this section. For every challenge identified, the applicant should demonstrate how they are addressed in the Work Plan (see paragraph (2)(e)(iv) above). All successes should include a monetary estimate of the value-added achieved.

(ix) Legal structure. Provide a description of the legal relationship between the grantee(s) and the proposed Center. If the Center is to be an independent corporate entity, provide copies of the corporate charter, bylaws and other relevant organizational documents. Describe how funds for the Center will be handled and include copies of the agreements documenting the legal relationships between the Center and related parties. If the Center is not to be an independent legal entity, provide copies of the corporate governance documents that describe how members of the Board of Directors for the Center are to be determined.

(x) Evaluation Criteria. Each of the evaluation criteria referenced below must be specifically and individually addressed in narrative form. Supporting documentation, as applicable, should be included in this section, or a cross reference to other sections in the

application should be provided, as applicable.

(xi) **Verification of Adequate Resources.** Present a budget to support the work plan showing sources and uses of funds (1) during the start up period prior to the start of operations and (2) for the first year of full operations. Present a copy of a bank statement evidencing sources of funds equal to amounts required in excess of the grant requested, or, in the alternative, a copy of confirmed funding commitments from credible sources such that USDA is satisfied that the Center has adequate resources to complete a full year of operation. Include information sufficient to facilitate verification by USDA of all representations.

(xii) **Certification of Adequate Resources** Applicants must certify that non-Federal funds identified in the budget pursuant to paragraph (2)(e)(xi) of this section will be available and funded commensurately with grant funds.

Evaluation Criteria and Weights

Each of the following seven evaluation criteria may be awarded up to five (5) points.

(1) **Ability to Deliver.** The application will be evaluated as to whether it evidences unique abilities to deliver Producer Services so as to create sustainable value-added ventures. Abilities that are transferable to a wide range of agricultural value-added commodities are preferred over highly specialized skills. Strong skills must be accompanied by a credible and thoughtful plan.

(2) **Successful Track Record.** The applicant's track record in achieving value-added successes.

(3) **Work Plan/Budget.** The work plan will be reviewed for detailed actions and an accompanying timetable for implementing the proposal. Clear, logical, realistic and efficient plans will result in a higher score. Budgets will be reviewed for completeness and the strength of non Federal funding commitments.

(4) **Qualifications of personnel.** Proposals will be reviewed for whether the key personnel who are to be responsible for performing the proposed tasks have the necessary qualifications and whether they have a track record of performing activities similar to those being proposed. If a consultant or others are to be hired, points may be awarded for consultants only if the proposal includes evidence of their availability and commitment as well. Proposals using in-house employees with strong track records in innovative activities

will receive higher points relative to proposals that out-source expertise.

(5) **Local support.** Proposed Centers must show local support and coordination with other developmental organizations in the proposed service area and with state and local institutions. Support documentation should include recognition of rural values that balance employment opportunities with environmental stewardship and other rural amenities. Proposed Centers that show strong support from potential beneficiaries and coordination with other developmental organizations will receive more points than those not evidencing such support.

(6) **Future support.** Applicants that can demonstrate financial independence in future years will receive more points for this criterion. Points will be awarded only where future funding sources are documented by letters of commitment.

(7) **Performance Criteria.** Criteria suggested by the applicant in the proposal narrative that are ambitious, relevant and quantifiable and reflect serious consideration and seriousness of purpose will score more points than superficial performance criteria that reflect little or no challenge or that do not incorporate variables that reflect value-added results.

In the event of a tied score between two or more applications, the scores for the first individual criterion will be compared, and the highest score for that individual criterion will break the tie. If the scores for the first criterion are tied, the scores for the second criterion will be compared, and so on.

Form of Submission

Applicants are encouraged, but not required, to submit applications and reports in electronic form. A complete, original application may be electronically sent as an e-mail attachment to marc.warman@usda.gov. If applications are submitted electronically, a signature page must be submitted via facsimile to the attention of Marc Warman at (202) 720-4641 or in hard copy to Marc Warman at the address provided at the beginning of this Notice. Alternatively, an original application package plus one paper copy may be submitted to the address provided at the beginning of this Notice.

Evaluation Screening

The Agency will conduct an initial screening of all proposals to determine whether the applicant is eligible and whether the application is complete and sufficiently responsive to the requirements set forth in this Notice to allow for an informed review. Failure to address any of the required evaluation

criteria will disqualify the proposal. Submissions which do not pass the initial screening may be returned to the Applicant. If the submission deadline has not expired and time permits, returned applications may be revised and re-submitted.

Evaluation Process

(1) Applications will be evaluated by agricultural economists or other technical experts appointed by the Agency.

(2) After all proposals have been evaluated and scored, Agency officials will present to the Administrator a list of all applications in rank order, together with funding level recommendations.

(3) The Administrator has not elected to reserve the right to award additional points for this round of competition; the applications will be funded in rank order until all available funds have been obligated.

Related Policies and Procedures Applicable to AIC Grants

Definitions

Agency—Rural Business-Cooperative Service (RBS), an agency of the United States Department of Agriculture (USDA), or a successor agency.

Agriculture Producer Group—An organization that represents Independent Producers, whose mission includes working on behalf of Independent Producers and the majority of whose membership and board of directors is comprised of Independent Producers.

Agricultural Product—Plant and animal products and their by-products to include forestry products, fish and seafood products.

Board of Directors—The group of individuals that govern the Center.

Center—The Agriculture Innovation Center to be established and operated by the grantees. It may or may not be an independent legal entity, but it must be independently governed in accordance with the requirements of this subpart.

Cooperative—A user-owned and controlled business from which benefits are derived and distributed equitably on the basis of use.

Cooperative Services—The office within RBS, and its successor organization, that administers programs authorized by the Cooperative Marketing Act of 1926 (7 U.S.C. 451 *et seq.*) and such other programs so identified in USDA regulations.

Economic development—The economic growth of an area as evidenced by increase in total income, employment opportunities, decreased

out-migration of population, value of production, increased diversification of industry, higher labor force participation rates, increased duration of employment, higher wage levels, or gains in other measurements of economic activity, such as land values.

Fixed equipment—Tangible personal property used in trade or business that would ordinarily be subject to depreciation under the Internal Revenue Code, including processing equipment, but not including property for equipping and furnishing offices such as computers, office equipment, desks or file cabinets.

Independent Producers—Agricultural producers, to include individuals, for profit and not for profit corporations, LLCs, partnerships or LLPs, solely owned or controlled by producers who do not produce the agricultural product under contract or joint ownership with any other organization. An independent producer can also be a steering committee composed of independent agricultural producers in the process of organizing an association to operate a value-added venture that will be owned and controlled by the independent producers supplying agricultural product to the market.

National Office—USDA RBS headquarters in Washington, D.C.

Nonprofit institution—Any organization or institution, including an accredited institution of higher education, no part of the net earnings of which may inure, to the benefit of any private shareholder or individual.

Producer Services—are those services to be provided by the Centers to agricultural producers. Producer services consist of the following types of services:

(1) Technical assistance, consisting of engineering services, applied research, scale production, and similar services, to enable the agricultural producers to establish businesses to produce value-added agricultural commodities or products;

(2) Assistance in marketing, market development and business planning, including advisory services with respect to leveraging capital assets; and

(3) Organizational, outreach and development assistance to increase the viability, growth and sustainability of businesses that produce value-added agricultural commodities or products.

Product segregation—Physical separation of a product or commodity from similar products. Physical separation requires a barrier to prevent mixing with the similar product.

Public body—Any state, county, city, township, incorporated town or village, borough, authority, district, economic

development authority, or Indian tribe on federal or state reservations or other federally recognized Indian tribe in rural areas.

Qualified Board of Directors—A Board of Directors that includes representatives from each of the following groups: (1) The two general agricultural organizations with the greatest number of members in the State in which the Center is located, (2) the State department of agriculture, or equivalent, of the State in which the Center is located and (3) entities representing the four highest grossing commodities produced in the State in which the Center is located, as determined on the basis of annual gross cash sales.

Rural and rural area—includes all the territory of a state that is not within the outer boundary of any city or town having a population of 50,000 or more and the urbanized area contiguous and adjacent to such city or town, as defined by the U.S. Bureau of the Census using the latest decennial census of the United States.

Rural Development—A mission area within the USDA consisting of the Office of Under Secretary for Rural Development, Office of Community Development, Rural Business-Cooperative Service, Rural Housing Service and Rural Utilities Service and their successors.

State—includes each of the several States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and, as may be determined by the Secretary to be feasible, appropriate and lawful, the Freely Associated States and the Federated States of Micronesia.

State Office—USDA Rural Development offices located in each state.

Value-Added—The incremental value that is realized by the producer from an agricultural commodity or product as the result of (1) a change in its physical state, (2) differentiated production or marketing, as demonstrated in a business plan, or (3) Product segregation. Also, the economic benefit realized from the production of farm or ranch-based renewable energy. Incremental value may be realized by the producer as a result of either an increase in value to buyers or the expansion of the overall market for the product. Examples include milling wheat into flour, slaughtering livestock or poultry, making strawberries into jam, the marketing of organic products, an identity-preserved marketing system, and collecting and converting methane from animal waste to generate energy.

Identity-preserved marketing systems include labeling that identifies how the product was produced and by whom.

Eligibility for Grant Assistance

Non-profit and for-profit corporations, institutions of higher learning and other entities, including a consortium where a lead entity has been designated and agrees to act as funding agent, that meet the following requirements are eligible for grant assistance:

(1) The entity—
(a) has provided services similar to those listed for Producer Services; or
(b) demonstrates the capability of providing Producer Services;

(2) The application includes a plan that meets the requirements of paragraph (2)(e)(iv) in the application requirements above, that also outlines—

(a) the support for the entity in the agricultural community;

(b) the technical and other expertise of the entity; and

(c) the goals of the entity for increasing and improving the ability of local agricultural producers to develop markets and processes for value-added agricultural commodities or products;

(3) The entity demonstrates that adequate resources (in cash or in kind) are available, or have been committed to be made available to the entity, to increase and improve the ability of local agricultural producers to develop markets and processes for value-added agricultural commodities or products;

(4) The proposed Center has a Qualified Board of Directors; and

(5) There is no recorded outstanding judgment obtained against the applicant by the United States in a Federal Court (other than in the United States Tax Court), that has not been paid in full or otherwise satisfied.

Use of Grant Funds

Grant funds may be used to assist eligible recipients in establishing Centers that provide Producer Services and may only be used to support operations of the Center that directly relate to providing Producer Services. Grant funds may be used for the following purposes:

(1) Consulting services for legal, accounting and technical services to be used by the grantee in establishing and operating a Center;

(2) Hiring of employees, at the discretion of the Qualified Board of Directors;

(3) The making of matching grants to agricultural producers, individually not to exceed \$5,000, where the aggregate amount of all such matching grants made by the grantee does not exceed \$50,000;

- (4) Applied research; and
- (5) Legal services.

Limitations on Use of Grant Funds

Grant funds may not be used to:

(1) Duplicate current services or replace or substitute support previously provided. If the current service is inadequate, however, grant funds may be used to expand the level of effort or services beyond what is currently being provided;

(2) Pay costs of preparing the application package for funding under this program;

(3) Pay costs of the project incurred prior to the date of grant approval;

(4) Fund political activities;

(5) Pay for assistance to any private business enterprise which does not have at least 51 percent ownership by those who are either citizens of the United States or reside in the United States after being legally admitted for permanent residence;

(6) Pay any judgment or debt owed to the United States;

(7) Plan, repair, rehabilitate, acquire, or construct a building or facility (including a processing facility);

(8) Purchase, rent or install Fixed Equipment; or

(9) Pay for the repair of privately owned vehicles.

Grant Approval and Obligation of Funds

The following statement will be entered in the comment section of the Request for Obligation of Funds, which must be signed by the grantee:

"The grantee certifies that it is in compliance with and will continue to comply with all applicable laws, regulations, Executive Orders and other generally applicable requirements, including those contained in 7 CFR part 4284 and 7 CFR parts 3015, 3016, 3017, 3018, 3019 and 3052 in effect on the date of grant approval, and the approved Letter of Conditions."

Grant Disbursement

The Agency will determine, based on 7 CFR parts 3015, 3016 and 3019, as applicable, whether disbursement of a grant will be by advance or reimbursement. The Agency may limit the frequency in which a Request for Advance or Reimbursement may be submitted.

Grant Closing

(1) *Letter of Conditions.* The Agency will notify an approved applicant in writing, setting out the conditions under which the grant will be made.

(2) *Applicant's intent to meet conditions.* Upon reviewing the conditions and requirements in the

letter of conditions, the applicant must complete, sign and return the Agency's "Letter of Intent to Meet Conditions," or, if certain conditions cannot be met, the applicant may propose alternate conditions to the Agency. The Agency must concur with any changes proposed to the letter of conditions by the applicant before the application will be further processed.

(3) *Grant agreement.* The Agency and the grantee must enter into an "Agriculture Innovation Center Grant Agreement" prior to the advance of funds.

Award Requirements

All approved applicants will be required to do the following:

(1) Use "Request for Advance or Reimbursement" to request advances or reimbursements, as applicable, but not more frequently than once a month;

(2) Maintain a financial management system that is acceptable to the Agency; and

(3) Collect and maintain data on race, sex and national origin of the beneficiaries of the project.

Reporting Requirements

Grantees must submit the following to USDA:

(1) A "Financial Status Report" listing expenditures according to agreed upon budget categories, on a semi-annual basis. Reporting periods end each March 31 and September 30. Reports are due 30 days after the reporting period ends.

(2) Semi-annual performance reports that compare accomplishments to the objectives stated in the proposal. All tasks completed to date must be specifically identified and documentation provided to support the reported results. If the original schedule provided in the work plan is not being met, the report should discuss the problems or delays that may affect completion of the project. Objectives for the next reporting period should be listed. Compliance with any special condition on the use of award funds should be discussed. Reports are due as provided in paragraph (1). The supporting documentation for completed tasks include, but are not limited to, feasibility studies, marketing plans, business plans, articles of incorporation and bylaws and an accounting of how working capital funds were spent.

(3) Final project performance reports, inclusive of supporting documentation. The final performance report is due within 30 days of the completion of the project.

Confidentiality of Reports

All reports submitted to the Agency will be held in confidence to the extent permitted by law.

Grant Servicing

Grants will be serviced in accordance with 7 CFR part 1951, subparts E and O. Grantees will permit periodic inspection of the program operations by a representative of the Agency. All non-confidential information resulting from the Grantee's activities shall be made available to the general public on an equal basis.

Performance

USDA may elect to suspend or terminate a grant in all or part, or funding of a particular work plan activity, but nevertheless fund the remainder of a request for advance or reimbursement, as applicable, where USDA has determined:

(1) that the grantee or subrecipient of grant funds has demonstrated insufficient progress in complying with the terms of the grant agreement;

(2) there is reason to believe that other sources of joint funding have not been or will not be forthcoming on a timely basis; or

(3) such other cause as USDA identifies in writing to the grantee (including but not limited to the use of federal grant funds for ineligible purposes).

Other Considerations

(1) *Environmental review.*

All grants made under this subpart are subject to the requirements of 7 CFR part 1940, subpart G or its successor. Applications for technical assistance or planning projects are generally excluded from the environmental review process by 7 CFR 1940.333, provided the assistance is not related to the development of a specific site. Applicants for grant funds must consider and document within their plans the important environmental factors within the planning area and the potential environmental impacts of the plan on the planning area, as well as the alternative planning strategies that were reviewed.

(2) *Civil rights.* All grants made under this subpart are subject to the requirements of title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color and national origin as outlined in 7 CFR part 1901, subpart E. In addition, the grants made under this subpart are subject to the requirements of section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the basis of disability;

the requirements of the Age Discrimination Act of 1975, which prohibits discrimination on the basis of age; and title III of the Americans with Disabilities Act, which prohibits discrimination on the basis of disability by private entities in places of public accommodations. This program will also be administered in accordance with all other applicable Civil Rights Law.

(3) *Other USDA regulations.* The grant programs under this part are subject to the provisions of the following regulations, as applicable:

(a) 7 CFR part 3015, Uniform Federal Assistance Regulations;

(b) 7 CFR part 3016, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments;

(c) 7 CFR part 3017, Governmentwide Debarment and Suspension (nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants);

(d) 7 CFR part 3018, New Restrictions on Lobbying;

(e) 7 CFR part 3019, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-profit Organizations; and

(f) 7 CFR part 3052, Audits of States, Local Governments and Non-profit Organizations.

Member Delegate Clause

No member of Congress shall be admitted to any share or part of a grant program or any benefit that may arise there from, but this provision shall not be construed to bar as a contractor under a grant a publicly held corporation whose ownership might include a member of Congress.

Audit Requirements

Grantees must comply with the audit requirements of 7 CFR part 3052. The audit requirements apply to the years in which grant funds are received and years in which work is accomplished using grant funds.

Programmatic Changes

The Grantee shall obtain prior approval for any change to the scope or objectives of the approved project. Failure to obtain prior approval of changes to the scope of work or budget may result in suspension, termination and recovery of grant funds.

Dated: September 5, 2003.

Gilbert Gonzalez,

Acting Under Secretary, Rural Development.
[FR Doc. 03-23135 Filed 9-10-03; 8:45 am]

BILLING CODE 3410-XY-P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Action Affecting Export Privileges; Gunter Kohlke

In the Matter of: Gunter Kohlke currently incarcerated at: Allenwood Federal Corrections Institution, Inmate No. 10080-196, P.O. Box 1500, White Deer, Pennsylvania 17887; and with an address at: Im Dankholz 25, 79798 Jestetten, Germany.

Order Denying Export Privileges

On July 18, 2002, a U.S. District Court in the Eastern District of New York convicted Gunter Kohlke ("Kohlke") of violating section 38 of the Arms Export Control Act (22 U.S.C. 2778 (2000)) ("AECA"). Specifically, the Court found that Kohlke knowingly and willfully attempted to export items on the United States Munitions List, from the United States to Switzerland, without first obtaining the required approval from the Department of State.

Section 11(h) of the Export Administration Act of 1979, as amended (currently codified at 50 U.S.C. app. 2401-2420 (2000)) ("Act")¹ provides that at the discretion of the Secretary of Commerce,² no person convicted of violating any of a number of Federal criminal statutes including the AECA shall be eligible to apply for or use any export license issued pursuant to, or provided by, the Act or the Export Administration Regulations (currently codified at 15 CFR parts 730-774 (2003)) ("Regulations"), for a period of up to 10 years from the date of the conviction. In addition, any license issued pursuant to the Act in which such a person had any interest at the time of conviction may be revoked.

¹ From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, the last of which was issued on August 3, 2000 (3 C.F.R., 2000 Comp. 397 (2001)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701-1706 (1994 & Supp. V 1999)) (IEEPA). On November 13, 2000, the Act was reauthorized and it remained in effect through August 20, 2001. Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 7, 2003 (68 FR 47833 (August 11, 2003)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701-1706 (2000)).

² Pursuant to appropriate delegations of authority that are reflected in the Regulations, the Director, Office of Exporter Services, in consultation with the Director, Office of Export Enforcement, exercises the authority granted to the Secretary by section 11(h) of the Act.

Pursuant to sections 766.25 and 750.8(a) of the Regulations, upon notification that a person has been convicted of violating the AECA, the Director, Office of Exporter Services, in consultation with the Director, Office of Export Enforcement, shall determine whether to deny that person's export privileges for a period of up to 10 years from the date of conviction and shall also determine whether to revoke any license previously issued to such person.

Having received notice of Kohlke's conviction for violating the AECA, and after providing notice and an opportunity for Kohlke to make a written submission to the Bureau of Industry and Security before issuing an Order denying his export privileges, as provided in section 766.25 of the Regulations, and having received no submission from Kohlke, following consultations with the Director, Office of Export Enforcement, I have decided to deny Kohlke's export privilege for a period of 10 years from the date of his conviction. The 10-year period ends on July 18, 2012. I have also decided to revoke all licenses issued pursuant to the Act in which Kohlke had an interest at the time of his conviction.

Accordingly, it is hereby *Ordered*:

I. Until July 18, 2012, Gunter Kohlke, currently incarcerated at: Allenwood Federal Correctional Institution, Inmate No. 10080-196, P.O. Box 1500, White Deer, Pennsylvania 17887, and with an address at: Im Dankholz 25, 79798 Jestetten, Germany, ("the denied person") and, when acting in behalf of Kohlke, all of his successors or assigns, representatives, agents and employees, may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as "item") exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the EAR, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported

or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

II. No person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the denied person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by a person subject to this order of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby a person subject to this order acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from a person subject to this order of any item subject to the Regulations that has been exported from the United States;

D. Obtain from a person subject to this order in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by a person subject to this order, or service any item, of whatever origin, that is owned, possessed or controlled by a person subject to this order if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

III. After notice and opportunity for comment as provided in section 766.23 of the Regulations, any other person, firm, corporation, or business organization related to Gunter Kohlke by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this Order.

IV. This Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

V. This Order is effective immediately and shall remain in effect until July 18, 2012.

VI. In accordance with part 756 of the Regulations, Kohlke may file an appeal from this Order with the Under Secretary for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of part 756 of the Regulations.

VII. A copy of this Order shall be delivered to Kohlke. This Order shall be published in the **Federal Register**.

Dated: September 5, 2003.

Eileen M. Albanese,

Director, Office of Exporter Services.

[FR Doc. 03-23128 Filed 9-10-03; 8:45 am]

BILLING CODE 3510-DT-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-122-838]

Certain Softwood Lumber Products From Canada: Notice of Partial Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain softwood lumber products from Canada for the period *May 22, 2002, through April 30, 2003*. We are now rescinding this review with respect to 48 companies for which the requests for an administrative review have been withdrawn.

EFFECTIVE DATE: September 11, 2003.

FOR FURTHER INFORMATION CONTACT: Amber Musser or Constance Handley, at (202) 482-1777 or (202) 482-0631, respectively; AD/CVD Enforcement, Office 5, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On May 1, 2003, the Department published a notice of opportunity to request the first administrative review of this order. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 68 FR 23281 (May 1, 2003). On May 30, 2003, in accordance with 19 CFR 351.213(b), the Coalition for Fair Lumber Imports Executive Committee (the petitioner) requested a review of 192 producers/exporters of certain

softwood lumber products. Also, between the dates of May 7, 2003, and June 2, 2003, 338 Canadian producers requested a review on their own behalf or had a review of their company requested by a U.S. importer. Taking into consideration the overlap in the three aforementioned categories, the total number of companies currently under review is 422.

On July 1, 2003, the Department published a notice of initiation of this antidumping duty administrative review, covering the period May 22, 2002, through April 30, 2003. *See Initiation of Antidumping Administrative Review*, 68 FR 39059 (July 1, 2003). The initiation, and subsequent correction, covered 422 companies.¹

On July 18, 2003, the petitioner withdrew its review request for 63 companies. On August 4, 2003, the petitioner withdrew its request for two additional companies. Of these 65 companies, eight had either requested their own review or had a review of their company requested by a U.S. importer. Accordingly, the Department has not rescinded the review with respect to these eight companies.

In addition, two of the companies for which the petitioner withdrew its request for a review, Lakeland Mills Ltd. and The Pas Lumber Co. Ltd., are affiliated with Canfor Corporation. Two of the companies, Excel Forest Products and Produits Forestiers Temrex Usine St. Alphonse, Inc., are affiliated with Tembec Inc. Two of the companies, Fraser, Inc. and Norbord Industries, Inc., are affiliated with Nexfor Inc. One of the companies, Groupe Cedrico, is affiliated with Bois d'oeuvre Cedrico Inc. And, one of the companies, Max Meilleur & Fils Ltee, is affiliated with Cobodex, Inc.² Therefore, because Canfor Corporation, Tembec Inc., Nexfor Inc., Bois d'oeuvre Cedrico Inc., and Cobodex, Inc. made timely requests for review the Department has not rescinded the review with respect to their affiliates.

Finally, the Department has not rescinded the review with respect to Leggett Wood because it is an operating division and registered trade name for

¹ Buchanan Lumber, a distinct entity from Buchanan Lumber Sales Inc., was inadvertently omitted from the original initiation notice. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews, Requests for Revocation in Part and Deferral of Administrative Reviews*, 68 FR 44253 (July 29, 2003).

² See Kaye Scholer LLP's July 16, 2003, submission, Baker & Hostetler's July 16, 2003, submission, Howrey Simon Arnold & White's August 5, 2003, submission, and Wilmer, Cutler, & Pickering's August 20, 2003, submissions.

Leggett and Platt, which has also requested its own review.

Partial Rescission of Antidumping Duty Administrative Review

The remaining 48 companies, included in the petitioner's July 18, 2003, letter, for whom the review will be rescinded are as follows:

100 Mile Wood Products Ltd.
5 Star Forest Industries Ltd.
Alliance Forest Product-Couturier Inc.
Antrim Cedar Corp.
Boucher Brothers Lumber Ltd.
CanEx Lumber Ltd.
Capital Forest Products
Coulson Manufacturing Ltd.
Davron Forest Products Ltd.
Deniso Lebel Inc.
Drummond Lumber
Ernie Braumberger
Galloway Lumber Co, Ltd.
Green Lake Metis Wood Products Ltd.
Hansen Forest Products Ltd.
J.H. Huscroft Ltd.
J.S. Jones Timber Ltd.
Jean Riopel Inc.
Jeffery Hanson
Kalesnikoff Lumber Co, Ltd.
L & M Wood Products (1985) Ltd.
La Scierie Lachance Ltee.
Lacrete Sawmills Ltd.
Les Chantiers de Chibougamau Ltee
Linde Bros. Lumber Ltd.
Lytton Lumber Ltd.
Manning Diversified Forest Products Ltd.
Medicine Lodge Timber Products Ltd.
Moen Lumber
Mostowich Lumber Ltd.
North Star Pallets
Oyama Forest Products
Port Arthur Lumber & Planing Mill Ltd.
Portbois
Precision Lumber Products Inc.
Rocky Wood Preservers Ltd.
Scierie Gauthier Ltee
Scierie Laterriere Ltee
Scierie Norbois Inc.
Skeena Cellulose Inc.
Strachan Forest Products Ltd.
Tara Forest Products
Trans North Timber
Transco Mills Ltd.
Uniforet Inc.
Universal Reel & Recycling Inc.
Zavisha Sawmills Ltd.
Zelensky Brothers La Ronge Sawmill

Pursuant to 19 CFR 315.213(d)(1), we are rescinding the administrative review with respect to each of the above listed companies. The Department will issue appropriate assessment instructions to the U.S. Bureau of Customs and Border Protection within 15 days of publication of this notice.

This notice is issued and published in accordance with section 751 of the

Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: September 5, 2003.

Gary Taverman,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 03-23191 Filed 9-10-03; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration U.S. Department of Agriculture, ARS—Albany, CA; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Suite 4100W, U.S. Department of Commerce, Franklin Court Building, 1099 14th Street, NW., Washington, DC.

Docket Number: 03-034. *Applicant:* U.S. Department of Agriculture, ARS, Albany, CA 94710. *Instrument:* Laboratory Decanter Centrifuge, Type MDZ 003. *Manufacturer:* Limetic GmbH, Germany. *Intended Use:* See notice at 68 FR 42007, July 16, 2003.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* The foreign instrument provides a small continuous decanter centrifuge for fractionation of starch/protein slurries designed for laboratory experimentation. The National Institutes of Health advises in its memorandum of July 21, 2003 that (1) this capability is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 03-23193 Filed 9-10-03; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. in Suite 4100W, U.S. Department of Commerce, Franklin Court Building, 1099 14th Street, NW., Washington, DC.

Docket Number: 03-041. *Applicant:* University of Michigan, NERS, 2355 Bonisteel Boulevard, Ann Arbor, MI 48109. *Instrument:* (2) each CdZnTe Conplanar Grad Radiation Detectors. *Manufacturer:* Baltic Scientific Instruments, Latvia. *Intended Use:* The instruments are intended to be used to study gamma rays and to investigate high energy photons ranging from 10 keV to 100 MeV in energy to achieve the best possible energy resolution. Technology development will eventually be applied by the National Aeronautics and Space Administration for space exploration purposes such as soil analysis of the surface of Mars. *Application accepted by Commissioner of Customs:* August 5, 2003.

Docket Number: 03-042. *Applicant:* University of California, Lawrence Berkeley National Laboratory, 1 Cyclotron Road, Berkeley, CA 94720. *Instrument:* Electron Microscope, Model Tecnai G² 20 S-TWIN. *Manufacturer:* FEI Company, The Netherlands. *Intended Use:* The instrument is intended to be used to study and characterize inorganic nanocrystals with the research objective to identify new forms of nanocrystals and their synthetic routes for the advancement of various scientific applications such as use in solar cells. *Application accepted by Commissioner of Customs:* August 5, 2003.

Docket Number: 03-043. *Applicant:* University of Chicago, Department of Pediatrics, 5839 South Maryland Avenue, MC 5053, Chicago, IL 60637-1470. *Instrument:* Microscope

Accessories. Manufacturer: Luigs & Neumann GmbH, Germany. Intended Use: The accessories are intended to be used to study gonadotropin-releasing hormone (GnRH) neurons in brain slices of transgenic mice to determine the electrical activity required for GnRH secretory pulses, which are essential for pubertal development and reproduction. *Application accepted by Commissioner of Customs:* August 20, 2003.

Docket Number: 03-044. *Applicant:* University of California, Los Alamos National Laboratory, PO Box 1663, Los Alamos, NM 87545. *Instrument:* Electron Microscope, Model JEM-2010 and Accessories. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* The instrument is intended to be used to study monodisperse semiconductor nanocrystals such as CdSe, PbSe and ZnSe, as well as metal nanocrystals such as Co and AuCo. Thin films of nitrides and oxides of Gallium and Aluminum grown by epitaxial techniques will also be investigated. Experiments will be conducted to determine the size, morphology and structure to provide feedback to the crystal growers so that the correct chemistry is achieved in producing the desired nanocrystals and to provide data to the spectroscopists to model the light emission of the nanocrystals. *Application accepted by Commissioner of Customs:* August 20, 2003.

Docket Number: 03-045. *Applicant:* Indiana University School of Medicine, Department of Anatomy and Cell Biology, 635 Barnhill Drive, Room 5065, Indianapolis, IN 46202. *Instrument:* Electron Microscope, Model Tecnai G² 12 BioTWIN. *Manufacturer:* FEI Company, The Netherlands. *Intended Use:* The instrument is intended to be used for research in the evaluation of the cellular and subcellular alteration associated with the development of kidney stones, ischemic changes in the development of acute renal failure, ischemic changes in the brain, the mechanics associated with the infection of the cells by the HIV virus, the dynamic cellular and subcellular changes associated with the contraction of smooth muscle cells and the mechanism associated with the incorporation of cardiogenic stem cells into the damaged heart. *Application accepted by Commissioner of Customs:* August 20, 2003.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 03-23192 Filed 9-10-03; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

Villanova University; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5 P.M. in Suite 4100W, U.S. Department of Commerce, Franklin Court Building, 1099 14th Street, NW., Washington, DC.

Docket Number: 03-029. *Applicant:* Villanova University, Villanova, PA 19085. *Instrument:* Fast Flame Ionization Detector (FID), Model HFR 500. *Manufacturer:* Cambustion Ltd, United Kingdom. Intended Use: *See notice at 68 FR 42007, July 16, 2003.*

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* The foreign instrument provides: (1) A 10-90% response time of 1.0 ms, (2) linearity within $\pm 1\%$ to 50000 ppm C₃, (3) simultaneous dual channel capability and (4) reliable operation at temperatures to 800 °C. The Southwest Research Institute advised August 26, 2003 that (1) these capabilities are pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 03-23194 Filed 9-10-03; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

President's Export Council: Meeting

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of an open meeting.

SUMMARY: The President's Export Council (PEC) will hold a full Council meeting to discuss topics related to

export expansion. The meeting will include discussion of trade priorities and initiatives, the World Trade Organization, PEC subcommittee activity and proposed letters of recommendation. The PEC was established on December 20, 1973, and reconstituted May 4, 1979, to advise the President on matters relating to U.S. trade. It was most recently renewed by Executive Order 13225.

Date: October 1, 2003.

Time: 10 a.m. to 11:30 a.m.

Address: U.S. Capitol, Room SC-5, Washington, DC 20510. This program is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be submitted no later than September 17, 2003, to J. Marc Chittum, President's Export Council, Room 2015, Washington, DC 20230. Seating is limited and will be on a first come, first served basis.

FOR FURTHER INFORMATION CONTACT:

J. Marc Chittum, President's Export Council, Room 2015, Washington, DC 20230 (Phone: 202-482-1124).

Dated: September 8, 2003.

J. Marc Chittum,

Staff Director and Executive Secretary, President's Export Council.

[FR Doc. 03-23271 Filed 9-10-03; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF COMMERCE

International Trade Administration, North American Free Trade Agreement, Article 1904 NAFTA Panel Reviews; Notice of Panel Decision

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of panel decision.

SUMMARY: On September 5, 2003, the binational panel issued its decision in the review of the final results of the injury determination made by the International Trade Commission (ITC) respecting Certain Softwood Lumber Products from Canada (Secretariat File No. USA-CDA-2002-1904-07) affirmed in part and remanded in part the determination of the International Trade Commission. The Commission will return the determination on remand within 100 days of the decision or no later than December 15, 2003. A copy of the complete panel decision is available from the NAFTA Secretariat.

FOR FURTHER INFORMATION CONTACT:

Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite

2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482-5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from the other country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* ("Rules"). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686).

Panel Decision: On September 5, 2003, the Binational Panel affirmed in part and remanded in part the International Trade Commission's final injury determination. The following issues were remanded to the Commission:

(1) The Commission's threat of material injury determination is hereby remanded and on remand the Commission should consider, in its analysis of whether there is a threat of material injury to the domestic softwood lumber industry, all of the information and data that it considered in its present material injury determination.

In the course of its analysis, the Commission is also directed to:

(a) Consider in its threat analysis the potential negative effects on the existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of the domestic like product.

(b) Undertake an analysis to distinguish between the contribution to threat of injury caused by the dumped and subsidized imports and the contribution to threat caused by the domestic industry itself.

(c) Undertake an analysis to determine whether third country imports "may have such a predominant effect in producing the harm as to * * * prevent the [subject] imports from being a material factor" of threat of injury.

(d) Undertake an analysis to distinguish between the contribution to threat of injury caused by the dumped

and subsidized imports and the contribution to threat caused by engineered wood products.

(e) Undertake an analysis of the fact that there are constraints on domestic production of softwood lumber in order to distinguish between the contribution to threat of injury caused by the dumped and subsidized imports and the contribution to threat of injury caused by the fact that there are insufficient timber supplies in the United States; and

(f) Undertake an analysis to distinguish between the threat of injury caused by the dumped and subsidized imports and the potential contribution to threat caused by the cyclical nature of the softwood lumber industry.

(2) The Panel remands the Commission's holdings that square-end bed frame components and flangestock are part of the single domestic like product for the continuum of species that comprise softwood lumber and instructs the Commission on remand to consider, based on the existing record evidence, all six like product factors to determine whether square-end bed frame components and flangestock are part of a continuum of softwood lumber products defined as a single domestic like product.

(3) The Panel remands the Commission's decision to cross-cumulate in the context of a threat of material injury determination and instructs the Commission to reconsider its interpretation of the statute with respect to cross-cumulation in the context of a threat determination and, applying the fresh interpretation, reach an appropriate conclusion. In revisiting the questions of how to interpret and apply the statute, the Commission should consider the relevant arguments of the parties and should reach a reasoned conclusion.

The Commission was directed to report its Determination on Remand within one hundred (100) days from the date of this decision or not later than December 15, 2003.

Dated: September 5, 2003.

Caratina L. Alston,

United States Secretary, NAFTA Secretariat.
[FR Doc. 03-23111 Filed 9-10-03; 8:45 am]

BILLING CODE 3510-GT-P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

AGENCY: National Institute of Standards and Technology Commerce.

ACTION: Notice of Government owned invention available for licensing.

SUMMARY: The invention listed below is owned in whole by the U.S. Government, as represented by the Department of Commerce. The invention is available for non-exclusive U.S. licensing in accordance with 35 U.S.C. 207 and 37 CFR part 404 to achieve expeditious commercialization of results of federally funded research and development.

FOR FURTHER INFORMATION CONTACT: Technical and licensing information on this invention may be obtained by writing to: National Institute of Standards and Technology, Office of Technology Partnerships, Attn: Mary Clague, Building 820, Room 213, Gaithersburg, MD 20899. Information is also available via telephone: 301-975-4188, fax 301-869-2751, or e-mail: mary.clague@nist.gov. Any request for information should include the NIST Docket number and title for the invention as indicated below.

SUPPLEMENTARY INFORMATION: NIST may enter into a Cooperative Research and Development Agreement ("CRADA") with the licensee to perform further research on the invention for purposes of commercialization. The invention available for non-exclusive U.S. licensing is:

[Docket No.: 02-003US]

Title: Low Cost Refreshable Tactile Graphic Array, and Driving Options for Scanned Tactile Graphic Display.

Abstract: This invention provides apparatus and methods for extended, refreshable display of graphics, and particularly provides an extended refreshable tactile graphic array for scanned tactile displays that accommodates both a Braille matrix and a closely spaced matrix for graphics, that does not require the application of power to maintain the displayed image once the stimulus points, or pins, have been set, that can be operated using conventional electromechanical actuators each operatively associated with plural stimulus points, and that can be adapted for multi-level (relief) display.

Dated: September 5, 2003.

Arden L. Bement, Jr.,

Director.

[FR Doc. 03-23178 Filed 9-10-03; 8:45 am]

BILLING CODE 3510-13-P

DEPARTMENT OF COMMERCE**National Institute of Standards and Technology****Manufacturing Extension Partnership National Advisory Board**

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of partially closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the Manufacturing Extension Partnership National Advisory Board (MEPNAB), National Institute of Standards and Technology (NIST), will meet Thursday, September 25, 2003, from 8 a.m. to 3:30 p.m. The MEPNAB is composed of nine members appointed by the Director of NIST who were selected for their expertise in the area of industrial extension and their work on behalf of smaller manufacturers. The Board was established to fill a need for outside input on MEP. MEP is a unique program consisting of centers in all 50 states and Puerto Rico. The centers have been created by state, federal, and local partnerships. The Board works closely with MEP to provide input and advice on MEP's programs, plans, and policies. The purpose of this meeting is to update the board on the latest program developments at MEP including a MEP Metrics Update and a presentation on What Fuels China's Growth. Discussions scheduled to begin at 1 p.m. and to end at 3:30 p.m. on September 25, 2003, on MEP budget issues will be closed. All visitors to the National Institute of Standards and Technology site will have to pre-register to be admitted. Anyone wishing to attend this meeting must register 48 hours in advance in order to be admitted. Please submit your name, time of arrival, email address and phone number to Carolyn Peters no later than Tuesday, September 23, 2003, and she will provide you with instructions for admittance. Ms. Peter's email address is carolyn.peters@nist.gov and her phone number is 301/975-5607.

DATES: The meeting will convene September 25, 2003 at 8 a.m. and will adjourn at 3:30 p.m. on September 25, 2003.

ADDRESSES: The meeting will be held in the Employees' Lounge, Administration Building, at NIST, Gaithersburg, Maryland 20899. Please note admittance instructions under SUMMARY paragraph.

FOR FURTHER INFORMATION CONTACT: Carrie Hines, Manufacturing Extension

Partnership, National Institute of Standards and Technology, Gaithersburg, Maryland 20899-4800, telephone number (301) 975-3360.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on March 11, 2003, that portions of the meeting which involve discussion of proposed funding of the MEP may be closed in accordance with 5 U.S.C. 552b(c)(9)(B), because that portion will divulge matters the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency actions; and that portions of the meeting which involve discussion of the staffing of positions in MEP may be closed in accordance with 5 U.S.C. 552b(c)(6), because divulging information discussed in that portion of the meeting is likely to reveal information of a personal nature, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Dated: September 5, 2003.

Arden L. Bement, Jr.,

Director.

[FR Doc. 03-23177 Filed 9-10-03; 8:45 am]

BILLING CODE 3510-13-P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration**

[Docket No. 030905221-3221-01]

National Weather Service Modernization and Associated Restructuring; Final Certification of No Degradation of Service for the Combined Consolidation and/or Automation and Closure of Two Weather Service Offices

AGENCY: National Weather Service (NWS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice.

SUMMARY: On August 29, 2003, the Under Secretary of Commerce for Oceans and Atmosphere certified that closure of the Fort Smith, Arkansas, and Salem, Oregon, Weather Service Offices (WSO) will not cause a degradation in service to the affected service areas. On August 29, 2003, the Under Secretary of Commerce for Oceans and Atmosphere transmitted to Congress notice of approval of Consolidation and/or Automation and Closure certifications for WSOs Fort Smith, Arkansas; and Salem, Oregon. Public Law 102-567

requires final certifications be published in the **Federal Register**. This notice satisfies that requirement.

ADDRESSES: Requests for copies of the final certification packages should be sent to John Sokich, Room 11426, 1325 East-West Highway, Silver Spring, MD 20910-3283.

FOR FURTHER INFORMATION CONTACT: John Sokich (301) 713-0258.

Dated: September 5, 2003.

John E. Jones, Jr.,

Deputy Assistant Administrator.

[FR Doc. 03-23155 Filed 9-10-03; 8:45 am]

BILLING CODE 3510-KE-P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS**Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Sri Lanka**

September 5, 2003.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection adjusting limits.

EFFECTIVE DATE: September 11, 2003.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927-5850, or refer to the Bureau of Customs and Border Protection website at <http://www.customs.gov>. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at <http://www.otexa.ita.doc.gov>.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limit for Categories 334/634 is being decreased for the partial undoing of special shift from Category 335, increasing the limit for Category 335.

A description of the textile and apparel categories in terms of HTS numbers is available in the **CORRELATION:** Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 68 FR 1599,

published on January 13, 2003). Also see 67 FR 68576, published on November 12, 2002.

James C. Leonard III,
Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 5, 2003.

Commissioner,
Bureau of Customs and Border Protection,
Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 1, 2002, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Sri Lanka and exported during the twelve-month period which began on January 1, 2003 and extends through December 31, 2003.

Effective on September 11, 2003, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit ¹
334/634	1,434,459 dozen.
335	451,106 dozen.

¹ The limits have not been adjusted to account for any imports exported after December 31, 2002.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
James C. Leonard III,
Chairman, Committee for the Implementation of Textile Agreements.
[FR Doc. 03-23110 Filed 9-10-03; 8:45 a.m.]

BILLING CODE 3510-DR-S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Wool Textile Products Produced or Manufactured in Belarus

September 5, 2003.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection adjusting limits.

EFFECTIVE DATE: September 11, 2003.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and

Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927-5850, or refer to the Bureau of Customs and Border Protection website at <http://www.customs.gov>. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at <http://otexa.ita.doc.gov>.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limit for Category 448 is being increased for swing, reducing the limit for Category 435 to account for the swing being applied to Category 448.

A description of the textile and apparel categories in terms of HTS numbers is available in the **CORRELATION:** Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 68 FR 1599, published on January 13, 2003). Also see 68 FR 4181, published on January 28, 2003.

James C. Leonard III,
Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 5, 2003.

Commissioner,
Bureau of Customs and Border Protection,
Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on January 21, 2003, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain wool and man-made fiber textile products, produced or manufactured in Belarus and exported during the twelve-month period which began on January 1, 2003 and extends through December 31, 2003.

Effective on September 11, 2003, you are directed to adjust the limits for the following categories, as provided for under the agreement between the Governments of the United States and Belarus dated January 10, 2003:

Category	Twelve-month restraint limit ¹
435	65,435 dozen
448	35,700 dozen

¹ The limits have not been adjusted to account for any imports exported after December 31, 2002.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs

exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
James C. Leonard III,
Chairman, Committee for the Implementation of Textile Agreements.
[FR Doc. 03-23109 Filed 9-10-03; 8:45 am]

BILLING CODE 3510-DR-S

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Sunshine Act Notice

The Board of Directors of the Corporation for National and Community Service gives notice of the following meeting:

DATE AND TIME: Tuesday, September 23, 2003, 10 a.m.—12 p.m.

PLACE: Corporation for National and Community Service, 1201 New York Avenue, NW, 8th Floor, Room 8410, Washington, DC 20525.

STATUS: Open.

MATTERS TO BE CONSIDERED:

- I. Chair's Opening Remarks.
- II. Consideration of Prior Meeting's Minutes.
- III. Committee Reports.
- IV. 2004 Americorps Program Guidelines.
- V. Public Comment.

ACCOMMODATIONS: Anyone who needs an interpreter or other accommodation should notify the Corporation's contact person by 5:00 p.m. Thursday, September 18, 2003.

FOR FURTHER INFORMATION CONTACT: Michele Tennery, Senior Associate, Public Affairs, Corporation for National and Community Service, 8th Floor, Room 8601, 1201 New York Avenue NW, Washington, DC 20525. Phone (202) 606-5000 ext. 125. Fax (202) 565-2784. TDD: (202) 565-2799. E-mail: mtennery@cns.gov.

Dated: September 9, 2003.

Frank R. Trinity,
General Counsel.

[FR Doc. 03-23328 Filed 9-9-03; 2:39 pm]

BILLING CODE 6050--\$-P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 03-18]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a

section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104-164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604-6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 03-18 with attached transmittal and policy justification.

Dated: September 5, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001-08-M



DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

3SEP03

**In reply refer to:
I-03/007015**

**The Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501**

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act (AECA), as amended, we are forwarding herewith transmittal no. 03-18, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance (LOA) to Pakistan for defense articles and services estimated to cost \$100 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,


**Richard J. Millies
Deputy Director**

Attachments

**Same ltr to: House Committee on International Relations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations
Senate Committee on Appropriations**

Transmittal No. 03-18**Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended**

- (i) **Prospective Purchaser:** Pakistan
- (ii) **Total Estimated Value:**
- | | |
|--------------------------|----------------------|
| Major Defense Equipment* | \$ 0 million |
| Other | <u>\$100 million</u> |
| TOTAL | \$100 million |
- (iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:** six AN/TPS-77 Air Surveillance radars, support equipment, spare/repair parts, publications/technical data, personnel training/equipment, and U.S. Government and contractor engineering and logistics support services, and other related elements of logistics support.
- (iv) **Military Department:** Air Force (DWN)
- (v) **Prior Related Cases, if any:** none
- (vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:** none
- (vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:** none
- (viii) **Date Report Delivered to Congress:** 3SEP03

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Pakistan – AN/TPS-77 Air Surveillance Radars

The Government of Pakistan has requested a possible sale of six AN/TPS-77 Air Surveillance radars, support equipment, spare/repair parts, publications/technical data, personnel training/equipment, and U.S. Government and contractor engineering and logistics support services, and other related elements of logistics support. The estimated cost is \$100 million.

This proposed sale will enhance the foreign policy and national security of the United States by providing the Pakistani Air Force increased technological capacity to support the U.S. Government efforts in support of Operation Enduring Freedom.

The proposed sale of AN/TPS-77 radars will provide more responsive and timely information for air defense operations. These radars will contribute to the modernization of its forces as well as allow modernization of obsolete radars.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be Lockheed Martin Naval Electronics and Surveillance Systems Company of Syracuse, New York. There are no offset agreements proposed in connection with this potential sale.

The number of U.S. Government and contractor representatives required in-country to support the program will be determined in joint negotiations as the program proceeds through the development, production and equipment installation phases.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 03–23138 Filed 9–10–03; 8:45 am]
BILLING CODE 5001–08–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 03–19]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 03–19 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: September 5, 2003.

Patricia L. Toppings,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–08–M



DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

3SEP03

In reply refer to:
I-03/008208

**The Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501**

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act (AECA), as amended, we are forwarding herewith transmittal no. 03-19, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance (LOA) to Bahrain for defense articles and services estimated to cost \$61 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,


**Richard J. Millies
Deputy Director**

Attachments

**Same ltr to: House Committee on International Relations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations
Senate Committee on Appropriations**

Transmittal No. 03-19**Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended**

- (i) **Prospective Purchaser:** Bahrain
- (ii) **Total Estimated Value:**
- | | |
|--------------------------|----------------------|
| Major Defense Equipment* | \$ 6 million |
| Other | <u>\$ 55 million</u> |
| TOTAL | \$ 61 million |
- (iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:** one AN/AAQ-24(V) NEMESIS Directional Infrared Countermeasures System which consists of three small laser turret assemblies, six missile warning sensors, one system processor, one control indicator unit, and two signal repeaters. Also included, associated support equipment, spare and repair parts, publications, personnel training and training equipment, technical assistance, contractor technical and logistics personnel services and other related elements of program support.
- (iv) **Military Department:** Air Force (QBC)
- (v) **Prior Related Cases, if any:** none
- (vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:** none
- (vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:** See Annex attached
- (viii) **Date Report Delivered to Congress:** 3SEP03

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Bahrain – AN/AAQ-24(V) NEMESIS Directional Infrared Countermeasures System

The Government of Bahrain has requested a possible sale of one AN/AAQ-24(V) NEMESIS Directional Infrared Countermeasures System which consists of three small laser turret assemblies, six missile warning sensors, one system processor, one control indicator unit, and two signal repeaters. Also included, associated support equipment, spare and repair parts, publications, personnel training and training equipment, technical assistance, contractor technical and logistics personnel services and other related elements of program support. The estimated cost is \$61 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been, and continues to be, an important force for political stability and economic progress in the Middle East.

Bahrain will install the AN/AAQ-24(V) NEMESIS system on a new Boeing 747-400. They will use the system for the movement and protection of their "Head of State". Bahrain will have no difficulty absorbing this system into its armed forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The exact contractor is unknown at this time but may involve Northrop-Grumman Corporation of Los Angeles, California and Boeing Corporation of Chicago, Illinois. Additional subcontractors may be needed depending on the exact nature of the contracting arrangements established. There are no offset agreements proposed in connection with this proposed sale.

Implementation of this proposed sale will require the assignment of ten each U.S. Government and contractor representatives for one-week intervals annually to participate in program management and technical review.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 03-19

**Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act**

**Annex
Item No. vii**

(vii) Sensitivity of Technology:

1. The AN/AAQ-24(V) NEMESIS Directional Infrared Countermeasures (DIRCM) with a multi-band laser on large infrared signature aircraft reduces the number of required transmitters and increases effectiveness against threats from modern Man-Portable Air Defense Systems. This aircraft self-protection suite will provide fast and accurate threat detection, processing, tracking, and countermeasures to defeat current and future generation infrared missile threats. DIRCM is designed for installation on a wide range of rotary and fixed-wing aircraft.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware or software in this proposed sale, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advance capabilities.

3. A determination has been made that Bahrain can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 03-23139 Filed 9-10-03; 8:45 am]
BILLING CODE 5001-08-C

DEPARTMENT OF DEFENSE**Office of the Secretary**

[Transmittal No. 03-20]

36(b)(1) Arms Sales Notification**AGENCY:** Department of Defense, Defense Security Cooperation Agency.**ACTION:** Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104-164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604-6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 03-20 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: September 5, 2003.

Patricia L. Toppings,
*Alternate OSD Federal Register Liaison
Officer, Department of Defense.*

BILLING CODE 5001-08-M



DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

3SEP03

**In reply refer to:
I-03/008209**

**The Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501**

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act (AECA), as amended, we are forwarding herewith transmittal no. 03-20, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance (LOA) to Qatar for defense articles and services estimated to cost \$61 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,


**Richard J. Millies
Deputy Director**

Attachments

**Same ltr to: House Committee on International Relations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations
Senate Committee on Appropriations**

Transmittal No. 03-20

**Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended**

- (i) **Prospective Purchaser:** Qatar
- (ii) **Total Estimated Value:**

Major Defense Equipment*	\$ 6 million
Other	\$ <u>55 million</u>
TOTAL	\$ 61 million
- (iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:** one AN/AAQ-24(V) NEMESIS Directional Infrared Countermeasures System which consists of three small laser turret assemblies, six missile warning sensors, one system processor, one control indicator unit, and two signal repeaters. Also included, associated support equipment, spare and repair parts, publications, personnel training and training equipment, technical assistance, contractor technical and logistics personnel services and other related elements of program support.
- (iv) **Military Department:** Air Force (QAA)
- (v) **Prior Related Cases, if any:** none
- (vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:** none
- (vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:** See Annex attached
- (viii) **Date Report Delivered to Congress:** 3SEP03

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION**Qatar – AN/AAQ-24(V) NEMESIS Directional Infrared Countermeasures System**

The Government of Qatar has requested a possible sale of one AN/AAQ-24(V) NEMESIS Directional Infrared Countermeasures System which consists of three small laser turret assemblies, six missile warning sensors, one system processor, one control indicator unit, and two signal repeaters. Also included, associated support equipment, spare and repair parts, publications, personnel training and training equipment, technical assistance, contractor technical and logistics personnel services and other related elements of program support. The estimated cost is \$61 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been, and continues to be, an important force for political stability and economic progress in the Middle East.

Qatar will install the AN/AAQ-24(V) NEMESIS system on a new Airbus 340-500. They will use the system for the movement and protection of their "Head of State". Qatar will have no difficulty absorbing this system into its armed forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The exact contractor is unknown at this time but may involve Northrop-Grumman Corporation of Los Angeles, California and Boeing Corporation of Chicago, Illinois. Additional subcontractors may be needed depending on the exact nature of the contracting arrangements established. There are no offset agreements proposed in connection with this proposed sale.

Implementation of this proposed sale will require the assignment of ten each U.S. Government and contractor representatives for one-week intervals annually to participate in program management and technical review.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 03-20**Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act****Annex
Item No. vii****(vii) Sensitivity of Technology:**

1. The AN/AAQ-24(V) NEMESIS Directional Infrared Countermeasures (DIRCM) with a multi-band laser on large infrared signature aircraft reduces the number of required transmitters and increases effectiveness against threats from modern Man-Portable Air Defense Systems. This aircraft self-protection suite will provide fast and accurate threat detection, processing, tracking, and countermeasures to defeat current and future generation infrared missile threats. DIRCM is designed for installation on a wide range of rotary and fixed-wing aircraft.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware or software in this proposed sale, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advance capabilities.

3. A determination has been made that Qatar can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 03-23140 Filed 9-10-03; 8:45 am]
BILLING CODE 5001-08-C

DEPARTMENT OF DEFENSE**Office of the Secretary**

[Transmittal No. 03-21]

36(b)(1) Arms Sales Notification**AGENCY:** Department of Defense, Defense Security Cooperation Agency.**ACTION:** Notice.**SUMMARY:** The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104-164 dated 21 July 1996.**FOR FURTHER INFORMATION CONTACT:** Ms. J. Hurd, DSCA/COMPT/RM, (703) 604-6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 03-21 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: September 5, 2003.

Patricia L. Toppings,*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

BILLING CODE 5001-08-M



DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

3SEP03

In reply refer to:
I-03/008519

The Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act (AECA), as amended, we are forwarding herewith transmittal no. 03-21, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance (LOA) to Jordan for defense articles and services estimated to cost \$61 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,


Richard J. Millies
Deputy Director

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations
Senate Committee on Appropriations

Transmittal No. 03-21**Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended**

- (i) **Prospective Purchaser:** Jordan
- (ii) **Total Estimated Value:**
- | | |
|--------------------------|----------------------|
| Major Defense Equipment* | \$ 6 million |
| Other | \$ <u>55 million</u> |
| TOTAL | \$ 61 million |
- (iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:** one AN/AAQ-24(V) NEMESIS Directional Infrared Countermeasures System which consists of three small laser turret assemblies, six missile warning sensors, one system processor, one control indicator unit, and two signal repeaters. Also included, associated support equipment, spare and repair parts, publications, personnel training and training equipment, technical assistance, contractor technical and logistics personnel services and other related elements of program support.
- (iv) **Military Department:** Air Force (QAC)
- (v) **Prior Related Cases, if any:** none
- (vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:** none
- (vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:** See Annex attached
- (viii) **Date Report Delivered to Congress:** 3SEP03

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Jordan – AN/AAQ-24(V) NEMESIS Directional Infrared Countermeasures System

The Government of Jordan has requested a possible sale of one AN/AAQ-24(V) NEMESIS Directional Infrared Countermeasures System which consists of three small laser turret assemblies, six missile warning sensors, one system processor, one control indicator unit, and two signal repeaters. Also included, associated support equipment, spare and repair parts, publications, personnel training and training equipment, technical assistance, contractor technical and logistics personnel services and other related elements of program support. The estimated cost is \$61 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been, and continues to be, an important force for political stability and economic progress in the Middle East.

Jordan will install the AN/AAQ-24(V) NEMESIS system on a new Airbus 340. They will use the system for the movement and protection of their "Head of State". Jordan will have no difficulty absorbing this system into its armed forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The exact contractor is unknown at this time but may involve Northrop-Grumman Corporation of Los Angeles, California. Additional subcontractors may be needed depending on the exact nature of the contracting arrangements established. There are no offset agreements proposed in connection with this proposed sale.

Implementation of this proposed sale will require the assignment of ten each U.S. Government and contractor representatives for one-week intervals annually to participate in program management and technical review.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 03-21**Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act****Annex
Item No. vii****(vii) Sensitivity of Technology:**

1. The AN/AAQ-24(V) NEMESIS Directional Infrared Countermeasures (DIRCM) with a multi-band laser on large infrared signature aircraft reduces the number of required transmitters and increases effectiveness against threats from modern Man-Portable Air Defense Systems. This aircraft self-protection suite will provide fast and accurate threat detection, processing, tracking, and countermeasures to defeat current and future generation infrared missile threats. DIRCM is designed for installation on a wide range of rotary and fixed-wing aircraft.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware or software in this proposed sale, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advance capabilities.

3. A determination has been made that Jordan can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 03-23141 Filed 9-11-03; 8:45 am]
BILLING CODE 5001-08-C

DEPARTMENT OF DEFENSE**Office of the Secretary**

[Transmittal No. 03-26]

36(b)(1) Arms Sales Notification**AGENCY:** Department of Defense, Defense Security Cooperation Agency.**ACTION:** Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104-164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604-6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 03-26 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: September 5, 2003.

Patricia L. Toppings,
*Alternate OSD Federal Register Liaison
Officer, Department of Defense.*

BILLING CODE 5001-08-M



DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

3SEP03
In reply refer to:
I-03/009025

The Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act (AECA), as amended, we are forwarding herewith Transmittal No. 03-26, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance (LOA) to Jordan for defense articles and services estimated to cost \$220 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,


Richard J. Millies
Deputy Director

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations
Senate Committee on Appropriations

Transmittal No. 03-26**Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended**

- (i) **Prospective Purchaser:** Jordan
- (ii) **Total Estimated Value:**
- | | |
|--------------------------|----------------------|
| Major Defense Equipment* | \$146 million |
| Other | \$ <u>74 million</u> |
| TOTAL | \$220 million |
- (iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:** eight UH-60L BLACKHAWK helicopters with T-700-GE-701C engines, four spare T-700-GE-701C engines, M130 chaff dispenser, receivers, spare and repair parts, gun pods, tools and support equipment, publications and technical data, personnel training and training equipment, U.S. Government Quality Assurance Team (QAT), contractor engineering and technical support services and other related elements of logistics support.
- (iv) **Military Department:** Army (VZR)
- (v) **Prior Related Cases, if any:** none
- (vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:** none
- (vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:** see Annex attached
- (viii) **Date Report Delivered to Congress:** 03SEP03

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Jordan – UH-60L BLACKHAWK Helicopters

The Government of Jordan has requested a possible sale of eight UH-60L BLACKHAWK helicopters with T-700-GE-701C engines, four spare T-700-GE-701C engines, M130 chaff dispenser, receivers, spare and repair parts, gun pods, tools and support equipment, publications and technical data, personnel training and training equipment, U.S. Government Quality Assurance Team (QAT), contractor engineering and technical support services and other related elements of logistics support. The estimated cost is \$220 million.

Proposed sale will enhance the foreign policy and national security objectives of the United States by improving the security of a key regional partner who has proven to be a vital force for political stability and peace in the Middle East.

This procurement will upgrade Jordan's air mobility capability and provide for the defense of vital installations and close air support for ground forces. Jordan will have no difficulty absorbing these helicopters into its armed forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The principle contractor will be United Technology, Sikorsky Aircraft of Stratford, Connecticut. There are no offset agreements proposed in connection with this potential sale.

Implementation of this sale will require the assignment of several U.S. Government Quality Assurance Teams for one-week intervals, twice annually, to participate in program management and technical reviews. There will be several U.S. Army National Guard Personnel, for a month, and a contractor field service representative, for two years, in Jordan.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 03-26

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The UH-60L BLACKHAWK helicopter is Unclassified. The highest level of classified information required to be released for training, operation and maintenance of the BLACKHAWK is Confidential. The highest level which could be revealed through reverse engineering or testing of the end item is Confidential.

2. A determination has been made that Jordan can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 03-23142 Filed 9-10-03; 8:45 am]

BILLING CODE 5001-08-C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 03-27]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104-164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604-6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 03-27 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: September 5, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001-08-M



DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

3SEP03
In reply refer to:
I-03/009071

The Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act (AECA), as amended, we are forwarding herewith Transmittal No. 03-27, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance (LOA) to Egypt for defense articles and services estimated to cost \$54 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,


Richard J. Millies
Deputy Director

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations
Senate Committee on Appropriations

Transmittal No. 03-27**Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended**

- (i) **Prospective Purchaser:** Egypt
- (ii) **Total Estimated Value:**
- | | |
|--------------------------|---------------------|
| Major Defense Equipment* | \$ 0 million |
| Other | <u>\$54 million</u> |
| TOTAL | \$54 million |
- (iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:** 10,040 non-standard rounds of commercial 120mm Armor Piercing Fin Stabilized Discarding Sabot-Tracer (APFSDS-T) Kinetic Energy Tungsten Advanced cartridges, fire control solution, and program management.
- (iv) **Military Department:** Army (UWB)
- (v) **Prior Related Cases, if any:** none
- (vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:** none
- (vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:** see Annex attached
- (viii) **Date Report Delivered to Congress:** 3SEP03

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION**Egypt – 120mm Armor Piercing Fin Stabilized Discarding Sabot-Tracer Kinetic Energy Tungsten Advanced Cartridges**

The Government of Egypt has requested a possible sale of 10,040 non-standard rounds of commercial 120mm Armor Piercing Fin Stabilized Discarding Sabot-Tracer (APFSDS-T) Kinetic Energy Tungsten Advanced cartridges, fire control solution, and program management. The estimated cost is \$54 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in the Middle East.

This proposed sale would provide Egypt with additional combat ammunition to support its M1A1 Abrams Tank fleet. Egypt will have no difficulty absorbing these cartridges into its armed forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be General Dynamics Ordnance and Tactical Systems of St. Petersburg, Florida. There are no offset agreements proposed in connection with this potential sale.

Implementation of this sale will not require the assignment of any additional U.S. Government or contractor representatives to Egypt.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 03-27**Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act****Annex
Item No. vii****(vii) Sensitivity of Technology:**

1. The commercial of 120mm Armor Piercing Fin Stabilized Discarding Sabot-Tracer (APFSDS-T) Kinetic Energy Tungsten Advanced cartridges components are Unclassified. The capabilities of these cartridges, to include the terminal effects, target impact dispersion, and armor defeating capabilities, are classified Confidential, except for armor penetration test results against Special Armored Targets, which are classified Secret or the same level of classification as the target, whichever is greater. The tungsten processing and penetrator manufacturing methods are sensitive data. No technological information regarding the tungsten penetrator material will be supplied with the cartridges being considered for foreign military sales. Overall degree of sensitivity is high. This is a commercially developed item and is not warranted by the U.S. Government.

2. A determination has been made that Egypt can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 03-23143 Filed 9-10-03; 8:45 am]
BILLING CODE 5001-08-C

DEPARTMENT OF DEFENSE**Office of the Secretary**

[Transmittal No. 03-28]

36(b)(1) Arms Sales Notification**AGENCY:** Department of Defense, Defense Security Cooperation Agency.**ACTION:** Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104-164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604-6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 03-28 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: September 5, 2003.

Patricia L. Toppings,
*Alternate OSD Federal Register Liaison
Officer, Department of Defense.*

BILLING CODE 5001-08-M



DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

3SEP03
In reply refer to:
I-03/009163

The Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act (AECA), as amended, we are forwarding herewith Transmittal No. 03-28, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance (LOA) to Saudi Arabia for defense articles and services estimated to cost \$240 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,


Richard J. Millies
Deputy Director

Attachments

**Same ltr to: House Committee on International Relations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations
Senate Committee on Appropriations**

Transmittal No. 03-28

**Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended**

- (i) **Prospective Purchaser:** Saudi Arabia
- (ii) **Total Estimated Value:**
- | | |
|--------------------------|----------------------|
| Major Defense Equipment* | \$ 23 million |
| Other | <u>\$217 million</u> |
| TOTAL | \$240 million |
- (iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:** four AN/AAQ-24(V) NEMESIS Directional Infrared Countermeasures Systems which consist of three each small laser turret assemblies, six each missile warning sensors, one each system processor, one each control indicator unit, and two each signal repeaters. Also included, associated support equipment, spare and repair parts, publications, personnel training and training equipment, technical assistance, contractor technical and logistics personnel services and other related elements of program support.
- (iv) **Military Department:** Air Force (QZV)
- (v) **Prior Related Cases, if any:** none
- (vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:** none
- (vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:** See Annex attached
- (viii) **Date Report Delivered to Congress:** 3SEP03

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION**Saudi Arabia – AN/AAQ-24(V) NEMESIS Directional Infrared Countermeasures System**

The Government of Saudi Arabia has requested a possible sale of four AN/AAQ-24(V) NEMESIS Directional Infrared Countermeasures Systems which consist of three each small laser turret assemblies, six each missile warning sensors, one each system processor, one each control indicator unit, and two each signal repeaters. Also included, associated support equipment, spare and repair parts, publications, personnel training and training equipment, technical assistance, contractor technical and logistics personnel services and other related elements of program support. The estimated cost is \$240 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been, and continues to be, an important force for political stability and economic progress in the Middle East.

Saudi Arabia will install the AN/AAQ-24(V) NEMESIS System on their Boeing 747 and 737 aircraft. They will use the system for the movement and protection of their "Head of State". Saudi Arabia will have no difficulty absorbing this system into its armed forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The exact contractor is unknown at this time but may involve Northrop-Grumman Corporation of Los Angeles, California. Additional subcontractors may be needed depending on the exact nature of the contracting arrangements established. There are no offset agreements proposed in connection with this proposed sale.

Implementation of this proposed sale will require the assignment of ten each U.S. Government and contractor representatives for one-week intervals annually to participate in program management and technical review.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 03-28

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The AN/AAQ-24(V) NEMESIS Directional Infrared Countermeasures (DIRCM) with a multi-band laser on large infrared signature aircraft reduces the number of required transmitters and increases effectiveness against threats from modern Man-Portable Air Defense Systems. This aircraft self-protection suite will provide fast and accurate threat detection, processing, tracking, and countermeasures to defeat current and future generation infrared missile threats. DIRCM is designed for installation on a wide range of rotary and fixed-wing aircraft.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware or software in this proposed sale, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advance capabilities.

3. A determination has been made that Saudi Arabia can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 03-23144 Filed 9-10-03; 8:45 am]

BILLING CODE 5001-08-C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 03-29]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104-164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604-6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 03-29 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: September 5, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001-08-M



DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

3SEP03

In reply refer to:

I-03/009165

The Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act (AECA), as amended, we are forwarding herewith Transmittal No. 03-29 and under separate cover the classified offset certificate thereto. This Transmittal concerns the Department of the Army's proposed Letter(s) of Offer and Acceptance (LOA) to Canada for defense articles and services estimated to cost \$101 million. Soon after this letter is delivered to your office, we plan to notify the news media of the unclassified portion of this Transmittal.

Reporting of Offset Agreements in accordance with Section 36(b)(1)(C) of the Arms Export Control Act (AECA), as amended, requires a description of any offset agreement with respect to this proposed sale. Section 36(g) of the AECA, as amended, provides that reported information related to offset agreements be treated as confidential information in accordance with section 12(c) of the Export Administration Act of 1979 (50 U.S.C. App. 2411(c)). Information about offsets for this proposed sale is described in the enclosed confidential attachment.

Sincerely,


Richard J. Millies
Deputy Director

Attachments

Separate Cover:
Offset certificate

Same ltr to: House Committee on International Relations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations
Senate Committee on Appropriations

Transmittal No. 03-29

**Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended**

- (i) **Prospective Purchaser:** Canada
- (ii) **Total Estimated Value:**
- | | |
|--------------------------|----------------------|
| Major Defense Equipment* | \$111 million |
| Other | <u>\$ 21 million</u> |
| TOTAL | \$132 million |
- (iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:** JAVELIN anti-tank missile systems (consisting of 200 JAVELIN command launch units and 840 JAVELIN missile rounds), simulators, trainers, support equipment, spare and repair parts, publications and technical data, personnel training and equipment, U.S. Government and contractor engineering and logistics personnel services, a Quality Assurance Team, and other related elements of logistics support.
- (iv) **Military Department:** Army (ZUA)
- (v) **Prior Related Cases, if any:** none
- (vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:** none
- (vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:** See Annex attached
- (viii) **Date Report Delivered to Congress:** 03SEP03

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Canada - JAVELIN Anti-tank Missile Svstems

The Government of Canada has requested a possible sale of JAVELIN anti-tank missile systems consisting of 200 JAVELIN command launch units and 840 JAVELIN missile rounds, simulators, trainers, support equipment, spare and repair parts, publications and technical data, personnel training and equipment, U.S. Government and contractor engineering and logistics personnel services, a Quality Assurance Team, and other related elements of logistics support. The estimated cost is \$132 million.

This proposed sale will contribute to the foreign policy and national security objectives of the United States by improving the military capabilities of Canada to fulfill its NATO obligations; furthering NATO rationalization, standardization, and interoperability; and enhancing the defense of the Western Alliance.

Canada will use these JAVELIN anti-tank missile systems to enhance their direct fire capability for infantry, cavalry and commando units against armored vehicles, buildings and field fortifications. These systems will provide Canada with a strong man-portable, direct fire capability and will increase interoperability with U.S. forces. Canada will have no difficulty absorbing these systems into its armed forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be JAVELIN Joint Venture (Raytheon and Lockheed Martin) of Orlando, Florida. One or more proposed offset agreements may be related to this proposed sale.

Implementation of this proposed sale will require the assignment of a U.S. Government Quality Assurance Team consisting of two U.S. Government and one contractor representatives to Canada for one week to assist in the delivery and deployment of the missiles.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 03-29

**Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act**

**Annex
Item No. vii**

(vii) Sensitivity of Technology:

1. The JAVELIN anti-tank missile system provides a man-portable, medium anti-tank capability to infantry, scouts, and combat engineers. JAVELIN is comprised of two major tactical components; a reusable Command Launch Unit (CLU) and a missile sealed in a disposable launch tube assembly. The CLU incorporates an integrated day/night sight and provides target engagement capability in adverse weather and countermeasure environments. The CLU may also be used in the stand-alone mode for battlefield surveillance and target detection. JAVELIN's key technical feature is the use of fire-and-forget technology that allows the gunner to fire and immediately take cover. Additional special features are the top attack and/or direct fire modes (for targets under cover), integrated day/night sight, advanced tandem warhead, imaging infrared seeker, target lock-on before launch, and soft launch from enclosures or covered fighting positions. If the software was compromised, it could result in a loss of sensitive technology, revealing the performance capabilities of the JAVELIN Missile System. Reverse engineering of the software would require a substantial effort. While the JAVELIN system is Unclassified, Secret disclosure is required in order to employ, operate, and train on the system.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

3. A determination has been made that Canada can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This proposed sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 03-23145 Filed 9-10-03; 8:45 am]
BILLING CODE 5001-08-C

DEPARTMENT OF DEFENSE**Office of the Secretary**

[Transmittal No. 03-30]

36(b)(1) Arms Sales Notification**AGENCY:** Department of Defense, Defense Security Cooperation Agency.**ACTION:** Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104-164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604-6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 03-30 with attached transmittal and policy justification.

Dated: September 5, 2003.

Patricia L. Toppings,*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

BILLING CODE 5001-08-P



DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

3SEP03
In reply refer to:
I-03/009192

The Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act (AECA), as amended, we are forwarding herewith Transmittal No. 03-30, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance (LOA) to Egypt for defense articles and services estimated to cost \$109 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,


Richard J. Millies
Deputy Director

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations
Senate Committee on Appropriations

Transmittal No. 03-30

**Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended**

- (i) **Prospective Purchaser:** Egypt
- (ii) **Total Estimated Value:**
- | | |
|--------------------------|----------------------|
| Major Defense Equipment* | \$ 17 million |
| Other | <u>\$ 92 million</u> |
| TOTAL | \$109 million |
- (iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:** 100 M1114 High Mobility Multi-purpose Wheeled Vehicles (HMMWV), 400 M1113 HMMWVs, 50 M997A2 HMMWV ambulances, spare engines, spare and repair parts, test and tool sets, personnel training and equipment, publications, a U.S. Government and contractor engineering and logistics personnel services, Quality Assurance Team, and other related elements of logistics support.
- (iv) **Military Department:** Army (UWA)
- (v) **Prior Related Cases, if any:**
FMS case UUP - \$61 million - 16Dec02
FMS case UTA - \$23 million - 01Mar00
- (vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:** none
- (vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:** none
- (viii) **Date Report Delivered to Congress:** 3SEP03

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Egypt – High Mobility Multi-purpose Wheeled Vehicles

The Government of Egypt has requested a possible sale of 100 M1114 High Mobility Multi-purpose Wheeled Vehicles (HMMWV), 400 M1113 HMMWVs, 50 M997A2 HMMWV ambulances, spare engines, spare and repair parts, test and tool sets, personnel training and equipment, publications, a U.S. Government and contractor engineering and logistics personnel services, Quality Assurance Team, and other related elements of logistics support. The estimated cost is \$109 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in the Middle East.

These vehicles will enhance Egypt's force modernization efforts and provide an all-terrain mode of transportation for its ground forces. Fifty of these vehicles will be configured as ambulances. Egypt, which already has the proposed items in its inventory, will have no difficulty absorbing these trucks.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be AM General of South Bend, Indiana. There are no offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require the assignment of a Quality Assurance team for a three-month interval, twice annually, to prepare for operational use and insure full mission capability of the vehicles. There will be one contractor representative for a period of two years in Egypt.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 03-23146 Filed 9-10-03; 8:45 am]

BILLING CODE 5001-08-C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 03-31]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104-164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604-6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 03-31 with attached transmittal and policy justification.

Dated: September 5, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001-08-M



DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

3SEP03
In reply refer to:
I-03/009297

The Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act (AECA), as amended, we are forwarding herewith Transmittal No. 03-31, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance (LOA) to Israel for defense articles and services estimated to cost \$65 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,


Richard J. Millies
Deputy Director

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations
Senate Committee on Appropriations

Transmittal No. 03-31

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

- (i) Prospective Purchaser: Israel
- (ii) Total Estimated Value:
- | | |
|--------------------------|---------------------|
| Major Defense Equipment* | \$ 0 million |
| Other | <u>\$65 million</u> |
| TOTAL | \$65 million |
- (iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: 256 American Truck Company (ATC) 6x6 High Mobility Medium Tactical (HMMT) trucks without cranes, 49 ATC 6x6 High Mobility Medium Tactical (HMMT) trucks with cranes, 10 ATC 6x6 HMMT driver training trucks, associated support equipment, spare and repair parts, publications, personnel training and training equipment, technical assistance, contractor technical and logistics personnel services and other related elements of program support.
- (iv) Military Department: Army (ZAM)
- (v) Prior Related Cases, if any: none
- (vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none
- (vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: none
- (viii) Date Report Delivered to Congress: 3SEP03

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Israel – High Mobility Medium Tactical Trucks

The Government of Israel has requested a possible purchase of 256 American Truck Company (ATC) 6x6 High Mobility Medium Tactical (HMMT) trucks without cranes, 49 ATC 6x6 High Mobility Medium Tactical (HMMT) trucks with cranes, 10 ATC 6x6 HMMT driver training trucks, associated support equipment, spare and repair parts, publications, personnel training and training equipment, technical assistance, contractor technical and logistics personnel services and other related elements of program support. The estimated cost is \$65 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country that has been and continues to be an important force for political stability and economic progress in the Middle East.

The proposed sale of the HMMT trucks will upgrade and enhance Israel's fleet with a Medium Tactical Truck between the High Mobility Multi-purpose Wheeled Vehicles and Heavy Expanded Mobility Tactical Trucks in their inventory. Israel will have no difficulty absorbing these trucks into its armed forces.

The proposed sale of these trucks will not affect the basic military balance in the region.

The prime contractor is American Truck Company of Ft. Wayne, Indiana. There are no offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require the assignment of four contractor representatives for three months to Israel.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 03-23147 Filed 9-10-03; 8:45 am]
BILLING CODE 5001-08-C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 03-32]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104-164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604-6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 03-32 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: September 5, 2003.

Patricia L. Toppings,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001-08-M



DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

3SEP03
In reply refer to:
I-03/009297

The Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act (AECA), as amended, we are forwarding herewith Transmittal No. 03-32, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance (LOA) to Israel for defense articles and services estimated to cost \$65 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,


Richard J. Millies
Deputy Director

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations
Senate Committee on Appropriations

Transmittal No. 03-32

**Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended**

- (i) **Prospective Purchaser:** The Netherlands
- (ii) **Total Estimated Value:**
- | | |
|--------------------------|----------------------|
| Major Defense Equipment* | \$234 million |
| Other | <u>\$ 64 million</u> |
| TOTAL | \$298 million |
- (iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:** 30 Modernized Target Acquisition and Designation Sights (M-TADS)/ Modernized Pilot Night Vision Sensors (M-PNVS) modification kits, 30 Integrated Helmet and Display Sight Systems, 1 M-TADS/PNVS modification kit for the Longbow Crew Trainer, spare and repair parts, support/test equipment, publications, technical documentation, maintenance and pilot training, contractor support, other related elements of logistical and program support.
- (iv) **Military Department:** Army (WBU)
- (v) **Prior Related Cases, if any:**
FMS case VXC - \$694 million - 24May95
FMS case TEN - \$100 million - 24May95
- (vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:** none
- (vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:** See Annex attached
- (viii) **Date Report Delivered to Congress:** 3SEP03

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

The Netherlands - Modernized Target Acquisition and Designation Sight/Pilot Night Vision Sensor Modification Kits

The Government of the Netherlands has requested a possible sale of 30 Modernized Target Acquisition and Designation Sights (M-TADS)/Modernized Pilot Night Vision Sensors (M-PNVS) modification kits, 30 Integrated Helmet and Display Sight Systems, 1 M-TADS/PNVS modification kit for the Longbow Crew Trainer, spare and repair parts, support/test equipment, publications, technical documentation, maintenance and pilot training, contractor support, other related elements of logistical and program support. The estimated cost is \$298 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a NATO ally, which has been, and continues to be, an important force for political stability and economic progress in Europe.

In improving the capabilities of its AH-64D helicopters, the Netherlands seeks to maintain a standardized configuration similar to the U.S. fleet, particularly the performance and reliability improvements. This proposed sale corrects performance, maintainability, obsolescence, and support cost issues related to the existing fleet and improves flight safety. The M-TADS/M-PNVS would enhance The Netherlands' fleet, which provides a key NATO expeditionary force capability, and would significantly contribute to NATO rationalization, standardization, and interoperability. The Netherlands will have no difficulty absorbing this capability into its force structure.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The principle contractors will be: Lockheed Martin Corporation of Orlando, Florida and The Boeing Company of Mesa, Arizona. One or more proposed offset agreements may be related to this proposed sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to the Netherlands.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 03-32

**Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act**

**Annex
Item No. vii**

(vii) Sensitivity of Technology:

1. The Modernized Target Acquisition and Designation Sight/Pilot Night Vision Sensor (M-TADS/M-PNVS) is an enhanced version of its predecessor, the TADS/PNVS. The M-TADS will provide second-generation day, night, and limited adverse weather target information, as well as night navigation capabilities. The M-PNVS will provide second-generation thermal imaging that permits safer nap-of-the-earth flight to, from and within the battle area, while the M-TADS provides the co-pilot gunner with improved search, detection, recognition, and designation by means of Direct View Optics (DVO), I2 television, second-generation Forward Looking Infrared (FLIR) sighting systems that may be used singly or in combinations. The hardware and releasable technical manuals are unclassified.

2. Sensitive technological information and/or restricted information pertaining to the M-TADS/M-PNVS will not be included in the export version transferred to the Netherlands. Reverse engineering is not a major concern if the hardware, publications, software, etc, are lost to a technologically advanced or competent adversary.

3. A determination has been made that the Netherlands can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This proposed sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 03-23148 Filed 9-10-03; 8:45 am]

BILLING CODE 5001-08-C

DEPARTMENT OF DEFENSE**Office of the Secretary**

[Transmittal No. 03-34]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.**SUMMARY:** The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104-164 dated 21 July 1996.**FOR FURTHER INFORMATION CONTACT:** Ms. J. Hurd, DSCA/COMPT/RM, (703) 604-6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 03-34 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: September 5, 2003.

Patricia L. Toppings,
*Alternate OSD Federal Register Liaison
Officer, Department of Defense.*

BILLING CODE 5001-08-M



DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

3SEP03
In reply refer to:
I-03/009625

The Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act (AECA), as amended, we are forwarding herewith Transmittal No. 03-34, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance (LOA) to Jordan for defense articles and services estimated to cost \$370 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,


Richard J. Millies
Deputy Director

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations
Senate Committee on Appropriations

Transmittal No. 03-34**Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended**

- (i) **Prospective Purchaser:** Jordan
- (ii) **Total Estimated Value:**
- | | |
|---------------------------------|-----------------------------|
| Major Defense Equipment* | \$210 million |
| Other | <u>\$160 million</u> |
| TOTAL | \$370 million |
- (iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:** 17 F-16A Mid-Life Upgrade kits, 12 F100 engine PW-220E modification kits, 17 Falcon UP and Falcon STAR F-16A/B structural upgrade kits, spares, program management, publications and technical documentation, support equipment/services, and U.S. Government and contractor technical and logistics personnel services, and other related requirements to ensure full program supportability.
- (iv) **Military Department:** Air Force (SMF, Amendment 3)
- (v) **Prior Related Cases, if any:** none
- (vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:** none
- (vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:** see Annex under separate cover
- (viii) **Date Report Delivered to Congress:** 3SEP03

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Jordan – F-16A Mid-Life Upgrade Kits

The Government of Jordan has requested a possible sale of 17 F-16A Mid-Life Upgrade kits, 12 F100 engine PW-220E modification kits, 17 Falcon UP and Falcon STAR F-16A/B structural upgrade kits, spares, program management, publications and technical documentation, support equipment/services, and U.S. Government and contractor technical and logistics personnel services, and other related requirements to ensure full program supportability. The estimated cost is \$370 million.

Proposed sale will enhance the foreign policy and national security objectives of the United States by improving the security of a key regional partner who has proven to be a vital force for political stability and peace in the Middle East.

The modifications and upgrades in this proposed sale will permit Jordan's new F-16 squadron to operate safely, and provide a core of improved aircraft capable of defending Jordan for many years. Jordan can easily absorb and use these aircraft within its existing structure. Jordan currently flies and supports up to 16 similar F-16 aircraft.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The principal contractors will be Lockheed Martin Aeronautics Company of Fort Worth, Texas and Pratt and Whitney Aviation of East Hartford, Connecticut. There are no offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require the assignment U.S. Government and contractor representatives. Details and the extent of this requirement will be negotiated with the customer.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 03-34

**Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act**

**Annex
Item No. vii**

(vii) Sensitivity of Technology:

1. Many aspects of the modification and upgrade package for Jordanian F-16 aircraft include systems previously released to Jordan, such as the F100-PW-220 engine, AN/ALR-69 radar warning receiver, the AN/APG-66V2 radar, the Have Quick II radio, and the fly-by-wire flight control system. The Mid-Life Upgrade (MLU) installation will introduce evolutionary improvements including an upgraded APG-66 radar, advanced Identification Friend-or-Foe system, Global Positioning System (GPS), and provision for targeting and navigation pods. The most significant new technology introduced with MLU installation in Jordan is capability to employ AIM-120 medium-range air-to-air missiles.

2. If a technologically advanced adversary were to obtain specific knowledge of these hardware and software elements, the adversary might be able to develop countermeasures or counter-tactics that could reduce weapon system effectiveness.

3. A determination has been made that Jordan can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 03-23149 Filed 9-10-03; 8:45 am]
BILLING CODE 5001-08-C

DEPARTMENT OF DEFENSE**Office of the Secretary****Defense Science Board**

AGENCY: Department of Defense.

ACTION: Notice of advisory committee meeting.

SUMMARY: The Defense Science Board Task Force on Patriot Systems Performance will meet in closed session on October 1-3, 2003, in Huntsville, AL; October 29-30, 2003; December 10-11, 2003; and January 7-8, 2004, at SAIC, 4001 N. Fairfax Drive, Arlington, VA. The Task Force will assess the recent performance of the Patriot System in OPERATION IRAQI FREEDOM from deployment through use across the threat spectrum.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At

the meetings, the Defense Science Board Task Force will: assess logistical, doctrine, training, personnel management, operational and material performance; identify those lessons learned which are applicable to the development of the Medium Extended Air Defense System (MEADS); and assess the current planned spiral development of the Patriot to ensure early incorporation of fixes discovered in the lessons learned process.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. 92-463, as amended (5 U.S.C. App. II), it has been determined that these Defense Science Board Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, the meetings will be closed to the public.

Dated: September 5, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03-23137 Filed 9-10-03; 8:45 am]

BILLING CODE 5001-08-M

DEPARTMENT OF DEFENSE**Office of the Secretary****Meeting of the Technology and Privacy Advisory Committee (TAPAC)**

AGENCY: Department of Defense.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given of a forthcoming open meeting of the Technology and Privacy Advisory Committee. The purpose of the meeting is for presentations of interest and discussion concerning the legal and policy considerations implicated by the application of advanced information technologies to counter-terrorism and counter-intelligence missions.

DATES: Monday, September 29, 2 p.m. to 5 p.m. and Tuesday September 30, 8 a.m. to 4 p.m.

ADDRESSES: The Ritz Carlton, 1250 South Hayes St., Arlington, VA 22202, <http://www.ritzcarlton.com>, 703-415-5000.

FOR FURTHER INFORMATION CONTACT: Visit the Committee's Web site at <http://www.sainc.com/tapac>, or contact Ms. Lisa Davis, Executive Director, Technology and Privacy Advisory

Committee, The Pentagon, Room 3E1045, Washington, DC 20301-3330, telephone 703-695-0903.

Dated: September 4, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 03-23113 Filed 9-10-03; 8:45 am]

BILLING CODE 5001-08-M

DEPARTMENT OF DEFENSE

Department of the Army

Armament Retooling and Manufacturing Support Public/Private Task Force

AGENCY: Department of the Army, DoD.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to Public Law 92-463, notice is hereby given of the next meeting of the Armament Retooling and Manufacturing Support (ARMS) Public/Private Task Force (PPTF).

Date of Meeting: October 23, 2003.

Place of Meeting: Doubletree Hotel Crystal City, 300 Army Navy Drive, Arlington, VA 22202.

Time of meeting: 7:30 a.m.-5:30 p.m. on October 23.

Proposed Agenda: The purpose of the meeting is to update the task force and public on the status of ongoing actions, new items of interest, and suggested future direction/actions. Topics for this meeting will include: Program Savings and Economic Impact; National Marketing Program Update; and Allocations of ARMS Program Funding. This meeting is open to the public.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Perez, U.S. Army Joint Munitions Command, and Attn: AMSJM-CCA-IA, Rock Island Arsenal, IL 61299, phone (309) 782-3360.

SUPPLEMENTARY INFORMATION: The PPTF encourages the development of new and innovative methods to optimize the asset value of the Government-Owned, Contractor-Operated ammunition industrial base for peacetime and national emergency requirements, while promoting economical and efficient processes at minimal operating costs, retention of critical skills, community economic benefits, and a potential model for defense conversion. The U.S. Army, Joint Munitions Command, will host this meeting.

A block of rooms has been reserved at the Doubletree Crystal City hotel for the night of October 22, 2003. The Doubletree Hotel Crystal City is located at 300 Army Navy Drive, Arlington, Virginia 22202, local phone (703) 416-4100. Please make your reservations by

calling 800-222-8733. Be sure to mention the guest code acronym ARMS Public/Private Task Force. Reserve your room prior to September 22nd to get the Government Rate of \$150.00 a night. Also notify this office of your attendance by notifying Mike Perez, mike.perez@us.army.mil, and (309) 782-3360 (DSN 793-3360). to *To insure adequate arrangements (transportation, conference facilities, etc.) for all attendees, we request your attendance notification with this office by October 10, 2003.* Corporate casual is meeting attire.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 03-23172 Filed 9-10-03; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF DEFENSE

Department of the Army

Availability of U.S. Patent Applications for Non-Exclusive, Exclusive, or Partially Exclusive Licensing

AGENCY: Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: In accordance with 35 U.S.C. 209 and 37 CFR part 404 announcement is made of the availability for licensing of the following U.S. Patent Applications for non-exclusive, exclusive, or partially exclusive licensing listed in under **SUPPLEMENTARY INFORMATION.** The inventions listed below have been assigned to the United States Government as presented by the Secretary of the Army, Washington, DC. **FOR FURTHER INFORMATION CONTACT:** Mr. John Biffoni, Intellectual Property Attorney, U.S. Army Soldier and Biological Chemical Command, ATTN: AMSSB-CC (Bldg E4435), APG, MD 21010-5424, Phone: (410) 436-1158; Fax: (410) 436-2534 or E-mail: John.Biffoni@sbccom.apgea.army.mil.

SUPPLEMENTARY INFORMATION:

1. *Title:* "Chemical/Biological Escape Hood."

Description: The present invention is directed to an escape hood which is relatively inexpensive, lightweight, and compact, which enable the wearer to breathe for a sufficient time while escaping or evacuating from hazardous environments. The escape hood of the present invention is simple in design for manufacturing ease. It provides complete eye and face protection, while minimizing heat and carbon dioxide buildup and excessive moisture retention. The level and duration of protection against toxic biological and

chemical agents provided by the escape hood make it especially suitable for emergency use.

Patent Application Number: 09/968,091.

Filing Date: 1 October 2001.

2. *Title:* "Chemical/Biological Special Operations Mask".

Description: This invention relates to fill-face respiratory masks adapted for protecting the wearer against biologically/chemically hazardous materials especially in the form of airborne particulates, vapors and aerosols.

Patent Application Number: 09/968,193.

Filing Date: 1 October 2001.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 03-23171 Filed 9-10-03; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement for Carpinteria Shoreline, a Feasibility Study in the City of Carpinteria, Santa Barbara County, CA

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The Environmental Impact Statement (EIS) will address environmental impacts from measures being investigated to include beachfill and shoreline stabilization structures to provide storm damage and shoreline protection along the Carpinteria Shoreline in the City of Carpinteria, Santa Barbara County, CA. The U.S. Army Corps of Engineers and the City of Carpinteria, California, will cooperate in conducting this feasibility study. The U.S. Army Corps of Engineers is the lead Federal agency for this study.

The Carpinteria Shoreline feasibility study will be conducted over the next several years following a planning process that will include public involvement during each of the study phases. The investigation will address the shoreline needs associated with erosion of shoreline, coastal storm flooding damages to public and private properties, and the preservation and enhancement of recreational opportunities. The Study may result in a report recommending that Congress authorize a project for implementation by the Corps of Engineers or that measures could be implemented by

another agency to address the problems and needs of the study area. While final alternatives have not been determined at this study initiation phase, the earlier Reconnaissance phase of the study and Section 905B Report identified several preliminary measures that could address the problems and needs within the study area. The 905B report concluded that there is the potential for significant storm damages from wave impacts to existing development and facilities along the 1,500 foot reach stretching from Ash Avenue up to Linden Avenue in the City of Carpinteria. A range of conceptual alternatives were identified as having potential for having a Federal interest to address the problems and needs of the study area: (1) Beach Nourishment with periodic renourishment; (2) Artificial Reef Submerged Breakwater; and (3) Seawall. The feasibility study will investigate measures to address the problems and needs and an array of alternatives will be developed and be analyzed for inclusion in the Feasibility Report and EIS.

DATES: A public meeting will be held on 23 September 2003 at 6:30 p.m., at the City Council Chamber, 5775 Carpinteria Avenue, Carpinteria, CA 93013, to discuss the feasibility Study and to obtain input to the scoping of the EIS. Comments concerning the Feasibility Study and Scoping for the EIS may be made at the public meeting or be mailed to the following address by October 27, 2003.

ADDRESSES: District Engineer, U.S. Army Corps of Engineers, Los Angeles District, ATTN: CESPL-PD-RP, P.O. Box 532711, Los Angeles, CA 90052-2325.

FOR FURTHER INFORMATION CONTACT: Mr. Kirk C. Brus, Environmental Coordinator, telephone (213) 452-3876, or Mr. Alex Bantique, Study Manager, telephone (213)-452-3837. The cooperating entity, City of Carpinteria, requests inquiries to Mr. Matthew Roberts, telephone (805) 684-5405, ext. 449 for any additional information.

SUPPLEMENTARY INFORMATION:

1. Authorization

Section 208 of the Flood Control Act of 1965 (Pub. L. 89-298) authorized feasibility studies for Carpinteria Shoreline. The 89th Congress of the United States passed what became Public Law 298. Congressional Energy and Water Development Appropriations Bill H.R. 21-22 (1995) provided funds to initiate the reconnaissance study for Carpinteria Shoreline.

2. Background

The Carpinteria Shoreline is part of the Carpinteria City Beach, bound by the Pacific Ocean to the west, lies within the City of Carpinteria, and is an integral part of the southern coastal area of California in Santa Barbara County. The sandy beach is typically narrow, and backed by public and private developments. The Carpinteria Salt Marsh is located north of the Carpinteria Shoreline on the ocean side of the Pacific Coast Highway (PCH) 1, and is fed by the Franklin and Santa Monica Creeks. The coastal plain in the study area continues has limited groundwater resources, partly due to saltwater intrusion coming from the Pacific Ocean.

The Feasibility Studies to be evaluated by this Draft EIS will analyze: (1) Beach Nourishment concepts for the Carpinteria Shoreline using sand including vegetated sand dunes, and periodic beach nourishment operation and maintenance (O&M) operations to prevent erosion and reduce coastal storm damages to the shoreline; (2) Artificial Reef Submerged Breakwater (ARSB) opportunities located in the ocean parallel to the Carpinteria Shoreline to avoid erosion, and decrease wave and coastal storm flooding damages to public and private properties; and (3) Reinforced Concrete Seawall designs as part of the Carpinteria Shoreline to lessen off shore wave impact and storm damages to public facilities and private residences; (4) Plans for maintaining and enhancing existing recreational facilities for the Carpinteria Shoreline to maintain public access and advert a decline in its recreational value. Prehistoric and historic cultural resources are not known to exist along this stretch of the Carpinteria Shoreline.

3. Proposed Action

No plan of action has yet been identified.

4. Alternatives

Alternatives will be developed as part of the planning process. These would likely include:

a—No Action: No nourishment, improvement or reinforcement of shoreline.

b—Proposed Alternative Plans: Conceptual feasible alternatives to prevent erosion and coastal storm damage within the Carpinteria Shoreline are the following: (1a) Beach Nourishment with two year renourishment period; (1b) Beach Nourishment with five year renourishment; (2a) Artificial Reef

Submerged Breakwater (ARSB) with one segment; (2b) ARSB with three segments; and (3) Seawalls.

5. Scoping Process

Participation of all interested Federal, State, and County resource agencies, as well as Native American peoples, groups with environmental interests, and all interested individuals is encouraged. Public involvement will be most beneficial and worthwhile in identifying pertinent environmental issues, offering useful information such as published or unpublished data, direct personal experience or knowledge which inform decision making, assistance in defining the scope of plans which ought to be considered, and recommending suitable mitigation measures warranted by such plans. Those wishing to contribute information, ideas, alternatives for actions, and so forth can furnish these contributions in writing to the points of contacts indicated above, or by attending public scoping opportunities. The scoping period will conclude 45 days after publication of this NOI.

When plans have been devised and alternatives formulated to embody those plans, potential impacts will be evaluated in the DEIS. These assessments will emphasize at least thirteen categories of resources: land use, physical environment, hydrology, biological, esthetics, air quality, noise, transportation, socioeconomic, safety recreation, cultural resources, and hazardous material.

Dated: September 4, 2003.

Richard G. Thompson,

Colonel, U.S. Army, District Engineer.

[FR Doc. 03-23173 Filed 9-10-03; 8:45 am]

BILLING CODE 3710-KF-M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Prepare an Environmental Impact Statement for Northwest Range Complex Extension, Naval Undersea Warfare Center, Division Keyport, Keyport, WA

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: Pursuant to Section 102 (2) (c) of the National Environmental Policy Act (NEPA) of 1969, as implemented by the Council on Environmental Quality regulations (40 CFR Parts 1500-1508), the Department of the Navy (Navy) announces its intent to prepare an Environmental Impact Statement/ Overseas Environmental Impact

Statement (EIS/OEIS) to evaluate the potential environmental impacts associated with the extension of the Northwest Range Complex, in Washington state, to provide additional space and volume outside the existing operational areas, to support the existing and evolving range operations of Naval Undersea Warfare Center, Division Keyport, Keyport, WA (NUWC DIVKPT). Existing and evolving range operations include requirements for testing, training, and evaluation of manned and unmanned vehicles in multiple marine environments to evaluate system capabilities such as guidance, control, and sensor accuracy.

DATES: Public scoping meetings will be held in Kitsap County, WA, Mason County, WA, Jefferson County, WA, and Grays Harbor County, WA, to receive oral and/or written comments on environmental concerns that should be addressed in the EIS/OEIS. The public meeting dates are:

1. November 17, 2003, 6 p.m. to 9 p.m., Kitsap County, WA.
2. November 18, 2003, 6 p.m. to 9 p.m., Mason County, WA.
3. November 19, 2003, 6 p.m. to 9 p.m., Jefferson County, WA.
4. November 20, 2003, 6 p.m. to 9 p.m., Grays Harbor County, WA.

ADDRESSES: The public meeting locations are:

1. Kitsap County—Naval Undersea Museum, 610 Dowell Street, Keyport, WA.
2. Mason County—Belfair Elementary School, Gymnasium, 22900 NE Highway 3, Belfair, WA.
3. Jefferson County—Quilcene Public Schools, Multi-Purpose Room, 294715 Highway 101, Quilcene, WA.
4. Grays Harbor County—Hoquiam High School, Cafeteria, 501 West Emerson, Hoquiam, WA.

FOR FURTHER INFORMATION CONTACT: Mrs. Shaari Unger (Code 521), Naval Undersea Warfare Center Div, Keyport, 610 Dowell St, Keyport, WA 98345; (360) 315-7730, fax (360) 396-2259, E-Mail: RangeExtensionE@efanw.navfac.navy.mil.

SUPPLEMENTARY INFORMATION: The Navy needs to extend the Northwest Range Complex operating area to provide multiple in-water environments that meet the evolving operational requirements for manned and unmanned vehicle testing in Washington State. The Northwest Range Complex is comprised of three marine ranging areas in the Pacific Northwest (Washington state): (1) The Dabob Bay Military Operating Area (MOA), two Hood Canal MOAs and the connecting waters known as the Dabob Bay Range

Complex (DBRC); (2) the Keyport MOA; and (3) the Quinault Underwater Tracking Range (QUTR) MOA which is located within the Navy MOA W237A. The range extension is required in order to provide adequate testing area and volume in multiple marine environments to fulfill the NUWC DIVKPT mission of providing test and evaluation services in both surrogate and simulated war-fighting environments for emergent manned and unmanned vehicle program operations.

Alternatives to be considered in the EIS/OEIS address the need to provide adequate testing area and volume as well as the type, tempo, and location of the testing and training to be conducted on the range. The alternatives proposed will meet the requirements for evolving range operations including manned and unmanned vehicle program needs. Additionally the alternatives will provide multiple marine environments including varied salinity types, variable depths, and surf zone access.

The Navy has developed three action alternatives that meet evolving range operations including manned and unmanned vehicle requirements. These alternatives meet operational criteria to provide adequate test and training area and volume in multiple marine environments in varying proximity to existing NUWC DIVKPT facilities. Alternative (1) is to conduct existing and new activities within the DBRC with extensions in Hood Canal north and south; including shallow water activity, extension of the Keyport Range operating area, and extension of QUTR operating area to W-237A. Alternative (2) is to conducting existing and new activities within the DBRC without extension, extension of the Keyport Range operating area, and extension of QUTR operating area to W-237A or (3) conducting existing and new activities within the DBRC with additional shallow water activity, extension of the Keyport Range operating area, and extension of QUTR operating area to W-237A. The No Action alternative is to continue activities carried out at existing operating areas for the DBRC, Keyport range, and QUTR.

The EIS/OEIS will evaluate the potential environmental impacts associated with identified alternatives. Issues to be addressed will include, but not be limited to, the following resource areas: marine/benthic communities, fisheries including an analysis of essential fish habitat, water quality, wildlife including threatened and endangered species and marine mammals, vegetation/plants, soils, land/shoreline use, recreation, socioeconomics, transportation, public

utilities, cultural resources, usual and accustomed fishing, air quality, and noise. The analysis will include an evaluation of the direct, indirect, short-term, and cumulative impacts. No decision will be made to implement any alternative until the NEPA process is completed.

The Navy is initiating the scoping process to identify community concerns and local issues that will be addressed in the EIS/OEIS. Federal, state, local agencies, and interested persons are encouraged to provide oral and/or written comments to the Navy to identify specific issues or topics of environmental concern that should be addressed in the EIS/OEIS. The Navy will consider these comments in determining the scope of the EIS/OEIS.

Written comments on the scope of the EIS/OEIS should be submitted in accordance with future Federal Register notices for public scoping meetings and should be mailed to: Commander, Engineering Field Activity, Northwest, Naval Facilities Engineering Command, 19917 7th Ave NE., Poulsbo, WA 98370, Attn: Code 05EC3.KK (Mrs. Kimberly Kler) E-Mail: RangeExtensionE@efanw.navfac.navy.mil.

Dated: September 8, 2003.

E.F. McDonnell,

Major, U.S. Marine Corps, Federal Register Liaison Officer.

[FR Doc. 03-23181 Filed 9-10-03; 8:45 am]

BILLING CODE 3810-FF-U

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Chief of Naval Operations (CNO) Executive Panel

AGENCY: Department of the Navy, DOD.

ACTION: Notice of closed meeting.

SUMMARY: The CNO Executive Panel is to report the findings and recommendations of the FORCENet Working Group to the Chief of Naval Operations. This meeting will consist of discussions relating to development of FORCENet, the Navy's transformational architecture for force integration and application. This meeting will be closed to the public.

DATE: The meeting will be held on Friday, September 12, 2003, from 11:30 a.m. to 12 p.m.

ADDRESS: The meeting will be held at the Office of the Chief of Naval Operations, Room 4E660, 2000 Navy Pentagon, Washington, DC 20350-2000.

FOR FURTHER INFORMATION CONTACT: Commander David Hughes, CNO Executive Panel, 4825 Mark Center

Drive, Alexandria, VA 22311, (703) 681-4908, or Ms. Nancy Harned, (703) 681-4907.

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), these matters constitute classified information that is specifically authorized by Executive Order to be kept secret in the interest of national defense and are, in fact, properly classified pursuant to such Executive Order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

Due to an unavoidable delay in administrative processing, the 15 days in advance notice could not be provided.

Dated: September 8, 2003.

E.F. McDonnell,

Major, U.S. Marine Corps, Federal Register Liaison Officer.

[FR Doc. 03-23240 Filed 9-10-03; 8:45 am]

BILLING CODE 3810-FF-P

DEPARTMENT OF EDUCATION

[CFDA No. 84.016A]

Office of Postsecondary Education, Department of Education; Undergraduate International Studies and Foreign Language Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2004

Purpose of Program: The Undergraduate International Studies and Foreign Language (UISFL) Program provides grants to strengthen and improve undergraduate instruction in international studies and foreign languages.

Eligible Applicants: (1) Institutions of higher education, (2) combinations of institutions of higher education, (3) partnerships between nonprofit educational organizations and institutions of higher education, and (4) public and private nonprofit agencies and organizations, including professional and scholarly associations.

Applications Available: September 11, 2003.

Deadline for Transmittal of Applications: November 5, 2003.

Deadline for Intergovernmental Review: January 5, 2004.

Estimated Available Funds: The Administration has requested \$2,039,000 for UISFL Program new awards for FY 2004. The actual level of funding, if any, depends on final

congressional action. However, we are inviting applications to allow enough time to complete the grant process, if Congress appropriates funds for this program.

Estimated Range of Awards: \$40,000-\$130,000.

Estimated Average Size of Awards: \$72,821.

Estimated Number of Awards: 28.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 24 months for grants to single institutions of higher education, and up to 36 months for grants to combinations of institutions of higher education, to partnerships, and to public and private nonprofit agencies and organizations.

Page Limit: The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the narrative to the equivalent of no more than 40 pages, using the following standards:

- A "page" is 8.5" x 11", on one side only, with 1" margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions. However, you may single space all text in charts, tables, figures and graphs.
- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch). However, you may use a 10-point font in charts, tables, figures and graphs.

The page limit does not apply to the cover sheet; the budget section, including the narrative budget justification; the assurances and certifications; or the one-to-two page abstract or the appendices. However, you must include all of the application narrative in responding to the selection criteria.

We will reject your application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 82, 85, 86, 97, 98 and 99; and (b) the regulations for this program in 34 CFR parts 655 and 658.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

SUPPLEMENTARY INFORMATION: Matching requirement: Under title VI, part A,

section 604(a)(3) of the Higher Education Act of 1965, as amended (HEA), 20 U.S.C. 1124(a)(3), UISFL Program grantees must provide matching funds in either of the following ways: (a) cash contributions from the private sector equal to one-third of the total project costs; or (b) a combination of institutional and non-institutional cash or in-kind contributions equal to one-half of the total project costs. The Secretary may waive or reduce the required matching share for institutions that are eligible to receive assistance under part A or part B of title III of HEA, or under title V of HEA.

Priorities

Competitive Priority

This competition focuses on projects designed to meet the priority in section 604(a)(5) of HEA (20 U.S.C. 1124(a)(5)) (see 34 CFR 75.105(b)(2)(iv)).

Applications from institutions of higher education; or combinations of institutions of higher education; or partnerships between nonprofit educational organizations and institutions of higher education, that: (a) Require entering students to have successfully completed at least two years of secondary school foreign language instruction; (b) require each graduating student to earn two years of postsecondary credit in a foreign language or have demonstrated equivalent competence in the foreign language; or (c) in the case of a two-year degree granting institution, offer two years of postsecondary credit in a foreign language.

Under 34 CFR 75.105(c)(2)(i) we award an additional five points to an application that meets the priority.

Invitational Priorities

We are particularly interested in applications that meet the following invitational priorities.

Invitational Priority 1

Applications from (1) institutions of higher education, (2) combinations of institutions of higher education, (3) partnerships between nonprofit educational organizations and institutions of higher education, and (4) public and private nonprofit agencies and organizations, including professional and scholarly associations, that propose projects that provide in-service training for k-12 teachers in foreign languages and international studies and strengthen instruction in international studies and foreign languages in teacher education programs.

Invitational Priority 2

Applications from (1) institutions of higher education, (2) combinations of institutions of higher education, (3) partnerships between nonprofit educational organizations and institutions of higher education, and (4) public and private nonprofit agencies and organizations, including professional and scholarly associations of higher education, that propose educational projects that include activities focused on the targeted world areas of Central and South Asia, the Middle East, Russia, the Independent States of the former Soviet Union, and Africa and that are integrated into the curricula of the home institutions or organizations.

Under 34 CFR 75.105(c)(1) we do not give an application that meets one or more of the invitational priorities a competitive or absolute preference over other applications.

Application Procedures

The Government Paperwork Elimination Act (GPEA) of 1998 (Pub. L. 105-277) and the Federal Financial Assistance Management Improvement Act of 1999 (Pub. L. 106-107) encourage us to undertake initiatives to improve our grant processes. Enhancing the ability of individuals and entities to conduct business with us electronically is a major part of our response to these Acts. Therefore, we are taking steps to adopt the Internet as our chief means of conducting transactions in order to improve services to our customers and to simplify and expedite our business processes.

Note: Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

We are requiring that applications for grants for FY 2004 under the UISFL Program be submitted electronically using e-Application available through the Department's e-GRANTS system. The e-GRANTS system is accessible through its portal page at: <http://e-grants.ed.gov>.

An applicant who is unable to submit an application through the e-GRANTS system may submit a written request for a waiver of the electronic submission requirement. In the request, the

applicant should explain the reason or reasons that prevent the applicant from using the Internet to submit the application. The request should be addressed to: Ms. Christine Corey, U.S. Department of Education, 1990 K Street, NW., Suite 6069, Washington, DC 20006-8521. Please submit your request no later than two weeks before the application deadline date.

If, within two weeks of the application deadline date, an applicant is unable to submit an application electronically, the applicant must submit a paper application by the application deadline date in accordance with the transmittal instructions in the application package. The paper application must include a written request for a waiver documenting the reasons that prevented the applicant from using the Internet to submit the application.

Pilot Project for Electronic Submission of Applications

In FY 2004, the Department is continuing to expand its pilot project for electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. The UISFL Program—CFDA 84.016 is one of the programs included in the pilot project. If you are an applicant under the UISFL Program, you must submit your application to us in electronic format or receive a waiver.

The pilot project involves the use of the Electronic Grant Application System (e-Application). Users of e-Application will be entering data on-line while completing their applications. You may not e-mail a soft copy of a grant application to us. The data you enter on-line will be saved into a database. We shall continue to evaluate the success of e-Application and solicit suggestions for its improvement.

If you participate in e-Application, please note the following:

- When you enter the e-Application system, you will find information about its hours of operation. We strongly recommend that you do not wait until application deadline date to initiate an e-Application package.

- You will not receive additional point value because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format.

- You must submit all documents electronically, including the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.

- Your e-Application must comply with any page limit requirement described in this notice.

- After you electronically submit your application, you will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).

- Within three working days after submitting your electronic application, fax a signed copy of the Application for Federal Education Assistance (ED 424) to the Application Control Center after following these steps:

1. Print ED 424 from e-Application.
2. The institution's Authorizing Representative must sign this form.
3. Place the PR/Award number in the upper right hand corner of the hard copy signature page of the ED 424.
4. Fax the signed ED 424 to the Application Control Center at (202) 260-1349.

- We may request that you give us original signatures on all other forms at a later date.

Application Deadline Date Extension in Case of System Unavailability:

If you are prevented from submitting your application on the application deadline date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail, or by hand delivery. For us to grant this extension—

1. You must be a registered user of e-Application, and have initiated an e-Application for this competition; and
2. (a) The e-Application system must be unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or (b) The e-Application system must be unavailable for any period of time during the last hour of operation (that is, for any period of time between 3:30 and 4:30 p.m., Washington, DC time) on the application deadline date.

The Department must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm the Department's acknowledgement of any system unavailability you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** or (2) the e-GRANTS help desk at 1-888-336-8930.

You may access the electronic grant application for the UISFL Program at: <http://e-grants.ed.gov>.

FOR FURTHER INFORMATION CONTACT: Christine Corey, U.S. Department of

Education, International Education and Graduate Programs Service, 1990 K Street, NW, Suite 6069, Washington, DC 20006-8521. Telephone: (202) 502-7629 or via Internet: christine.corey@ed.gov.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting that person. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: <http://www.ed.gov/legislation/FedRegister>.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1-888-293-6498; or in the Washington, DC, area at (202) 512-1530.

You may also view this document in PDF at the following site: <http://www.ed.gov/offices/HEP/iegps/>.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: <http://www.access.gpo.gov/nara/index.html>.

Program Authority: 20 U.S.C. 1124.

Dated: September 8, 2003.

Sally L. Stroup,

Assistant Secretary, Office of Postsecondary Education.

[FR Doc. 03-23182 Filed 9-10-03; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF ENERGY

Amendment to the Record of Decision for the Department of Energy's Final Programmatic Environmental Impact Statement for Long-Term Management and Use of Depleted Uranium Hexafluoride

AGENCY: Department of Energy.

ACTION: Amendment to Record of Decision.

SUMMARY: Pursuant to 10 CFR 1021.315, the Department of Energy (DOE) is amending the Record of Decision (ROD) for its Final Programmatic Environmental Impact Statement for Alternative Strategies for the Long-Term Management and Use of Depleted Uranium Hexafluoride (DOE/EIS-0269) (DUF₆ PEIS) issued in August, 1999 (64 FR 43358; August 10, 1999). The DOE has now decided to transfer up to 1,700 of the approximately 4,700 cylinders containing DUF₆ from the East Tennessee Technology Park (ETTP) in Oak Ridge, Tennessee, to its storage facilities at DOE's enrichment facility at Portsmouth, Ohio, between 2003 and 2005.

The August 1999 ROD was based on the analysis in the DUF₆ PEIS, and announced that DOE anticipated shipment of approximately 4,700 cylinders containing DUF₆ from ETTP to a conversion facility. The DOE did not identify the specific location for shipment of ETTP cylinders at that time, but intended to leave that decision until it had concluded site-specific National Environmental Policy Act (NEPA) review. However, on August 2, 2002, while site-specific review was underway, the President signed the *2002 Supplemental Appropriations Act for Further Recovery From and Response To Terrorist Attacks on the United States* (Pub. L. 107-206). In pertinent part, this law required DOE to award a contract within 30 days of enactment for the design, construction, and operation of a DUF₆ conversion plant at each of the DOE sites at Paducah, Kentucky, and Portsmouth, Ohio. In response to Public Law 107-206, on August 29, 2002, DOE awarded a contract to Uranium Disposition Services, LLC (UDS). Now that a destination has been identified for the DUF₆ cylinders, DOE is amending its August 1999 ROD to ship up to 1,700 DUF₆ cylinders at ETTP to Portsmouth beginning in 2003 through 2005.

Pursuant to 10 CFR 1021.314c, DOE prepared a Supplement Analysis (SA) to discuss the circumstances that are pertinent to deciding whether to prepare a new Supplemental EIS. DOE determined that no further NEPA documentation is required. DOE intends to transport the ETTP cylinders and continue its site-specific NEPA reviews of the conversion facilities.

FOR FURTHER INFORMATION CONTACT: For further information on the long-term management and use of depleted uranium hexafluoride or to receive copies of the SA, initial ROD or this

Amended ROD contact: Gary S. Hartman, U.S. Department of Energy, Oak Ridge Operations Office, Oak Ridge, Tennessee 37831, telephone (865) 576-0273, fax (865) 576-0746, e-mail: hartmangs@oro.doe.gov. For general information on the DOE NEPA process, contact Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance, EH-42/Forrestal Building, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585-0119, telephone (202) 586-4600, or leave a message at (800) 472-2756.

SUPPLEMENTARY INFORMATION:

I. Background

DUF₆ results from the process of making uranium suitable for use as fuel for nuclear power plants or for military applications. The use of uranium in these applications requires increasing the proportion of the uranium-235 isotope found in natural uranium through an isotopic separation process called uranium enrichment. Gaseous diffusion is the enrichment process currently used in the United States. The DUF₆ that is produced as a result of enrichment typically contains 0.2 percent to 0.4 percent uranium-235 and is stored as solid in large metal cylinders at the gaseous diffusion facilities. Large-scale uranium enrichment in the United States began as part of atomic bomb development during World War II. Uranium enrichment activities were subsequently continued under the U.S. Atomic Energy Commission and its successor agencies including DOE. Uranium enrichment was carried out at three locations: the K-25 Plant (now called the East Tennessee Technology Park or ETTP) at Oak Ridge, Tennessee, the Paducah Site in Kentucky and the Portsmouth Site in Ohio. DOE maintains approximately 700,000 metric tons (1 metric ton or mt = 1,000 kilograms, or approximately 2,205 pounds) of DUF₆ in about 58,000 cylinders stored at the Paducah, Portsmouth, and ETTP sites. DUF₆ is stored as a solid at all three sites in steel cylinders. Each cylinder holds approximately 9 to 12 metric tons of material. The cylinders usually are stacked two layers high in outdoor areas called "yards." The Paducah site has approximately 36,200 DUF₆ cylinders, the Portsmouth Site has approximately 16,100 DUF₆ cylinders, and the ETTP has approximately 4,700 DUF₆ cylinders.

Beginning in 1994, the DOE began work on a Programmatic Environmental Impact Statement (PEIS) to select a new long-term strategy for managing its

inventory of DUF₆. After it selected its long-term strategy in the PEIS, the DOE intended to conduct site-specific environmental review in accordance with NEPA to identify specific sites and technologies necessary to carry out the strategy.

In the DUF₆ PEIS, the DOE analyzed a wide spectrum of alternatives for the conversion of DUF₆ into products as well as alternatives for storage and disposal of the DUF₆ and the products made from it. The Final DUF₆ PEIS (DOE/EIS-0269) can be found on the World Wide Web at <http://web.ead.anl.gov/uranium>. As part of the analysis, DOE estimated the potential transportation impacts for each of the alternatives by rail and truck. Because the sites for the conversion facilities had not yet been selected, transportation impacts were evaluated for distances ranging from 155 to 3,100 miles, a range that anticipated shipments to Paducah or Portsmouth or a new conversion facility.

In the 1999 ROD, the DOE decided, among other things, that it would take the necessary steps to promptly convert its DUF₆ inventory, that it would select the location of the actual conversion facilities in a project-specific EIS, and that it anticipated shipping approximately 4,700 cylinders from ETTP to the conversion facilities. On the issue of transportation, the ROD recognized that the primary impacts from transportation are related to accidents. If shipments were predominantly by truck, it was estimated that zero fatalities would be expected for the no-action alternative, approximately two fatalities for the long-term storage as DUF₆ alternative, and up to four fatalities for each of the other alternatives. Shipment by rail would result in similar, but slightly smaller, impacts. Severe transportation accidents could also cause a release of radioactive material or chemicals from a shipment that could have adverse health effects. All alternatives, other than no action and long-term storage as UF₆, could involve the transportation of relatively large quantities of chemicals such as ammonia and anhydrous hydrogen fluoride (HF) because their use would be required in the conversion process. Severe accidents involving these materials could result in releases that caused fatalities with HF posing the largest potential hazard. However, because of the low probability of such accidents, the maximum calculated risk for these accidents would be zero fatalities. If HF were to be neutralized to calcium fluoride (CaF₂) at the conversion facility, the risks associated with its transportation would be

eliminated. There would be risks associated with transportation of CaF₂; however, these risks would be much less than those associated with transportation of HF.

Public Law 105-204, signed into law in July 1998, while the DUF₆ PEIS was being prepared, directed the Secretary of Energy to submit to Congress a plan for the construction of plants at Paducah and Portsmouth to convert the DUF₆ inventory. In the ROD, the DOE noted that it had submitted the plan as required and that it planned to review these proposed activities in subsequent NEPA review. DOE initiated its Conversion Plan on July 30, 1999, by announcing the availability of a draft Request for Proposals (RFP) for a contractor to design, construct, and operate DUF₆ conversion facilities at the Paducah and Portsmouth sites.

On October 31, 2000, DOE issued a final RFP to procure a contractor to design, construct, and operate DUF₆ conversion facilities at the Paducah and Portsmouth sites. The RFP stated that any conversion plants that would be built would have to convert the DUF₆ to a more stable chemical form that would be suitable for either beneficial use or disposal. On September 18, 2001, the DOE published a Notice of Intent (NOI) in the **Federal Register** (66 FR 48123), announcing its intention to prepare a site-specific EIS for the proposed action to construct, operate, maintain, and decontaminate and decommission two DUF₆ conversion facilities at Portsmouth, Ohio, and Paducah, Kentucky. As noted above, DOE originally planned to wait until it finished its site-specific EIS review before transporting any of the cylinders. That plan has changed with the advent of Public Law 107-206.

Public Law 107-206, the *2002 Supplemental Appropriations Act for Further Recovery From and Response to Terrorist Attacks on the United States*, was signed by the President on August 2, 2002. This law required, in pertinent part, that within 30 days of its enactment DOE was required to award a contract for the scope of work described in the October 2000 RFP, including design, construction, and operation of a DUF₆ conversion plant at each of the Department's sites at Paducah, Kentucky and Portsmouth, Ohio. In compliance with the law, on August 29, 2002, the DOE awarded a contract to Uranium Disposition Services, LLC (hereafter referred to as UDS), for construction and operation of the two mandated conversion facilities. The DOE also reevaluated the appropriate scope of its site-specific NEPA review and decided to prepare

two separate EISs, one for the plant proposed for the Paducah site and a second for the Portsmouth site. This change in approach was announced in the **Federal Register** on April 28, 2003 (68 FR 22368).

Now that Congress has determined the locations for the conversion plants, DOE intends to begin shipping a portion of its DUF₆ inventory, up to 1,700 DUF₆ cylinders, from ETTP to Portsmouth beginning in 2003. Portsmouth was chosen based on the availability of storage capacity and the desire to balance cylinder inventory. It is important that DOE begin to ship DUF₆ from ETTP in order to satisfy the terms of a Consent Order with the Tennessee Department of Environment and Conservation with respect to the management of DUF₆ at the ETTP site. DOE has agreed to remove all known DUF₆ cylinders from ETTP by 2009, in accordance with applicable regulatory requirements.

At the same time, DOE will continue with its site-specific NEPA review to determine the exact locations at the Portsmouth and Paducah sites for the conversion facilities and to analyze the impacts of shipping cylinders to these sites.

Basis for Decision

Pursuant to 10 CFR 1021.314(c), the Department has prepared a Supplemental Analysis to determine whether or not a new or supplemental EIS is required for the proposed action. Specifically, the Supplemental Analysis was prepared to determine whether the DUF₆ PEIS sufficiently analyzed the transportation of up to 1,700 full DUF₆ cylinders. On the basis of the Supplemental Analysis, the estimated impacts from the proposed transportation campaign are less than or equal to those described in the PEIS for shipment of the entire ETTP cylinder inventory. Therefore, no new or supplemental EIS is necessary, and no further NEPA documentation is required.

As part of the DUF₆ PEIS, the DOE analyzed the potential environmental impacts of transporting 4,683 full DUF₆ cylinders from ETTP to an unspecified location within the continental United States at three different distances: 250 km (155 mi), 1,000 km (620 mi), and 5,000 km (3,100 mi). Transportation by both truck and rail was considered. The assessment considered risks during both routine (incident-free) transportation conditions as well as from accidents. Because destination sites for the cylinders were not known at the time, the impacts were estimated on the basis of representative national average route statistics. National average accident

occurrence rates (accidents per million miles) and fatality rates (accident fatalities per million miles) were used for accident calculations for truck and rail shipments. Transportation of both Department of Transportation compliant and noncompliant cylinders was analyzed. The noncompliant cylinders were assumed to be transported in overpacks or have their contents transferred into compliant cylinders at ETPP before being transported off-site.

The potential receptors of exposure resulting from DUF₆ transport considered in the PEIS analyses included workers who load and unload the cylinders, transportation crews, and members of the general public who live along the transportation routes, as well as members of the public who share the roads or rest stops with the DUF₆ cylinder transport vehicles. The assessment also considered impacts to maximally exposed individuals for several very specific exposure scenarios, such as vehicle inspectors, persons in vehicles stopped next to a shipment, and a resident living along a site entrance or exit road. Both radiological and nonradiological, including chemical and vehicle related, impacts were estimated.

Similar to the assessment of DUF₆ cylinders at ETPP, the DOE also analyzed the potential impacts from transporting the approximately 53,000 DUF₆ cylinders under its management responsibility at its Portsmouth and Paducah sites to an unspecified location in the continental United States over similar distances.

The Supplement Analysis analyzes the health and environmental impacts of shipments of up to 1,700 DUF₆ cylinders from ETPP to the Portsmouth site in 2003 through 2005. The result of this analysis and a separate report on transportation of DUF₆ cylinders to Portsmouth and Paducah prepared by B. M. Biwer, *et al.*; *Transportation Impact for Shipment of Uranium Hexafluoride (UF₆) Cylinders From the East Tennessee Technology Park to the Portsmouth and Paducah Gaseous Diffusion Plants* ANL EAD/TM-112, Argonne National Laboratory, Argonne, IL, October 2001 subsequent to the PEIS were then compared to the results in the DUF₆ PEIS. The Supplement Analysis concluded as follows:

The estimated collective population risks for the proposed shipment of up to 1,700 DUF₆ cylinders from ETPP to Portsmouth by truck are compared with the results from the Argonne report and the DUF₆ PEIS in Table 6. In general, the collective risks for the proposed campaign are less than the projected risks presented in the PEIS for the shipment of ETPP DUF₆ cylinders over 1,000

km and much less than the PEIS results for shipment over 5,000 km. The one exception is the risk estimate for vehicle emissions (*i.e.*, exhaust emissions and fugitive dust), which is somewhat greater for the proposed shipment campaign than the estimates in the PEIS because of the use of a revised method of estimating such risks. However, the total number of estimated fatalities from all causes for the campaign is much less than one and well within the bounds of the PEIS analysis.

With respect to potential exposures of individual members of the public, the estimated doses and risks to maximally exposed individuals for the proposed shipments would be the same as the per-event results presented in the PEIS. The probability of being exposed to multiple shipments during the proposed campaign would be less than would be estimated for the PEIS because of the fewer number of shipments considered.

The maximum estimated consequences for severe accidents for the proposed shipments would also be the same as those reported in the PEIS. Because the number of shipments and the cumulative shipment distances would be considerably less than those in the PEIS, the probability of such an accident's occurring also would be less. Thus, the overall risk posed by such a severe accident, which is defined as the product of the accident consequence and the estimated probability, for the proposed campaign would be less than for the shipments considered in the PEIS.

Potential impacts at ETPP from the preparation of the cylinders for shipment for the proposed campaign would also be less than those reported in the PEIS. The PEIS considered preparation of up to 2,342 compliant cylinders for shipment, compared with 1,700 cylinders being considered in this SA.

Decision

Based on the Supplement Analysis, the DOE has concluded that the estimated impacts for the proposed transport of up to 1,700 ETPP DUF₆ cylinders are less than or equal to those analyzed in the PEIS for shipment of the entire ETPP cylinder inventory. Therefore, no supplemental EIS is necessary, and no further NEPA documentation is required. The DOE hereby amends the ROD for the Final Programmatic Environmental Impact Statement for Alternative Strategies for the Long-Term Management and Use of Depleted Uranium Hexafluoride issued in August 1999 (64 FR 43358; August 10, 1999). The DOE has now decided to transfer up to 1,700 of the approximately 4,700 cylinders containing DUF₆ from the East Tennessee Technology Park (ETTP) in Oak Ridge, Tennessee, to its storage facilities at DOE's enrichment facility at Portsmouth, Ohio, between fiscal years 2003 and 2005. Portsmouth was selected based on the availability of storage capacity and the desire to balance

cylinder inventory. The DOE's site-specific NEPA review will continue as before.

Issued in Washington, DC, this 28th day of August, 2003.

Jessie Hill Roberson,

Assistant Secretary for Environmental Management.

[FR Doc. 03-23167 Filed 9-10-03; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

International Energy Agency Meeting

AGENCY: Department of Energy.

ACTION: Notice of meeting.

SUMMARY: The Industry Advisory Board (IAB) to the International Energy Agency (IEA) will meet on September 18, 2003, at the Sony Center at Potsdamer Platz, Berlin, Germany; and on September 19, 2003, in connection with an IEA seminar on Oil Stocks and New Challenges in the Oil Market, hosted by the German Federal Ministry of Economy and Labor on the same date at Scharnhorststrasse 34-37, Berlin, Germany.

FOR FURTHER INFORMATION CONTACT:

Samuel M. Bradley, Assistant General Counsel for International and National Security Programs, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, 202-586-6738.

SUPPLEMENTARY INFORMATION: In accordance with section 252(c)(1)(A)(i) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(i)) (EPCA), the following notice of meeting is provided:

A meeting of the Industry Advisory Board (IAB) to the International Energy Agency (IEA) will be held at the Sony Center at Potsdamer Platz, Berlin, Germany, on September 18, 2003, from 3 p.m. to 6 p.m. The agenda for the IAB meeting is as follows:

- I. Welcome, Review of Agenda, and Introductions
- II. Near-term Goals of the IEA
- III. Overview of Upcoming Work at IEA
- IV. Progress Report: International Energy Forum & IEA World Energy Outlook 2003
- V. Introduction of Draft Outline for Emergency Response Exercise 3 (ERE3)
- VI. Discussion of Design Questions for ERE3
- VII. Closing and Review of Upcoming IAB Meetings

A meeting of the IAB will be held on September 19, 2003, in connection with a Seminar on Oil Stocks and New

Challenges in the Oil Market, sponsored by the IEA and hosted by the German Federal Ministry of Economy and Labor at Scharnhorststrasse 34–37, Berlin, Germany, commencing at 9:15 a.m. The purpose of this notice is to permit attendance by representatives of U.S. company members of the IAB at the IEA-sponsored Seminar, which is scheduled to be held at the same time and location.

The agenda for the Seminar is under the control of the IEA. It is expected that the IEA will adopt the following agenda:

Opening

I. Opening Speeches

Session 1: Dynamics of Global Oil Market and Challenges to Oil Security

- I. Recent Oil Market Events, Near-Term Risks and the Continuing Importance of Strategic Stocks
- II. Industry's Perspective on Recent Oil Market Events and the Role of the IEA and Strategic Stocks
- III. Discussion
- IV. The Post Iraq Oil Market and the Role of Strategic Stocks
- V. Global Investment Outlook to 2030: Key Trends and Uncertainties
- VI. Discussion

Session 2: Oil Security and Stockholding

- I. Overview of IEA Member Country Stockholding Regimes
- II. Discussion
- III. Stocks, Data and the Oil Market
- IV. Public Stocks, Mandatory Industry Stocks and Fair Competition in the Market
- V. Emergency Reserves and the Growing Use of Bilateral Stockholding Tickets
- VI. Discussion

Session 3: A Global Framework for Future Oil Security

- I. Recent Developments in Stockholding by Non-Member Countries
- II. The Role of Non-Member Consuming Countries in Global Oil Supply Security: Strategic Stocks
- III. How Will the Producer/Consumer Dialogue Promote Stability in Global Energy Markets?
- IV. Discussion

Concluding Discussion—Key Issues for the Future of Oil Security

- I. Summary of the Chairmen and Discussion
- II. Conclusion

As provided in section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(ii)), the meeting of the IAB on September 18 is open only to representatives of members of the IAB and their counsel;

representatives of members of the IEA's Standing Group on Emergency Questions (SEQ); representatives of the Departments of Energy, Justice, and State, the Federal Trade Commission, the General Accounting Office, Committees of Congress, the IEA, and the European Commission; and invitees of the IAB, the SEQ, or the IEA. The expected participants at the IEA-sponsored Seminar on September 19 include Government members of the SEQ, representatives of the German Federal Ministry of Economy and Labor, representatives of the IEA Secretariat, and representatives of members of the IAB.

Issued in Washington, DC, September 5, 2003.

Samuel M. Bradley,

Assistant General Counsel for International and National Security Programs.

[FR Doc. 03–23166 Filed 9–10–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Agency information collection activities: submission for OMB review; comment request.

SUMMARY: The EIA has submitted the Petroleum Marketing Program Surveys to the Office of Management and Budget (OMB) for review and a three-year extension with revisions under section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) (44 U.S.C. 3501 *et seq.*).

DATES: Comments must be filed by October 14, 2003. If you anticipate that you will be submitting comments but find it difficult to do so within that period, you should contact the OMB Desk Officer for DOE listed below as soon as possible.

ADDRESSES: Send comments to OMB Desk Officer for DOE, Office of Information and Regulatory Affairs, Office of Management and Budget. To ensure receipt of the comments by the due date, submission by FAX (202–395–7285) or e-mail (Ballen@omb.eop.gov) is recommended. The mailing address is 726 Jackson Place NW., Washington, DC 20503. The OMB DOE Desk Officer may be telephoned at (202) 395–3087. (A copy of your comments should also be

provided to EIA's Statistics and Methods Group at the address below.)

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Herbert Miller. To ensure receipt of the comments by the due date, submission by FAX (202–287–1705) or e-mail (herbert.miller@eia.doe.gov) is recommended. The mailing address is Statistics and Methods Group (EI–70), Forrestal Building, U.S. Department of Energy, Washington, DC 20585–0670. Mr. Miller may be contacted by telephone at (202) 287–1711.

SUPPLEMENTARY INFORMATION: This section contains the following information about the energy information collection submitted to OMB for review: (1) The collection numbers and title; (2) the sponsor (*i.e.*, the Department of Energy component); (3) the current OMB docket number (if applicable); (4) the type of request (*i.e.*, new, revision, extension, or reinstatement); (5) response obligation (*i.e.*, mandatory, voluntary, or required to obtain or retain benefits); (6) a description of the need for and proposed use of the information; (7) a categorical description of the likely respondents; and (8) an estimate of the total annual reporting burden (*i.e.*, the estimated number of likely respondents times the proposed frequency of response per year times the average hours per response).

1. Petroleum Marketing Program Surveys—EIA–14, “Refiners” Monthly Cost Report”; EIA–182, “Domestic Crude Oil First Purchase Report”; EIA–782A, “Refiners’/ Gas Plant Operators” Monthly Petroleum Product Sales Report”; EIA–782B, “Resellers’/ Retailers” Monthly Petroleum Product Sales Report”; EIA–782C, “Monthly Report of Petroleum Products Sold Into States for Consumption”; EIA–821, “Annual Fuel Oil and Kerosene Sales Report”; EIA–856, “Monthly Foreign Crude Oil Acquisition Report”; EIA–863, “Petroleum Product Sales Identification Survey”; EIA–877, “Winter Heating Fuels Telephone Survey”; EIA–878, “Motor Gasoline Price Survey”; and EIA–888, “On-Highway Diesel Fuel Price Survey.”

2. Energy Information Administration.
3. OMB Number 1905–0174.

4. Revision.
5. Mandatory.

6. The Petroleum Marketing Program Surveys collect information on costs, sales, prices, and distribution for crude oil and petroleum products. Data are published in petroleum publications and in multi-fuel reports. Respondents are refiners, first purchasers of domestic

crude oil, gas plant operators, resellers/retailers, motor gasoline wholesalers, suppliers, distributors and importers.

On March 25, 2003, EIA issued a **Federal Register** notice soliciting comments on these surveys. Since that time, EIA has decided to collect the information reported on the Forms EIA-863, EIA-878, and EIA-888 as confidential in accordance with the Confidential Information Protection and Statistical Efficiency Act of 2002 (Title V of Public Law 107-347). In accordance with CIPSEA, the information would be used exclusively for statistical purposes.

7. Business or other for-profit.

8. 122,534 hours (15,373 respondents times x 7.4 responses per year times 1.07 hours per response).

Please refer to the supporting statement as well as the proposed forms and instructions for more information about the purpose, who must report, when to report, where to submit, the elements to be reported, detailed instructions, provisions for confidentiality, and uses (including possible nonstatistical uses) of the information. For instructions on obtaining materials, see the **FOR FURTHER INFORMATION CONTACT** section.

Statutory Authority: Section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. 104-13) (44 U.S.C. 3501 *et seq.*).

Issued in Washington, DC, September 4, 2003.

Jay H. Casselberry,

Agency Clearance Officer, Statistics and Methods Group, Energy Information Administration.

[FR Doc. 03-23168 Filed 9-10-03; 8:45 am]

BILLING CODE 6450-01-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-7557-2]

Clean Air Act Advisory Committee Notice of Meeting

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) established the Clean Air Act Advisory Committee (CAAAC) on November 19, 1990, to provide independent advice and counsel to EPA on policy issues associated with implementation of the Clean Air Act of 1990. The Committee advises on economic, environmental, technical scientific, and enforcement policy issues.

Open Meeting Notice: Pursuant to 5 U.S.C. App. 2 section 10(a)(2), notice is

hereby given that the Clean Air Act Advisory Committee will hold its next open meeting on Wednesday, October 15, 2003, from approximately 8:30 a.m. to 2:30 p.m. at the Grove Park Inn Resort, 290 Macon Avenue, Asheville, North Carolina. Seating will be available on a first come, first served basis. Three of the CAAAC's Subcommittees (the Linking Energy, Land Use, Transportation, and Air Quality Concerns Subcommittee; the Permits/NSR/Toxics Subcommittee; and the Economics Incentives and Regulatory Innovations Subcommittee) will hold concurrent meetings on Tuesday, October 14, 2003, from approximately 8:30 a.m. to 12 p.m. at the Park Grove Inn Resort, the same location as the full Committee.

Inspection of Committee Documents: The committee agenda and any documents prepared for the meeting will be publicly available at the meeting. Thereafter, these documents, together with CAAAC meeting minutes, will be available by contacting the Office of Air and Radiation Docket and requesting information under docket item A-94-34 (CAAAC). The Docket office can be reached by telephoning 202-566-1742; FAX 202-566-1741.

FOR FURTHER INFORMATION concerning this meeting of the full CAAAC, please contact Paul Rasmussen, Office of Air and Radiation, US EPA (202) 564-1306, FAX (202) 564-1352 or by mail as US EPA, Office of Air and Radiation (Mail code 6102 A), 1200 Pennsylvania Avenue, NW, Washington, DC 20004. For information on the Subcommittee meetings, please contact the following individuals: (1) Linking Transportation, Land Use and Air Quality Concerns—Robert Larson, 734-214-4277; Debbie Stackhouse, 919-541-5354; and (2) Economic Incentives and Regulatory Innovations—Carey Fitzmaurice, 202-564-1667. Additional information on these meetings and the CAAAC and its Subcommittees can be found on the CAAAC Web Site: www.epa.gov/oar/caaac/.

Dated: September 3, 2003.

Robert D. Brenner,

Principal Deputy Assistant Administrator for Air and Radiation.

[FR Doc. 03-23165 Filed 9-10-03; 8:45 am]

BILLING CODE 6560-50-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-7557-1]

RIN 2040-AD93

Stakeholder Meeting Concerning Development of "Revisions to the Unregulated Contaminant Monitoring Regulation for Public Water Systems"; Notice of Public Meeting

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Section 1445 (a) (2) (42 U.S.C. 300j-4 (a)) of the Safe Drinking Water Act (SDWA), as amended in 1996, requires the Environmental Protection Agency (EPA) to promulgate regulations establishing criteria for a monitoring program for unregulated contaminants. Monitoring shall vary based on system size, source water, and contaminants likely to be found. The SDWA also specifies that for systems serving 10,000 persons or fewer, only a representative sample of systems must monitor. Per SDWA, EPA is required to issue, every 5 years, a list of not more than 30 unregulated contaminants to be monitored by public water systems. The first list of unregulated contaminants was published on September 17, 1999 (64 FR 50556). A second list is scheduled to be proposed by August 2004.

The purpose of this notice is to announce a public stakeholder meeting to present information to stakeholders concerning the status of the Agency's efforts in the areas of analyte selection, analytical methods, sampling design, determination of minimum reporting levels, and other possible revisions to the current regulation.

DATES: The meeting will be held on October 29, 2003, from 9 a.m. until 5 p.m., Eastern standard time.

ADDRESSES: The public meeting will be held at the Holiday Inn Rosslyn, in the Shenandoah Room on the 2nd floor, at 1900 North Fort Myer Drive, Arlington, VA 22209. The Inn is located one block north of the Rosslyn Virginia Metro stop on the orange and blue lines. The Inn's telephone number is (703) 807-2000.

FOR FURTHER INFORMATION CONTACT: For more information on the location, or general background information, please contact the Safe Drinking Water Hotline, phone: (800)426-4791 or (703)285-1093, e-mail: hotline-sdwa@epa.gov. For technical information contact David J. Munch, Regulation Manager for the "Revisions to the Unregulated Contaminant Monitoring Regulation for

Public Water Systems," USEPA, Office of Ground Water and Drinking Water, Mail Code 140, 26 West Martin Luther King Drive, Cincinnati, Ohio 45219. E-mail: munch.dave@epa.gov. An informational package will be prepared for the meeting and available at the meeting site on October 29, 2003. If you wish to receive this package prior to the meeting, contact Maureen Devitt of The Cadmus Group at Mdevitt@cadmusgroup.com.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Statements from the public will be taken if time permits. This meeting will be held in a building that is accessible to persons using wheel chairs and scooters. Any person needing special accommodations at this meeting, including wheelchair access, should contact Susan Bjork at The Cadmus Group at (617) 673-7166 or Sbjork@cadmusgroup.com, as soon as possible, but preferably no less than five business days before the scheduled meeting.

Dated: September 5, 2003.

Cynthia C. Dougherty,

Director, Office of Ground Water and Drinking Water.

[FR Doc. 03-23162 Filed 9-10-03; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-7557-3]

Public Notice

On September 4, 2003, the U.S. Environmental Protection Agency, Region 9 ("EPA") entered a Complaint/Consent Agreement and [Proposed] Final Order ("CA/FO") in *In the Matter of J.E. McAmis, Inc.* The CA/FO proposes to issue a Final Order pursuant to section 309(g) of the Clean Water Act (CWA), 33 U.S.C. 1319(g), to J.E. McAmis, Inc. ("McAmis") assessing a civil penalty of \$70,000 for violations of section 404 of the CWA.

The CA/FO resolves allegations that McAmis violated section 404 of the CWA on various occasions between August and November 2001 while performing maintenance dredging of the Larkspur Ferry Channel, by discharging dredged material into San Francisco Bay, a "water of the United States," without CWA authorization. During the project, dredged material was discharged outside of the designated SF-11 disposal site, and other dredged material was discharged in San Francisco Bay that was not authorized to be dredged at all.

Copies of the CA/FO are available on request from the following address: Jessica Kao, ORC-2, U.S. EPA, Region 9, 75 Hawthorne Street, San Francisco, CA 94105, (415) 972-3922.

EPA is required by CWA section 309(g)(4)(A), 33 U.S.C. 1319(g)(4)(A), to provide public notice of and reasonable opportunity to comment on, a proposal to issue an Administrative Order before issuing the Final Order. Persons wishing to comment on the proposed Final Order may do so by submitting written comments, postmarked no later than [Insert Date fifteen days from the date this Notice is published], to the above address.

Any person who comments on the proposal to issue a Final Order shall be given notice of any hearing held in this matter. If a hearing is held, commenters will be entitled to an opportunity to be heard and to present evidence. If no hearing is held, commenters may petition EPA to set aside any subsequent Final Order and to hold a hearing. Commenters may also seek judicial review of the Final Order pursuant to CWA section 309(g)(8), 33 U.S.C. 1319(g)(8).

Dated: September 4, 2003.

Alexis Strauss,

Director, Water Division.

[FR Doc. 03-23163 Filed 9-10-03; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

Notice of Availability of Two New Exposure Drafts

AGENCY: Federal Accounting Standards Advisory Board.

ACTION: Notice of Two New Exposure Drafts *Auditing Estimates for Direct Loan and Loan Guarantee Subsidies Under the Federal Credit Reform Act (Amendments to Technical Release 3: Preparing and Auditing Direct Loan and Loan Guarantee Subsidies Under the Federal Credit Reform Act) and Preparing Estimates for Direct Loan and Loan Guarantee Subsidies Under the Federal Credit Reform Act (Amendments to Technical Release 3: Preparing and Auditing Direct Loan and Loan Guarantee Subsidies Under the Federal Credit Reform Act).*

Board Action: Pursuant to the Federal Advisory Committee Act (Pub. L. No. 92-463), as amended, section 10(a)(2), and the FASAB Rules of Procedure, as amended in October, 1999, notice is hereby given that the Accounting and Auditing Policy Committee has

published two new exposure drafts, *Auditing Estimates for Direct Loan and Loan Guarantee Subsidies Under the Federal Credit Reform Act (Amendments to Technical Release 3: Preparing and Auditing Direct Loan and Loan Guarantee Subsidies Under the Federal Credit Reform Act)* and *Preparing Estimates for Direct Loan and Loan Guarantee Subsidies Under the Federal Credit Reform Act (Amendments to Technical Release 3: Preparing and Auditing Direct Loan and Loan Guarantee Subsidies Under the Federal Credit Reform Act)*

A summary of the proposed Statements follows: The purpose of proposed Technical Release 3 is to amend the guidance for auditors to audit credit subsidy estimates provided in the original technical release (July 1999). The most significant changes made in this amended TR3 are (1) the removal of the preparation guidance from this amended TR to only include the audit guidance and (2) procedural changes updating the document to reflect new guidance and changes in terminology in the area of credit reform (e.g., SFFAS 18 & 19; and OMB Circular A-11).

The purpose of proposed Technical Release 6 is to amend the implementation guidance for agencies to prepare and report credit subsidy estimates provided in the original technical release (July 1999). The most significant changes made between the original TR3 and this amended TR are (1) the removal of the audit guidance from this amended TR to only include the preparation guidance; (2) clarification of OMB's role in the credit subsidy estimation and re-estimation process; and (3) credit subsidy re-estimates may now include 6 months of actual data and 6 months of projected estimates.

Respondents are encouraged to comment on any part of the exposure drafts. Written comments are requested by October 5, 2003, and should be sent to: Wendy M. Comes, Executive Director, Federal Accounting Standards Advisory Board, 441 G Street, NW., Suite 6814, Washington, DC 20548.

Copies of the Exposure Drafts can be obtained by contacting FASAB at 202-512-7350 or valentinem@fasab.gov. Additionally, the Exposure Drafts will be available on FASAB's home page <http://www.fasab.gov/>.

FOR FURTHER INFORMATION CONTACT: Wendy Comes, Executive Director, 441 G Street, NW., Mail Stop 6K17V, Washington, DC 20548, or call (202) 512-7350.

Authority: Federal Advisory Committee Act, Pub. L. No. 92-463.

Dated: September 5, 2003.

Wendy M. Comes,
Executive Director.

[FR Doc. 03-23112 Filed 9-10-03; 8:45 am]

BILLING CODE 1610-01-M

FEDERAL COMMUNICATIONS COMMISSION

[MD Docket No. 03-83; DA 03-2557]

Assessment and Collection of Regulatory Fees For Fiscal Year 2003

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Commission announces that Fiscal Year (FY) 2003 regulatory fees are due by September 24, 2003.

DATES: Effective September 11, 2003.

FOR FURTHER INFORMATION CONTACT: Roland Helvajian, Office of Managing Director at (202) 418-0444 or Rob Fream, Office of Managing Director at (202) 418-0408.

SUPPLEMENTARY INFORMATION:

Federal Communications Commission; Public Notice

Released: July 30, 2003.

Regulatory Fees Due September 24, 2003

The Federal Communications Commission announced today that Fiscal Year (FY) 2003 regulatory fee payments are due by September 24, 2003 from the over 2,200 companies in 47 regulated categories—such as television, radio, cable, wireless telephone, interstate telephone, satellite, paging/messaging, and microwave—who are required to pay fees by 47 U.S.C. 159 (Pub. L. 103-66). Cumulatively, Congress requires the Commission to collect \$269,000,000 in regulatory fees for FY 2003. These fees are collected to recover the regulatory costs associated with the Commission's enforcement, policy and rulemaking, user information, and international activities.

What Do I Owe?

Regulatees pay differing fees dependent on a variety of factors such as number of subscribers, number of assigned telephone numbers, and revenue. Currently, regulatees must calculate the fees they owe based on these varying factors. In the future we hope to make the process simpler by sending all organizations a simple postcard with the amount owed.

To find out what your organization owes for FY 2003 Regulatory Fees—refer to the industry-appropriate *What I Owe Fact Sheet*.

Payment Process

Regulatory fee payments are due September 24, 2003. Payments may be made to Mellon Bank at any time through September 24, 2003. Payments received after 11:59 p.m. on September 24, 2003 will be assessed a 25% late payment penalty.

All payments **MUST** be accompanied by an FCC Registration Number (FRN). After completing Form 159 you can make payment by check, credit card, electronic transfer, or wire transfer. Checks must be mailed, along with Form 159 to: Federal Communications Commission, Regulatory Fees, P.O. Box 358835, Pittsburgh, PA 15251-5835.

If you prefer to send your payment by courier to a lockbox address your envelope and have it delivered to: Federal Communications Commission, Regulatory Fees, c/o Mellon Client Service Center, 500 Ross Street, Room 670, Pittsburgh, PA 15262-0001, Attn: FCC Module Supervisor.

Payments that are misdirected to the FCC in Washington, DC will be forwarded to Mellon Bank in Pittsburgh, PA; however, this could result in a late filing that would therefore be subject to the 25% late payment fee.

The quickest and easiest way to pay is using a credit card through the Fee Filer service (<http://www.fcc.gov/fees/feefiler.html>). For more information on acquiring a FRN—refer to the *Use of the FCC Registration Number Fact Sheet*; for more information on how to pay—refer to the *Payment Methods Fact Sheet*.

FCC Form 159 Remittance Advice

Form 159 (FCC Remittance Advice) and, as necessary, Form 159-C (Advice Continuation Sheet) must accompany all regulatory fee payments. Form 159 allows payers to report information on one or more payment items (e.g., revenues, call signs, or a combination of any two). Use Form 159-C to report additional payments. Reproduced forms are acceptable. Detailed instructions on how to correctly complete these forms are contained in the *What You Owe Fact Sheets* for each service category. You must list each entity separately on Forms 159/159-C. Written attachments are not acceptable. Failure to properly complete Forms 159/159-C will delay the processing of your regulatory fee payment.

Ways to obtain Form 159:

- Go to <http://www.fcc.gov/formpage.html>.

- Call the FCC's Form Distribution Center at 1-800-418-FORM [3676].
- Pick up the form at the Commission in Room TW-B200.

Regulatees may submit Form 159 information electronically by accessing the FCC Fee Filer system at <http://www.fcc.gov/fees/feefiler.html>. Information on how to file electronically via the Fee Filer system will follow in a subsequent Public Notice.

Other Questions

The following Fact Sheets are available on the Internet at <http://www.fcc.gov/fees/regfees.html>.

Use of the FCC Registration Number (FRN) is Mandatory
Waivers, Reductions and Deferments of Regulatory Fees
Payment Methods for Regulatory Fees
Regulatory Fee Exemptions
What You Owe—Interstate Telecommunications Service Providers
What You Owe—Cable Television Systems
What You Owe—Media Services Licensees
What You Owe—Commercial Wireless Services
What You Owe—International and Satellite Services Licensees

Additional Information

Those who do not have Internet access can obtain FCC forms by calling (800) 418-FORM (3676), or (202) 418-3676. Public Notices and Fact Sheets can be ordered by calling (888) 225-5322. Materials can also be obtained by writing to: Federal Communications Commission, ATTN: Consumer Information Center, 445 12th Street, SW., Washington, DC 20554.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03-23130 Filed 9-10-03; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

Previously Announced Date and Time: Thursday, September 11, 2003, 10 a.m. Meeting Open to the Public. This Meeting Was Cancelled.

DATE AND TIME: Wednesday, September 17, 2003, 10 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This Hearing will be open to the public.

MATTER BEFORE THE COMMISSION: LaRouche's Committee for a New Bretton Woods.

PERSON TO CONTACT FOR INFORMATION:
Mr. Ron Harris, Press Officer,
Telephone: (202) 694-1220

Mary W. Dove,
Secretary of the Commission.
[FR Doc. 03-23249 Filed 9-9-03; 11:03 am]
BILLING CODE 6715-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Agency for Toxic Substances and Disease Registry

[Program Announcement 04004]

Public Health Conference Grant Program; Notice of Availability of Funds Amendment

A notice announcing the availability of Fiscal Year 2004 funds to fund a Grant Agreement to Support Public Health Conference Support Grant Agreement published in the **Federal Register** on August 28, 2003, Volume 68, Number 167, pages 51781-51785. The notice is amended as follows: On page 51782, first column, under Section B. Purpose, second paragraph, the sentence, "Conferences on Access to Quality Health Services, Family Planning, Food Safety, Health Communications, Medical Product Safety, Substance Abuse, and Vision and Hearing, are not priority focus areas of CDC or ATSDR, and should be directed to other Federal Agencies" should be removed.

Dated: September 4, 2003.
Sandra R. Manning, CGFM,
Director, Procurement and Grants Office, Centers for Disease Control and Prevention.
[FR Doc. 03-23156 Filed 9-10-03; 8:45 am]
BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 03030]

Controlling Asthma in American Cities Project Phase II Intervention Implementation Amendment

A notice announcing the availability of Fiscal Year (FY) 2003 funds for a cooperative agreement program building on the planning phase of the Controlling Asthma in American Cities Project was published in the **Federal Register**, June 6, 2003, Volume 68, Number 109, pages 33952-33955.

The notice is amended as follows: Page 33952, Section D. Funding, delete the sentence, "It is expected that the awards will begin on or about September 15, 2003 and will be made for a 12-month budget period within a project period of up to five years." Replace with, "It is expected that the awards will begin on or about September 15, 2003 and will be made for a nine-month budget period for the first year that will end June 15, 2004. Future budget periods will be 12 months, and will begin on June 16 of every year, and run through June 15 of the following year, for a project period of up to five years."

Dated: September 5, 2003.
Sandra R. Manning,
Director, Procurement and Grants Office, Center for Disease Control and Prevention.
[FR Doc. 03-23157 Filed 9-10-03; 8:45 am]
BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301)-443-1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: Grants for Hospital Construction and Modernization—Federal Right of Recovery and Waiver of Recovery (42 CFR Part 124, Subpart H) (OMB No. 0915-0099)—Revision

The regulation known as "Federal Right of Recovery and Waiver of Recovery," provides a means for the Federal Government to recover grant funds and a method of calculating interest when a grant-assisted facility under Titles VI and XVI of the Public Health Service Act is sold or leased, or there is a change in use of the facility. It also allows for a waiver of the right of recovery under certain circumstances. Facilities are required to provide written notice to the Federal Government when such a change occurs; and to provide copies of sales contracts, lease agreements, estimates of current assets and liabilities, value of equipment, expected value of land on the new owner's books and remaining depreciation for all fixed assets involved in the transactions, and other information and documents pertinent to the change of status.

ESTIMATES OF ANNUALIZED HOUR BURDEN

Regulation	No. of respondents	Responses per respondent	Hours per response	Total burden hours
124.704(b) and 707	10	1	1.25	12.5

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: John Morrall, Human Resources and Housing Branch, Office of Management

and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: September 3, 2003.
Jane M. Harrison,
Director, Division of Policy Review and Coordination.
[FR Doc. 03-23091 Filed 9-10-03; 8:45 am]
BILLING CODE 4165-15-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; Assessment for NIH Minority Research/Training Programs: Phase 3

SUMMARY: Under the provisions of section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Research Council, on behalf of the National Institutes of Health (NIH), has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** on February 7, 2003, on pages 6492–3, 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: Assessment for NIH Minority Research/Training Programs: Phase 3. *Type of Information Collection Request:* NEW. *Need and Use of Information Collection:* The goal of this study is to assess and analyze NIH minority trainee educational and career outcomes to determine which programs and which features of programs have been most successful in helping individual students and faculty members move toward productive careers as research scientists. The primary objectives of the study are to determine how well NIH minority research/training programs are working and what additional factors contribute to minority trainee success, including characteristics of individual participants, the academic institutions where they received NIH research/training support and/or obtained their terminal degree.

In addition to conducting an assessment and analysis of the programs based upon information in existing NIH databases, current and former NIH trainees will be asked to participate in a voluntary telephone interview in which they will be asked to comment on aspects of their research training experience. Trainees asked to participate in the survey will include individuals who received research training in underrepresented minority-

targeted programs and non-targeted programs, and who received support at academic levels ranging from their undergraduate years to the faculty level. This data collection will involve the use of computer-assisted telephone interviewing (CATI) software.

Program administrators at training grant recipient institutions will be interviewed by telephone to obtain their perspectives on the training programs. The results of the program administrator interviews will help the NIH determine (1) The ways and extent to which NIH minority research/training programs work; (2) which features of minority programs have been the most successful in helping individual students and faculty members move a step forward toward productive careers as research scientists; (3) what programmatic, environmental, or other factors increase the likelihood of minority training programs and their participating trainees achieving success; and (4) how to better assess NIH minority training programs. These interviews will provide a depth and quality of data that is not available through database query alone.

Frequency of response: one-time. *Affected Public:* Individuals. *Type of Respondent:* Individuals who have participated in NIH minority training programs. *Estimated Number of Respondents:* 1,200; *Estimated Number of Responses per Respondent:* 1; *Average Burden Hours Per Response:* .5; and *Estimated Total Annual Burden Hours Requested:* 600. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Request for Comments: Written comments and/or suggestions from the public and affected agencies should address 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 20053, Attention: Desk Officer for NIH. To request information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Dr. Joan Esnayra, Program Officer, Board on Biology, National Research Council Room 341B, National Academies, 2101 Constitution Ave., NW., Washington, DC 20418, or call non-toll-free number (202) 334–2539, or e-mail your request, including your address, to jesnayra@nas.edu.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

Dated: September 3, 2003.

John Ruffin,

Director, National Center on Minority Health and Health Disparities, National Institutes of Health.

[FR Doc. 03–23107 Filed 9–10–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Initial Review Group, Subcommittee H—Clinical Groups.

Date: October 27–30, 2003.

Time: 8 a.m. to 8 p.m.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Blvd., Gaithersburg, MD 20878.

Contact Person: Deborah R. Jaffe, PhD, Scientific Review Administrator, Grants Review Branch, Division of Extramural

Activities, National Cancer Institute, NIH, 6116 Executive Boulevard, Room 8038, MSC 8328, Bethesda, MD 20892, (301) 496-7721, dj86k@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: September 3, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03-23100 Filed 9-10-03; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; Notice of 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 Nursing Research Special Emphasis Panel, NINR T32 Training Grant Applications.

Date: October 15, 2003.

Time: 8:15 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Jeffrey M. Chernak, PhD, Scientific Review Administrator, Office of Review, National Institute of Nursing Research, 6701 Democracy Plaza, Suite 712, MSC 4870, Bethesda, MD 20817, (301) 402-6959, chernak@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: September 3, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03-23098 Filed 9-10-03; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel, Review of Center Core Grants.

Date: September 30-October 1, 2003.

Time: 6:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Affab A Ansari, Ph.D., Health Scientist Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, 6701 Democracy Plaza, Suite 800, Bethesda, MD 20892, (301) 594-4952.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: September 3, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03-23099 Filed 9-10-03; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel, Review of Research Program Projects.

Date: November 5, 2003.

Time: 8:30 a.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: DoubleTree Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Teresa Nesbitt, PhD, Scientific Review Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, National Institutes of Health, 6701 Democracy Blvd., Suite 800, Bethesda, MD 20892, (301) 594-4958.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: September 3, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03-23102 Filed 9-10-03; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the

provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel Review of Research Project Grants.

Date: October 17, 2003.

Time: 12:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Aftab A Ansari, PhD., Health Scientist Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, 6701 Democracy Plaza, Suite 800, Bethesda, MD 20892, (301) 594-4952.

(Catalog of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: September 3, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03-23103 Filed 9-10-03; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel Review of Research Project Grants.

Date: October 17, 2003.

Time: 8:30 a.m. to 11:55 a.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Aftab A. Ansari, PhD., Scientific Review Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, 6701 Democracy Plaza, Bethesda, MD 20892, (301) 594-4952.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: September 3, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03-23104 Filed 9-10-03; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel, Alzheimers Center #1.

Date: September 24-26, 2003.

Time: 6 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, Chevy Chase, MD 20815.

Contact Person: William Cruce, PhD., Scientific Review Administrator, National Institute on Aging, National Institutes of Health, Scientific Review Office, 7201 Wisconsin Avenue, Gateway Bldg. 2C212, Bethesda, MD 20814-9692, 301-402-7704, crucew@nia.nih.gov.

Name of Committee: National Institute on Aging Special Emphasis Panel, Human Genetics.

Date: September 30, 2003.

Time: 11 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, 2C212, Bethesda, MD 20814, (Telephone Conference Call).

Contact Person: Alicja L. Markowska, PhD., DSC, Scientific Review Office, National Institute on Aging, Gateway Building Suite 2C212, 7201 Wisconsin Avenue, Bethesda, MD, 20814, 301-402-7703, markowska@nia.nih.gov.

Name of Committee: National Institute on Aging Special Emphasis Panel, Determinants of Retirement Behavior.

Date: October 3, 2003.

Time: 10 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, 2C212, Bethesda, MD 20814, (Telephone Conference Call).

Contact Person: Alfonso R. Latoni, PhD., Scientific Review Administrator, Scientific Review Office, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Room 2C12, Bethesda, MD 20892, 301/496-9666, latonia@mail.nih.gov.

Name of Committee: National Institute on Aging Special Emphasis Panel, Imaging.

Date: October 7, 2003.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, 2C212, Bethesda, MD 20814, (Telephone Conference Call).

Contact Person: Alicja L. Markowska, PhD., DSC, Scientific Review Office, National Institute on Aging, Gateway Building Suite 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814, 301-402-7703, markowska@nia.nih.gov.

Name of Committee: National Institute on Aging Initial Review Group, Biological Aging Review Committee.

Date: October 7-8, 2003.

Time: 6 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Alessandra M. Bini, PhD., Health Scientist Administrator, Scientific Review Office, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Bethesda, MD 20892, 301-402-7708.

Name of Committee: National Institute on Aging Initial Review Group, Behavior and Social Science of Aging Review Committee.

Date: October 9-10, 2003.

Time: 4 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Alfonso R. Latoni, PhD., Scientific Review Administrator, Scientific Review Office, National Institute on Aging, Gateway Building 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892, 301/496-9666, latonia@mail.nih.gov.

Name of Committee: National Institute on Aging Initial Review Group, Clinical Aging Review Committee.

Date: October 16–17, 2003.

Time: 5 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Chevy Chase, 5520 Wisconsin Avenue, Bethesda, MD 20815.

Contact Person: Alicja L. Markowska, PhD., DSC, Scientific Review Administrator, Scientific Review Office, National Institute on Aging, Gateway Building Suite 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814, 301–402–7703, markowska@nia.nih.gov.

Name of Committee: National Institute on Aging Special Emphasis Panel, Menopause.

Date: October 27, 2003.

Time: 2 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, 2C212, Bethesda, MD 20814, (Telephone Conference Call).

Contact Person: Alicja L. Markowska, PhD., DSC, Scientific Review Office, National Institute on Aging, Gateway Building Suite 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814, 301–402–7703, markowska@nia.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: September 3, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–23105 Filed 9–10–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The portions of the meeting devoted to the review and evaluation of journals for potential indexing by the National Library of Medicine will be closed to the public in accordance with the provisions set forth in section 552b(c)(9)(B), Title 5 U.S.C. as amended. Premature disclosure of the titles of the

journals as potential titles to be indexed by the National Library of Medicine, the discussions, and the presence of individuals associated with these publications could significantly frustrate the review and evaluation of individual journals.

Name of Committee: Literature Selection Technical Review Committee.

Date: October 9–10, 2003.

Open: October 9, 2003, 9 a.m. to 11 a.m.

Agenda: Administrative reports and program discussions.

Place: National Library of Medicine, Building 38, Board Room, 2nd Floor, Center Drive, Bethesda, MD 20814.

Closed: October 9, 2003, 11 a.m. to 5 p.m.

Agenda: To review and evaluate journals as potential titles to be indexed by the National Library of Medicine.

Place: National Library of Medicine, Building 38, Board Room, 2nd Floor, Center Drive, Bethesda, MD 20814.

Closed: October 10, 2003, 8:30 a.m. to 2 p.m.

Agenda: To review and evaluate journals as potential titles to be indexed by the National Library of Medicine.

Place: National Library of Medicine, Building 38, Board Room, 2nd Floor, Center Drive, Bethesda, MD 20814.

Contact Person: Sheldon Kotzin, MLS, Chief, Bibliographic Services Division, Division of Library Operations, National Library of Medicine, 8600 Rockville Pike, Bldg. 38A/Room 4N419, Bethesda, MD 20894.

Any interested person may file written comments with the Committee by forwarding the statement to the Contact Person listed on this Notice. The statement should include the name, address, telephone number and, when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign in at the security desk upon entering the building.

(Catalogue of Federal Domestic Assistance Program No. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: September 3, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 03–23106 Filed 9–10–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Clinical Center; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Board of Governors

of the Warren Grant Magnuson Clinical Center, September 16, 2003, 9 a.m. to September 16, 2003, 12 p.m., National Institutes of Health, Building 10, 10 Center Drive, Medical Board Room 2C116, Bethesda, MD, 20892 which was published in the **Federal Register** on August 7, 2003, FR 68,152–47084.

The meeting will be held Friday, September 19, 2003 from 9 a.m. to 12 p.m. The meeting is open to the public

Dated: September 3, 2003.

LaVerne Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–23101 Filed 9–10–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

The Annual Census of Patient Characteristics in State and County Mental Hospital Inpatient Services (0930–0093, Extension)—The Census, which is conducted by SAMHSA's Center for Mental Health Services (CMHS), is a complete enumeration of all State and county mental hospitals and collects aggregate information by age, gender, race/ethnicity and diagnosis for each State on the number of additions during the year and resident patients who are physically present for 24 hours per day in the inpatient service at the end of the reporting year. First conducted in 1840, the Census has provided information throughout the years that is not available from any other sources. The Census is the primary means within CMHS for assessing de-institutionalization practices of State and county mental hospitals. The annual burden estimate is shown in the table below.

Respondents	Responses/re-spondent	Average burden/response	Total response burden	Total burden hours
Computer Printout	50	1	.67 hr.	34 hrs.
Manual retrieval and completion	2	1	2 hrs	4 hrs.
Total	52	.....	.....	38 hrs

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Lauren Wittenberg, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, respondents are encouraged to submit comments by fax to: 202-395-6974.

Dated: September 5, 2003.

Anna Marsh,

Acting Executive Officer, SAMHSA.

[FR Doc. 03-23159 Filed 9-10-03; 8:45 am]

BILLING CODE 4162-20-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Office for Women's Services; Notice of Meeting

Pursuant to Public Law 92-463, notice is hereby given of a meeting of the Advisory Committee for Women's Services of the Substance Abuse and Mental Health Services Administration (SAMHSA) in September 2003.

The meeting of the Advisory Committee for Women's Services will include discussion around the activities of the Substance Abuse and Mental Health Services Administration involving substance abuse and mental health disorders affecting women, comprehensive school based services, HIV/AIDS and an update on SAMHSA's grant policies.

A summary of the meeting and/or a roster of committee members may be obtained from: Nancy P. Brady, Executive Secretary, Advisory Committee for Women's Services, Office for Women's Services, SAMHSA, Parklawn Building, Room 12C-26, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443-1135.

Attendance by the public and public comments are welcome. Please communicate with the individual listed as contact below to make arrangements to comment or to request special

accommodations for persons with disabilities.

Substantive information may be obtained from the contact whose name and telephone number is listed below.

Committee Name: Advisory Committee for Women's Services.

Meeting Date/Time: Open: September 25, 2003.

Place: DoubleTree Hotel—Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact: Nancy P. Brady, Executive Secretary, 5600 Fishers Lane, Parklawn Building, Room 12C-26, Rockville, MD 20857, Telephone: (301) 443-1135; FAX: (301) 594-6159 and e-mail: nbrady@samhsa.gov.

Dated: September 4, 2003.

Toian Vaughn,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 03-23092 Filed 9-10-03; 8:45 am]

BILLING CODE 4162-20-P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Notice of Cancellation of Customs Broker License

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

ACTION: General notice.

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930, as amended, (19 U.S.C. 1641) and the Customs Regulations (19 CFR 111.51), the following Customs broker license and any and all associated local and national permits are canceled with prejudice:

Name	License #	Issuing port
Kenneth E. Yokeum	09689	Los Angeles.

Dated: September 3, 2003.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 03-23125 Filed 9-10-03; 8:45 am]

BILLING CODE 4820-02-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-169-1220-PG]

Notice of Public Meeting, Carrizo Plain National Monument Advisory Committee

SUMMARY: In accordance with Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the United States Department of the Interior, Bureau of Land Management (BLM), Carrizo Plain National Monument Advisory Committee will meet as indicated below.

DATES: The meeting will be held on Saturday, October 4, 2003 at the Carrisa Plains Elementary School located two miles west of the intersection of Soda Lake Road and Highway 58 in eastern San Luis Obispo County. The meeting will begin at 9 AM and finish at 5 PM. There will be a public comment period from 3-4 PM. A field trip is also planned for those committee members who are able to attend the preceding day, Friday, starting at 9 AM. The field trip will begin at the intersection of Soda Lake Road and the entrance to the Washburn Ranch administrative site, approximately 8 miles from the northern entrance of the monument. This field trip is being offered at the request of committee members and will provide a continued orientation to the monument.

SUPPLEMENTARY INFORMATION: The nine-member Carrizo Plain National Monument Advisory Committee advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of public land issues associated with public land management in the Carrizo Plain National Monument in central California. At this meeting, monument staff will present updated information on the progress on the new Carrizo Plain National Monument Resource Management Plan. This meeting is open to the public, who may present written or verbal comments. Depending on the number of persons wishing to comment, and the time available, the time allotted for individual oral comments may be limited. Individuals who plan to attend and need special assistance such as sign

language interpretation or other reasonable accommodations should contact the BLM as indicated below.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Attention: Marlene Braun, Monument Manager, 3801 Pegasus Drive, Bakersfield, CA, 93308. Phone at (661) 391-6119 or email at mbraun@blm.gov.

Dated: September 4, 2003.

Marlene Braun,

Manager, Carrizo Plain National Monument.
[FR Doc. 03-23160 Filed 9-10-03; 8:45 am]

BILLING CODE 4310-40-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-310-1820-AE]

Notice of Public Meeting: Northwest California Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 (FLPMA), and the Federal Advisory Committee Act of 1972 (FACA), the U. S. Department of the Interior, Bureau of Land Management (BLM) Northwest California Resource Advisory Council will meet as indicated below.

DATES: The meeting will be held Wednesday and Thursday, Oct. 8 and 9, 2003, in the Conference Room of the Bureau of Land Management's Alturas Arcata Field Office, 1695 Heindon Rd., Arcata, California. On October 8, the meeting begins at 10 a.m. for a field tour on public lands managed by the BLM Arcata Field Office. On October 9, the meeting begins at 8 a.m. in the conference room of the BLM field office. Time for public comments has been set aside for 1 p.m. on October 9.

FOR FURTHER INFORMATION CONTACT: Rich Burns, Field Manager, BLM Ukiah Field Office, 2550 North State St., Ukiah, California, (707) 468-4000; or BLM Public Affairs Officer Joseph J. Fontana, (530) 252-5332.

SUPPLEMENTARY INFORMATION: The 12-member council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in Northwest California. At this meeting, agenda topics will include review of the final management plan for the Headwaters Forest Reserve, development of a recommendation on the BLM's Sustaining Working Landscapes initiative, a status report on

management of the South Spit area of Humboldt Bay and an update of wilderness study area management. The RAC members will also hear status reports from the Arcata, Redding and Ukiah field office managers. All meetings are open to the public. Members of the public may present written comments to the council. Each formal council meeting will have time allocated for public comments. Depending on the number of persons wishing to speak, and the time available, the time for individual comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation and other reasonable accommodations, should contact the BLM as provided above.

Dated: September 3, 2003.

Joseph J. Fontana,

Public Affairs Officer.

[FR Doc. 03-23108 Filed 9-10-03; 8:45 am]

BILLING CODE 4310-40-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV-910-03-0777XX]

Notice of Public Meeting: Sierra Front/Northwestern Great Basin Resource Advisory Council, Northeastern Great Basin Resource Advisory Council, and Mojave-Southern Great Basin Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Combined Resource Advisory Council meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), the Department of the Interior, Bureau of Land Management (BLM) Council meetings will be held as indicated below.

DATES: The three councils will meet on Thursday, October 16 from 8 a.m. to 5 p.m. and Friday, October 17, from 8 a.m. to approximately 1 p.m., in the Sunset Conference Room, Sunset Station, 1301 W. Sunset Road, Henderson, Nevada 89014.

FOR FURTHER INFORMATION CONTACT: Jo Simpson, Chief, Office of Communications, BLM Nevada State Office, 1340 Financial Blvd., Reno, Nevada, telephone (775) 861-6586; or Debra Kolkman at telephone (775) 289-1946.

SUPPLEMENTARY INFORMATION: The 15-member councils advise the Secretary of

the Interior, through the BLM, on a variety of planning and management issues associated with public land management in Nevada. They meet separately at various times throughout the year and convene for a joint session once a year, usually in October. Agenda topics will include a presentation and discussion of the outlook for 2004 for the BLM in Nevada, planning for sage grouse habitat conservation, recreation management, land use planning, the BLM Sustaining Working Landscapes policy initiative, and other subjects related to BLM's management of public lands in Nevada. Time will be set aside for the members to meet together by interest group. A public comment period will be at 3 p.m. on Thursday, October 16.

On October 17, the three RACs will meet separately in the morning, and in joint session from noon until about 1 p.m. As part of the morning session, the three RACs will develop accomplishment reports for fiscal year 2003 and meeting schedules and agenda topics for fiscal year 2004. The Northeastern Great Basin and Mojave-Southern Great Basin council members will hear a status report on the Ely Resource Management Plan.

All meetings are one to the public. The public may present written comments to the three RAC groups or the individual RACs. Individuals who plan to attend and need further information about the meeting or need special assistance such as sign language interpretation or other reasonable accommodations, should contact Debra Kolkman at the BLM Nevada State Office, 1340 Financial Blvd., Reno, Nevada, telephone (775) 289-1946.

Dated: September 3, 2003.

Robert V. Abbey,

State Director, Nevada.

[FR Doc. 03-23196 Filed 9-10-03; 8:45 am]

BILLING CODE 4310-HC-M

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Labor Condition Applications and Requirements for Employers Using Nonimmigrants on H-1B Visas in Specialty Occupations and as Fashion Models

AGENCY: Employment and Training Administration, Labor.

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 to the collection of information on the Labor Condition Application for H-1B nonimmigrants. 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 November 10, 2003.

ADDRESSES: Comments and questions regarding the collection of information on Form ETA 9035, Labor Condition Application for H-1B Nonimmigrants, should be directed to William L. Carlson, Chief, Division of Foreign Labor Certification, U.S. Department of Labor, 200 Constitution Avenue, NW., Room C-4318, Washington, DC 20210, (202) 693-3010 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

The Immigration and Naturalization Act (INA) requires that before any alien may be admitted or otherwise provided status as an H-1B nonimmigrant, the prospective employer must have filed with the Department of Labor (Department) a Labor Condition Application (LCA) stating that they will offer prevailing wages and working conditions, that there is not a strike or lockout in the course of a labor dispute in the occupational classification at the place of employment, and that they have provided notice of such filing to the bargaining representative or, if there is none, by posting notice of filing in conspicuous locations at the place of employment. Further, the employer must make certain documentation available for public examination. The Department's review of LCA's is limited

by law solely to a review for completeness or "obvious inaccuracies." Complaints may be filed with the Department alleging a violation of the LCA process. If reasonable cause is found to believe a violation has been committed, the Department will conduct an investigation and, if appropriate, assess penalties. The INA places a limit on the number of aliens who can be admitted to the U.S. on H-1B visas or otherwise provided H-1B nonimmigrant status (195,000 in FY '03 and 65,000 in each succeeding fiscal year). The INA generally limits these workers to a maximum of six years duration of stay under H-1B status although extensions are permitted for certain aliens on whose behalf an alien labor certification or employment-based immigrant petition has been pending for 365 days or more.

The INA requires that the Department make available for public examination in Washington, DC, a list of employers which have filed LCA's.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed information collection 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 collections techniques or other forms of information, e.g., permitting electronic submissions of responses.

III. Current Actions

In order for the Department to meet its statutory responsibilities under the INA there is a need for an extension of an existing collection of information pertaining to the Labor Condition Application and Requirements for Employers Using Nonimmigrants on H-1B Visas in Specialty Occupations and as Fashion Models.

Type of Review: Extension of a currently approved collection without change.

Agency: Employment and Training Administration, Labor.

Title: Labor Condition Application and Requirements for Employers Using Nonimmigrants on H-1B Visas in Specialty Occupations and as Fashion Models.

OMB Number: 1205-0310.

Affected Public: Businesses or other for-profit; not-for-profit institutions; Federal government; State, Local or Tribal government.

Form: Form ETA 9035.

Total Respondents: 250,000.

Frequency of Response: On occasion.

Total Responses: 250,050.

Average Burden Hours per Response: 1.25.

Estimate Total Annual Burden Hours: 250,050.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the ICR; they will also be a matter of public record.

Signed at Washington DC, this 4th day of September, 2003.

Emily Stover DeRocco,

Assistant Secretary, Employment and Training Administration.

[FR Doc. 03-23133 Filed 9-10-03; 8:45 am]

BILLING CODE 4510-30-P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-313 and 50-368]

Entergy Operations, Inc.; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of issuance; correction.

SUMMARY: This document corrects a notice appearing in the **Federal Register** on August 19, 2003 (68 FR 49824), that was incorrectly placed in the section titled Notice of Issuance of Amendments to Facility Operating Licenses and Final Determination of No Significant Hazards Consideration and Opportunity for a Hearing [Exigent Public Announcement or Emergency Circumstances]. While the Notice of Consideration of Issuance, published July 9, 2003 (68 FR 41020), was Exigent, it was not made public via Public Announcement or under Emergency Circumstances, and should, therefore, have been placed in the section titled Notice of Issuance of Amendments to Facility Operating Licenses.

FOR FURTHER INFORMATION CONTACT:

Thomas W. Alexion, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone (301) 415-1326, e-mail: twa@nrc.gov.

Dated in Rockville, Maryland, this 4th day of September 2003.

For the Nuclear Regulatory Commission.

Thomas W. Alexion,

Project Manager, Section 1, Project Directorate IV, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03-23150 Filed 9-10-03; 8:45 am]

BILLING CODE 7590-01-P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available

From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 11Ac1-5, SEC File No. 270-488,

OMB Control No. 3235-0542

Rule 11Ac1-6, SEC File No. 270-489,

OMB Control No. 3235-0541

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget for extension and approval.

Rule 11Ac1-5 requires market centers to make available to the public monthly order execution reports in electronic form. The Commission believes that many market centers retain most, if not all, the underlying raw data necessary to generate these reports in electronic format. Once the necessary data is collected, market centers could either program their systems to generate the statistics and reports, or transfer the data to a service provider (such as an independent company in the business of preparing such reports or a self-regulatory organization ("SRO") that would generate the statistics and reports.

The collection of information obligations of Rule 11Ac1-5 apply to all market centers that receive covered orders in national market system securities. The Commission estimates that approximately 367 market centers are subject to the collection of information obligations of Rule 11Ac1-5. Each of these respondents is required to respond to the collection of information on a monthly basis.

The Commission staff estimates that, on average, Rule 11Ac1-5 causes

respondents to spend 6 hours per month in additional time to collect the data necessary to generate the reports, or 72 hours per year. With an estimated 367 market centers subject to Rule 11Ac1-5, the total data collection cost to comply with the monthly reporting requirement is estimated to be 26,424 hours per year.

Rule 11Ac1-6 requires broker-dealers to prepare and disseminate quarterly order routing reports. Much of the information needed to generate these reports already should be collected by broker-dealers in connection with their periodic evaluations of their order routing practices. Broker-dealers must conduct such evaluations to fulfill the duty of best execution that they owe their customers.

The collection of information obligations of Rule 11Ac1-6 applies to broker-dealers that route non-directed customer orders in covered securities. The Commission estimates that out of the currently 2678 broker-dealers that are subject to the collection of information obligations of Rule 11Ac1-6, clearing brokers bear a substantial portion of the burden of complying with the reporting and recordkeeping requirements of Rule 11Ac1-6 on behalf of small to mid-sized introducing firms. There currently are approximately 330 clearing brokers. In addition, there are approximately 610 introducing brokers that receive funds or securities from their customers. Because at least some of these firms also may have greater involvement in determining where customer orders are routed for execution, they have been included, along with clearing brokers, in estimating the total burden of Rule 11Ac1-6.

The Commission staff estimates that each firm significantly involved in order routing practices incurs an average burden of 40 hours to prepare and disseminate a quarterly report required by Rule 11Ac1-6, or a burden of 160 hours per year. With an estimated 940 broker-dealers significantly involved in order routing practices, the total burden per year to comply with the quarterly reporting requirement in Rule 11Ac1-6 is estimated to be 150,400 hours.

Rule 11Ac1-6 requires broker-dealers to respond to individual customer requests for information on orders handled by the broker-dealer for that customer. Clearing brokers generally bear the burden of responding to these requests. The Commission staff estimates that an average clearing broker incurs an annual burden of 400 hours (2000 responses × 0.2 hours/response) to prepare, disseminate, and retain responses to customers required by Rule 11Ac1-6. With an estimated 330

clearing brokers subject to Rule 11Ac1-6, the total burden per year to comply with the customer response requirement in Rule 11Ac1-6 is estimated to be 132,000 hours.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

Dated: September 3, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03-23124 Filed 9-10-03; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act; Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of September 15, 2003:

An Open Meeting will be held on Wednesday, September 17, 2003 at 2 p.m. in Room 6600, and Closed Meetings will be held on Wednesday, September 17, 2003 at 4 p.m. and Thursday, September 18, 2003 at 10 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meetings. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), (9)(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), (9)(ii) and (10), permit consideration of the

scheduled matters at the Closed Meetings.

The subject matter of the Open Meeting scheduled for Wednesday, September 17, 2003 will be:

1. The Commission will consider whether to propose for public comment new rules 12d1-1, 12d1-2, and 12d1-3 under the Investment Company Act of 1940. The recommended rules would broaden the ability of an investment company ("fund") to acquire shares of another fund consistent with the protection of investors and the purposes of the Act. The Commission also will consider a recommendation to amend forms N-1A, N-2, N-3, N-4, and N-6, which are used by investment companies to register under the Investment Company Act and to offer their shares under the Securities Act of 1933. The recommended amendments would improve the transparency of the expenses of funds that invest in other funds by requiring that the expenses of the acquired funds be aggregated and shown as an additional expense in the fee table of the acquiring funds.

For further information, please contact Penelope Saltzman at (202) 942-0690.

2. The Commission will hear oral argument on an appeal of RichMark Capital Corporation, a registered broker-dealer, and Doyle Mark White, its 50% owner, from the decision of an administrative law judge.

The law judge found that respondents willfully violated the antifraud provisions of section 17(a) of the Securities Act of 1933, section 10(b) of the Securities Exchange Act of 1934, and Exchange Act Rule 10b-5. He suspended for 90 days RichMark's broker-dealer registration and White from association with any broker or dealer, assessed civil money penalties of \$275,000 against RichMark and \$55,000 against White, held RichMark and White jointly and severally liable for the disgorgement of \$25,617.86 plus prejudgment interest, and imposed a cease-and-desist order.

Among the issues likely to be argued are:

a. Whether respondents made adequate disclosure to customers to whom they recommended and sold stock of PCCG Group, Inc. (PCCG) that respondents were selling their own shares of PCCG at the same time;

b. Whether respondents made adequate disclosure to PCCG customers of respondents' financial incentive to sell PCCG stock arising from the compensation respondents received under an investment banking agreement between PCCG and RichMark; and

c. Whether sanctions should be imposed in the public interest.

For further information, contact the Office of the Secretary at (202) 942-7070.

3. The Commission will hear oral argument on an appeal by the Division of Enforcement from the decision of an administrative law judge dismissing proceedings against Robert J. Setteducati. The Division alleged that Setteducati, formerly executive vice president of H.J. Meyers & Co., Inc., a former registered broker-dealer, was part of an effort by the firm to manipulate the market for stock of Borealis Technology Corporation during 1996, in violation of antifraud provisions of the securities laws.

The law judge found that:

a. The market for Borealis had not been manipulated, and that

b. Even if the Borealis market had been manipulated, Setteducati's role in the Borealis offering and aftermarket trading was insufficient to hold him liable for any such misconduct.

Among the issues likely to be argued are:

a. Whether the evidence supports the Division's allegations; and

b. Whether and to what extent sanctions should be imposed in the public interest.

For further information, please contact the Office of the Secretary at (202) 942-7070.

The subject matter of the Closed Meeting scheduled for Wednesday, September 17, 2003 will be:

Post-argument discussion.

The subject matter of the Closed Meeting scheduled for Thursday, September 18, 2003 will be:

Institution and settlement of administrative proceedings of an enforcement nature;

Institution and settlement of injunctive actions; and

Formal orders of investigation.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted, or postponed, please contact the Office of the Secretary at (202) 942-7070.

Dated: September 9, 2003.

Jonathan G. Katz,
Secretary.

[FR Doc. 03-23346 Filed 9-9-03; 3:53 pm]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35-27720]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

September 5, 2003.

Notice is hereby given that the following filing(s) has/have been made with the Commission under provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by September 29, 2003, to the Secretary, Securities and Exchange Commission, Washington, DC 20549-0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After September 29, 2003 the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Xcel Energy, Inc., et al. (70-9635)

Xcel Energy Inc. ("Xcel"), 800 Nicollet Mall, Minneapolis, Minnesota 55402, a holding company registered under the Act, and certain subsidiaries,¹

¹ Xcel directly owns six utility subsidiaries ("Utility Subsidiaries") that serve electric and/or natural gas customers in 12 states. These six utility subsidiaries are Northern States Power Company ("NSP-M"), a Minnesota corporation, Northern States Power Company ("NSP-W"), a Wisconsin corporation, Public Service Company of Colorado ("PSCo"), Southwestern Public Service Co. ("SPC"), Black Mountain Gas Company ("Black Mountain"), and Cheyenne Light, Fuel and Power Company ("Cheyenne"). Xcel's major nonutility subsidiaries ("Nonutility Subsidiaries") are NRG Energy, Inc. ("NRG"), Seren Innovations, Inc., e prime, inc., and Eloigne Company. For purposes of this Application, the term "Subsidiaries" includes each of Xcel's utility subsidiaries and nonutility subsidiaries, except for NRG and its subsidiaries, as well as any future direct or indirect nonutility subsidiaries (other than of NRG or its subsidiaries) of Xcel whose equity securities may be acquired in accordance with an order of the Commission or in

Continued

(collectively, "Applicants"²) have filed a post-effective amendment to an application-declaration ("Application") previously filed with the Commission under sections 6(a), 7, 9(a), 10, 12(b), 12(c), 12(f), 32 and 33 of the Act and rules 43, 45, 46, 53 and 54 under the Act.

Applicants request authority to extend the time period in which to engage in a variety of financing transactions and other related proposals, as more fully discussed below, commencing on the effective date of an order issued under this Application and ending June 30, 2005 ("Requested Authorization Period"). Applicants also request certain revisions to the terms and conditions for intrasystem financings and guarantees, including the implementation of a utility money pool, and the terms and conditions relating to the formation and operation of financing subsidiaries.

I. Background

By order dated August 22, 2000 (HCAR No. 27218) ("August 2000 Order"), the Commission authorized Xcel to, among other things, issue and sell common stock and long-term debt securities during a period through September 30, 2003 ("Original Authorization Period"), provided that the aggregate proceeds of these issuances, together with any long-term debt and preferred securities issued by financing entities established by Xcel, did not exceed \$2.0 billion.

In the August 2000 Order, the Commission reserved jurisdiction over Xcel's request to use the proceeds of financings to make investments in, exempt wholesale generators ("EWGs"), as defined in section 32 of the Act, and foreign utility companies ("FUCOs"), as defined in section 33 of the Act, in excess of \$1.2 billion. By order dated March 7, 2002 (HCAR No. 27494) ("100% Order", and together with the August 2000 Order, "Original Financing Orders"), the Commission released that reservation of jurisdiction. By order dated May 29, 2003 (HCAR No. 27681), the Commission authorized Xcel's request to declare and pay dividends out of capital and unearned surplus in an aggregate amount not to exceed \$152 million. ("Supplemental Financing Order" and, together with the Original Financing Orders, the "Financing Orders")

Applicants, in the Application, request that the Commission release its

accordance with an exemption under the Act or the Commission's rules under the Act.

² As stated above, for purposes of this Application, NRG and its subsidiaries are not Applicants.

reservation of jurisdiction in the Supplemental Financing Order, so as to authorize an increase in the aggregate amount of common stock and long-term debt securities that Xcel can issue during the Requested Authorization Period from \$2.0 billion, as authorized in the August 2000 Order, to \$2.5 billion. Applicants also request that the financing authority granted by this Application be subject to certain general terms and conditions.

A. Financing Orders

In the Original Financing Orders, the Commission authorized the following transactions ("Financing Authority"):

- Xcel to issue and sell common stock and/or long-term debt securities for the uses described, provided that the aggregate proceeds received during the Original Authorization Period upon issuance of such common stock (exclusive of the issuance of common stock specifically authorized in the Original Financing Orders in respect of employee benefit plans and dividend reinvestment plans,³ the issuance of common stock specifically authorized in the Commission order dated May 30, 2002 (HCAR No. 27533),⁴ and the issuance of common stock in connection with the reorganization of NRG⁵) and the aggregate principal amount of long-term debt issued and outstanding at any one time during the Original Authorization Period, together with any long-term debt or preferred securities issued by Financing Subsidiaries (as defined in the Original Financing Orders) established by Xcel, not to exceed \$2.0 billion;

- Xcel to have outstanding at any one time short-term debt with a maturity date not more than one year from the date of the borrowing in an aggregate principal amount of up to \$1.5 billion;
- Cheyenne and Black Mountain to each issue short-term debt to non-

³ Xcel was also authorized to issue and/or acquire an additional 30 million shares of its common stock (subject to adjustment for stock splits) from time to time through June 30, 2007 under various employee benefit plans and dividend reinstatement plans. This Application does not request any amendment to this authority.

⁴ In HCAR No. 27533 (May 30, 2002), the Commission authorized Xcel to issue up to 33,394,564 shares of its common stock in connection with the consummation of the exchange offer for the publicly held shares of NRG common stock and upon subsequent exercise of options issued by NRG or conversion of the corporate units issued by NRG into shares of Xcel.

⁵ On May 14, 2003, NRG and certain of NRG's subsidiaries filed voluntary petitions for bankruptcy under Chapter 11 of the U.S. Bankruptcy Code in the U.S. Bankruptcy Court for the Southern District of New York. Authorization for Xcel to issue common stock in accordance with the terms of NRG's Plan of Reorganization is being addressed in a separate application to the Commission under the Act.

associate lenders, when combined with borrowings from associate lenders, not to exceed \$40 million for each of Cheyenne and Black Mountain;

- Xcel's Subsidiaries to borrow from each other and from Xcel, and for Xcel and any Subsidiary to enter into guarantees, obtain letters of credit, enter into expense agreements or otherwise provide credit support with respect to the debt and other obligations of other Subsidiaries ("Intrasystem Financings"), excluding transactions that are exempt under rules 45(b) and 52, as applicable, in an aggregate outstanding principal amount not to exceed \$2.5 billion at any one time, provided that any short-term loans to Cheyenne and Black Mountain will be counted against their respective authorization for \$40 million of short-term debt and shall not apply against this limit on Intrasystem Financings;⁶

- Xcel and its Subsidiaries to enter into hedging transactions with respect to existing and anticipated debt offerings, subject to certain limitations and restrictions;

- Xcel and its Subsidiaries to acquire, directly or indirectly, the equity securities of one or more of their Financing Subsidiaries created specifically for the purpose of facilitating the financing of the authorized and exempt activities of Xcel and the Subsidiaries through the issuance of debt or preferred securities, including but not limited to monthly income preferred securities, to third parties, the loaning of the proceeds of such financings to Xcel or such Subsidiaries, the guarantee of all or part of the obligations of any Financing Subsidiary under any securities issued by the Financing Subsidiary, and Xcel or a Subsidiary to enter into expense arrangements in respect of the obligations of any such Financing Subsidiary;⁷

- Xcel and its Nonutility Subsidiaries to acquire the securities of one or more companies ("Intermediate Subsidiaries"), which would be organized exclusively for the purpose of acquiring, holding and/or financing the acquisition of the securities of or other interest in one or more other Nonutility Subsidiaries, provided that Intermediate Subsidiaries may also engage in development activities and administrative activities relating to such subsidiaries;

- Xcel to restructure its nonutility interests, including the creation of new,

⁶ Applicants do not request an extension of this authority, but rather seek revised authority for intrasystem financings and guarantees.

⁷ Applicants do not request an extension of this authority, but rather seek revised authority.

or the elimination of existing, Intermediate Subsidiaries, the consolidation of Nonutility Subsidiaries engaged in similar businesses, the spin-off of a portion of an existing business of a Nonutility Subsidiary to another Nonutility Subsidiary, the re-incorporation of an existing Nonutility Subsidiary in a different state, the transfer of authority from one Nonutility Subsidiary to another or other similar type arrangements, and to change the terms of any wholly-owned Nonutility Subsidiary's authorized capital stock capitalization as deemed appropriate by Xcel or other immediate parent company;

- Any Nonutility Subsidiary to pay dividends out of capital and unearned surplus; and
- The use by Xcel of financings to invest in EWGs and FUCOs, and to guarantee the obligations of EWGs and FUCOs, provided that Xcel's aggregate investment at the time of such investment shall not exceed 100% of its "consolidated retained earnings," as defined in rule 53(a)(1)(ii).

In the Supplemental Financing Order, the Commission authorized Xcel to declare and pay two quarterly dividends out of capital and unearned surplus on its common stock and its preferred stock, in an aggregate amount of up to \$152 million and the Commission reserved jurisdiction over Xcel's request to increase the aggregate amount of common stock and long-term debt securities that it may issue during the Original Authorization Period from the \$2.0 billion (authorized by the August 2000 Order) to \$2.5 billion. Applicants request that the Commission release that reserved jurisdiction.

II. Modifications to the Financing Parameters

Applicants request certain modifications to the financing conditions contained in the Financing Orders. Applicants request that the financing authority granted by the Application be subject to the following general terms and conditions, where appropriate:

Effective Cost of Money. The effective cost of money on debt and preferred securities issued to non-associate companies pursuant to authorization in the Financing Orders and/or an order in this matter will not exceed competitive market rates for securities of comparable credit quality with similar terms and features.

Maturity of Debt. The maturity of authorized indebtedness will not exceed 50 years.

Investment Grade Ratings. Applicants further represent that apart from

securities issued for the purpose of Intrasystem Financings, no guarantees or other securities, other than common stock, may be issued in reliance upon the authorization granted by the Commission pursuant to the Application, unless (i) the security to be issued, if rated, is rated investment grade; (ii) all outstanding securities of the issuer (except in the case of Xcel, Xcel's preferred stock) that are rated are rated investment grade; and (iii) all outstanding securities of Xcel (except for Xcel's preferred stock) that are rated are rated investment grade. For purposes of this provision, a security will be deemed to be rated investment grade if it is rated investment grade by at least one nationally recognized statistical rating organization. Xcel's preferred stock is not rated investment grade. Applicants request that the Commission reserve jurisdiction over the issuance by Xcel of preferred stock and/or any other such securities that are rated below investment grade. Applicants further request that the Commission reserve jurisdiction over the issuance of any guarantee or other securities at any time that the conditions, set forth in clauses (i) through (iii) above, are not satisfied.

Capitalization Ratios. Xcel's common equity, as reflected on its most recent Form 10-K or Form 10-Q and as adjusted to reflect subsequent events that affect capitalization, will be at least 30% of consolidated total capitalization (the "Xcel 30% Test");⁸ provided that in any event when Xcel does not satisfy the Xcel 30% Test, Xcel may issue common stock pursuant to this authorization. Similarly, the common stock equity of each Utility Subsidiary will be at least 30% of that Utility Subsidiary's total capitalization. Xcel requests that the Commission reserve jurisdiction over Xcel's authority to engage in the financing transactions authorized in the Financing Orders and in this proceeding at a time when Xcel does not satisfy the Xcel 30% Test.

Fees, Commissions and Other Remuneration. The underwriting fees, commissions and other similar remuneration paid in connection with the non-competitive issuance of any security issued by Xcel will not exceed the greater of (A) 5% of the principal or total amount of the securities being issued or (B) issuances expenses that are paid at the time in respect of the issuance of securities having the same or reasonably similar terms and

conditions issued by similar companies of reasonably comparable credit quality.

Applicants state that the proceeds from the financings authorized by the Commission pursuant to the Application will be used for the same purposes authorized in the August 2000 Order, which are general corporate purposes, including (i) financing investments by and capital expenditures of Xcel and its Subsidiaries, (ii) the repayment, redemption, refunding or purchase by Xcel or any of its Subsidiaries of securities issued by such companies without the need for prior Commission approval pursuant to rule 42 or a successor rule, (iii) financing working capital requirements of Xcel and its Subsidiaries, and (iv) other lawful general purposes. In addition, any use of proceeds to make investments in any "energy-related company," as defined in rule 58 under the Act, will be subject to the investment limitation of such rule, and any use of proceeds to make investments in any EWG or FUCO will be subject to the investment limitation and other conditions in the 100% Order or any order amending or replacing the 100% Order. Xcel further commits that no financing proceeds will be used to acquire the equity securities of any new subsidiary unless such acquisition has been approved by the Commission in this proceeding or in a separate proceeding or is in accordance with an available exemption under the Act or the rules.

Xcel requests that the Commission release jurisdiction reserved in the Supplemental Financing Order over Xcel's request to increase the aggregate amount of common stock and long-term debt securities that it may issue from \$2.0 billion to \$2.5 billion. Specifically, Xcel requests authorization, subject to the financing parameters in the Application, to issue and sell common stock and/or long-term debt securities for the uses described herein, provided that the aggregate proceeds received during the Requested Authorization Period upon issuance of such common stock (exclusive of the issuance of common stock specifically authorized in the Financing Orders with respect to employee benefit plans and dividend reinvestment plans, the issuance of common stock specifically authorized in the NRG Order and the issuance of common stock pursuant to NRG's Plan of Reorganization) and the aggregate principal amount of long-term debt issued and outstanding at any one time during the Requested Authorization Period, together with any long-term debt or preferred securities issued by

⁸Total capitalization is the sum of common stock equity, preferred stock, long-term debt (including current maturities) and short-term debt.

Financing Subsidiaries established by Xcel, shall not exceed \$2.5 billion.

III. Common Stock and Long-Term Debt

Applicants propose that the issuance of common stock⁹ and long-term debt of Xcel would be subject to the following general terms and conditions:

Common Stock. Subject to the limits described above and the other conditions described in the Application, Xcel may issue and sell common stock, options, warrants and stock purchase rights exercisable for common stock, or other equity-linked securities or contracts to purchase common stock. Such financings may be effected pursuant to underwriting agreements of a type generally standard in the industry. Public distributions may be pursuant to private negotiation with underwriters, dealers or agents, as discussed below, or effected through competitive bidding among underwriters. In addition, sales may be made through private placements or other non-public offerings to one or more persons. All such common stock sales will be at rates or prices and under conditions negotiated or based upon, or otherwise determined by, competitive capital markets.

Xcel may also issue common stock in public or privately-negotiated transactions in exchange for the equity securities or assets of other companies, provided that the acquisition of any such equity securities or assets has been authorized in this proceeding or in a separate proceeding or is exempt under the Act.

Long-Term Debt. The long-term debt to be issued by Xcel under the authorization will be unsecured. Subject to the limits described above and the other conditions described in the Application, Xcel's long-term debt (a) may be subordinated in right of payment to other debt and other obligations of Xcel, (b) may be convertible into any other securities of Xcel, (c) will have maturities ranging from one to 50 years, (d) may be subject to optional and/or mandatory redemption, in whole or in part, at par or at various premiums above the principal amount thereof, (e) may be entitled to mandatory or optional sinking fund provisions, (f) may provide for reset of the interest rate pursuant to a remarketing arrangement, and (g) may be called from existing investors by a third party. In addition, Xcel may have the right from time to time to defer the

payment of interest on all or a portion of its long-term debt (which may be fixed or floating or "multi-modal", *i.e.*, where the interest is periodically reset, alternating between fixed and floating interest rates for each reset period).

Xcel states that long-term debt securities would be issued and sold directly to one or more purchasers in privately-negotiated transactions or to one or more investment banking or underwriting firms or other entities who would resell such securities without registration under the Securities Act of 1933, as amended, in reliance upon one or more applicable exemptions from registration, or to the public either (i) through underwriters selected by negotiation or competitive bidding or (ii) through selling agents acting either as agent or as principal for resale to the public either directly or through dealers.

IV. Intrasystem Financings and Guarantees

Applicants request authority for Xcel to enter into guarantees, obtain letters of credit, enter into expense agreements or otherwise provide credit support ("Guarantees") with respect to the obligations of Utility Subsidiaries as may be appropriate to enable the Utility Subsidiaries to carry on in the ordinary course of their respective businesses, and Xcel and its Nonutility Subsidiaries to enter into Guarantees with respect to the obligations of Nonutility Subsidiaries as may be appropriate to enable such Nonutility Subsidiaries to carry on in the ordinary course of their respective businesses; provided that the aggregate principal amount of intrasystem financings and Guarantees pursuant to this paragraph shall not exceed \$1.0 billion outstanding at any one time during the Requested Authorization Period. The \$1.0 billion excludes any such Guarantees that are exempt pursuant to rules 45(b) and 52. The authorization requested will permit issuances of guarantees in situations where the exemptions provided by rules 45(b) and 52 are not applicable.

Xcel may charge each Subsidiary a fee for each Guarantee provided on behalf of the Subsidiary that is determined by multiplying the amount of any such guarantee by Xcel by the cost of obtaining the liquidity necessary to perform the guarantee (for example, bank line commitment fees or letter of credit fees) for the period of time the guarantee remains outstanding. Nonutility Subsidiaries may also charge each Nonutility Subsidiary a fee for each guarantee provided on its behalf determined in the same manner as specified above. Applicants also request authorization for Xcel to finance its

Nonutility Subsidiaries and its Nonutility Subsidiaries to finance other Nonutility Subsidiaries in an aggregate principal amount outstanding at any one time during the Requested Authorization Period of not to exceed \$400 million. This \$400 million excludes any financings that are exempt pursuant to rules 45(b) and 52.

In the case of loans by Xcel or a Nonutility Subsidiary to a Nonutility Subsidiary, the company making the loan or extending the credit may charge interest at the same effective rate of interest as the daily weighted average effective rate of commercial paper, revolving credit and/or other short-term borrowings of such lending company, including an allocated share of commitment fees and related expenses. If no such borrowings are outstanding, then the interest rate shall be predicated on the Federal Funds' effective rate of interest as quoted daily by the Federal Reserve Bank of New York. In the limited circumstances where the Nonutility Subsidiary effecting the borrowing is not wholly-owned by Xcel, directly or indirectly, authority is requested under the Act for Xcel or a Nonutility Subsidiary to make the loans to the subsidiaries at interest rates and maturities designed to provide a return to the lending company of not less than its effective cost of capital. If loans are made to a Nonutility Subsidiary which is not wholly-owned, such Nonutility Subsidiary will not provide any services to any associate Subsidiary except a company which meets one of the conditions for rendering of services on a basis other than "at cost", as authorized in HCAR No. 27212 (August 16, 2000).

V. Utility Money Pool

In order to provide intrasystem financing to the Utility Subsidiaries, Applicants request authorization to operate a Utility Money Pool. The Utility Money Pool would include some or all of the Utility Subsidiaries as borrowers from and lenders to the pool. Xcel would participate in the Utility Money Pool, but only as a lender to the pool. Xcel Energy Services Inc. ("Xcel Services") will act as the administrator of the Utility Money Pool. To the extent not exempted by rule 52, the Utility Subsidiaries request authorization to make unsecured short-term borrowings from the Utility Money Pool and to contribute surplus funds to the Utility Money Pool and to lend and extend credit to (and acquire promissory notes from) one another through the Utility Money Pool. Xcel requests authorization to contribute surplus funds and to lend and extend credit to the Utility

⁹ Any common stock to be issued by Xcel under the settlement with NRG and NRG's creditors is addressed in a separate application to the Commission under the Act.

Subsidiaries through the Utility Money Pool. No loans through the Utility Money Pool would be made to, and no borrowings through the Utility Money Pool would be made by, Xcel.

Applicants believe that the cost of the proposed borrowings through the Utility Money Pool will generally be more favorable to the borrowing participants than the comparable cost of external short-term borrowings, and the yield to the participants contributing available funds to the Utility Money Pool will generally be higher than the typical yield on short-term investments.

Under the proposed terms of the Utility Money Pool, short-term funds would be available from the following sources for short-term loans to each of the Utility Subsidiaries from time to time: (1) Surplus funds in the treasuries of Utility Money Pool participants, (2) surplus funds in the treasury of Xcel, and (3) proceeds from bank borrowings by Utility Money Pool participants or the sale of commercial paper by the Utility Money Pool participants for loan to the Utility Money Pool ("External Funds"). The determination of whether a Utility Money Pool participant at any time has surplus funds to lend to the Utility Money Pool or shall borrow funds from the Utility Money Pool would be made by the participant's chief financial officer or treasurer, or by a designee thereof, on the basis of cash flow projections and other relevant factors, in that participant's sole discretion.

Utility Money Pool participants that borrow would borrow *pro rata* from each company that lends, in the proportion that the total amount loaned by each lending company bears to the total amount then loaned through the Utility Money Pool. On any day when more than one fund source (*e.g.*, surplus treasury funds of Xcel and other Utility Money Pool participants ("Internal Funds") and External Funds), with different rates of interest, is used to fund loans through the Utility Money Pool, each borrower would borrow *pro rata* from each such fund source in the Utility Money Pool in the same proportion that the amount of funds provided by that fund source bears to the total amount of short-term funds available to the Utility Money Pool.

Borrowings from the Utility Money Pool would require authorization by the borrower's chief financial officer or treasurer, or by a designee. No party would be required to effect a borrowing through the Utility Money Pool if it is determined that it could (and had authority to) effect a borrowing at lower cost directly from banks or through the sale of its own commercial paper. The

cost of compensating balances, if any, and fees paid to banks to maintain credit lines and accounts by Utility Money Pool participants lending External Funds to the Utility Money Pool would initially be paid by the participant maintaining such line. A portion of these costs—or all of such costs in the event a Utility Money Pool participant establishes a line of credit solely for purposes of lending any External Funds obtained thereby into the Utility Money Pool—would be retroactively allocated every month to the companies borrowing these External Funds through the Utility Money Pool in proportion to their respective daily outstanding borrowings of such External Funds.

If only Internal Funds make up the funds available in the Utility Money Pool, the interest rate applicable and payable to or by the Utility Money Pool participants for all loans of such Internal Funds outstanding on any day will be the rates for high-grade unsecured 30-day commercial paper sold through dealers by major corporations as quoted in *The Wall Street Journal* on the last business day of the prior calendar month. If only External Funds comprise the funds available in the Utility Money Pool, the interest rate applicable to loans of such External Funds would be equal to the lending company's cost for such External Funds (or, if more than one Utility Money Pool participant had made available External Funds on such day, the applicable interest rate would be a composite rate equal to the weighted average of the cost incurred by the respective Utility Money Pool participants for such External Funds).

In cases where both Internal Funds and External Funds are concurrently borrowed through the Utility Money Pool, the rate applicable to all loans comprised of such "blended" funds would be a composite rate equal to the weighted average of (a) the cost of all Internal Funds contributed by Utility Money Pool participants (as determined pursuant to the second-preceding paragraph above) and (b) the cost of all such External Funds (as determined pursuant to the immediately preceding paragraph, above).

Funds not required by the Utility Money Pool to make loans (with the exception of funds required to satisfy the Utility Money Pool's liquidity requirements) would ordinarily be invested in one or more short-term investments, including: (i) Interest-bearing accounts with banks; (ii) obligations issued or guaranteed by the U.S. government and/or its agencies and instrumentalities, including obligations

under repurchase agreements; (iii) obligations issued or guaranteed by any state or political subdivision, provided that such obligations are rated not less than "A" by a nationally recognized rating agency; (iv) commercial paper rated not less than "A-1" or "P-1" or their equivalent by a nationally recognized rating agency; (v) money market funds; (vi) bank certificates of deposit; (vii) Eurodollar funds; and (viii) such other investments as are permitted by section 9(c) of the Act and rule 40 under the Act.

The interest income and investment income earned on loans and investments of surplus funds would be allocated among the participants in the Utility Money Pool in accordance with the proportion each participant's contribution of funds bears to the total amount of funds in the Utility Money Pool. Each Applicant receiving a loan through the Utility Money Pool would be required to repay the principal amount of such loan, together with all interest accrued, on demand. All loans made through the Utility Money Pool may be prepaid by the borrower without premium or penalty. Operation of the Utility Money Pool, including record keeping and coordination of loans, will be handled by Xcel Services under the authority of the appropriate officers of the participating companies. Xcel Services will administer the Utility Money Pool on an "at cost" basis.

Proceeds from the Utility Money Pool may be used by each Utility Subsidiary (i) for the interim financing of its construction and capital expenditure programs, (ii) for its working capital needs, (iii) for the repayment, redemption or refinancing of its debt and preferred stock, (iv) to meet unexpected contingencies, payment and timing differences and cash requirements, and (v) to otherwise finance its own business and for other lawful general corporate purposes. The Utility Subsidiaries request authority to borrow up to an amount at any one time outstanding from the Utility Money Pool as set forth below:

Utility subsidiary	Money pool limit (million)
NSP-M	\$250
NSP-W	100
PSCo	250
SPS	100
Cheyenne	40
Black Mountain	40

Loans to Cheyenne and Black Mountain through the money pool will be counted against their respective \$40 million limits applicable to short-term debt.

VI. Financing Subsidiaries

For the Requested Authorization Period, Applicants request that the terms and conditions in respect of Financing Subsidiaries be modified. Applicants request authority for Xcel and its Subsidiaries to acquire, directly or indirectly, the equity securities of one or more corporations, trusts, partnerships or other entities ("Financing Subsidiaries") created specifically for the purpose of facilitating the financing of the authorized and exempt activities (including exempt and authorized acquisitions) of Xcel and the Subsidiaries through the issuance of debt or preferred securities, including but not limited to monthly income preferred securities, to third parties and the loaning of the proceeds of such financings to Xcel or such Subsidiaries. The proceeds of any securities issuance by a Financing Subsidiary would be loaned, dividended or otherwise transferred to Xcel or the Subsidiary that established such Financing Subsidiary. The proceeds of any securities issuances by a Financing Subsidiary would count against any applicable authorization limit of Xcel or a Subsidiary establishing such Financing Subsidiary as though Xcel or the Subsidiary had undertaken the issuance directly. Xcel or the Subsidiary that established such Financing Subsidiary, as applicable, may, if required, guarantee all or part of the obligations of such Financing Subsidiary under any securities issued by the Financing Subsidiary. Xcel or the Subsidiary that established such Financing Subsidiary, as applicable, also may enter into expense arrangements in respect of the obligations of such Financing Subsidiary. However, the amount of any such guarantee by Xcel or a Subsidiary would not be counted against the authorization limit in respect of intra-system financings and guarantees discussed above.

Any such long-term debt or preferred securities would be issued with terms and features negotiated or based upon, or otherwise determined by, competitive capital markets, and in any event consistent with the general terms set forth above for Xcel. Any such preferred securities would have dividend rates or methods of determining the same, redemption provisions, conversion or put terms and other terms and conditions as Xcel may determine at the time of issuance. In addition, all issuances of preferred securities will be at rates or prices, and under conditions negotiated pursuant to, based upon, or

otherwise determined by competitive capital markets.

Georgia Power Company (70-10137)

Georgia Power Company ("Georgia Power"), a wholly owned utility subsidiary of the Southern Company ("Southern"), a registered holding company, 241 Ralph McGill Boulevard, NE., Atlanta, Georgia, 30308, has filed a declaration under section 12(b) of the Act and rules 45 and 54 under the Act.

Georgia Power owns 50% of the outstanding common stock of Southern Electric Generating Company ("SEGCO"), an indirect utility subsidiary of Southern. Alabama Power Company ("Alabama Power"), a wholly owned utility subsidiary of Southern, owns the remaining outstanding common stock of SEGCO. SEGCO owns units one through four of the 1,000 megawatt Ernest C. Gaston steam plant near Wilsonville, Alabama. The plant sells all of its energy and capacity to Georgia Power and Alabama Power in proportion to their ownership interest in the plant. Alabama Power acts as SEGCO's agent in the operation of the plant.

On May 22, 2003 SEGCO issued its Series A 4.40% Senior Notes due May 15, 2013 in an aggregate principal amount of \$50 million. As part of the financing, Alabama Power guaranteed repayment of the SEGCO debt. Georgia Power proposes to agree by letter to reimburse Alabama Power pro rata (based on Georgia Power's ownership of the outstanding equity securities of SEGCO as of the date the payment is due) for any payments made by Alabama Power under its guarantee. The letter will provide that the commitment of Georgia Power will terminate when Georgia Power ceases to own an interest in SEGCO.

Unitil Corporation (70-10161)

Unitil Corporation ("Unitil"), a registered holding company under the Act, 6 Liberty Lane West, Hampton, New Hampshire 03842, ("Applicant") has filed an application/declaration ("Application") with the Commission under sections 6(a) and 7 of the Act.

Unitil requests authority to issue and sell for cash prior to January 31, 2004 up to 717,600 additional shares of its common stock, no par value (the "Additional Common Stock"). Unitil has an authorized total of 8,000,000 shares of common stock, of which 4,753,630 shares were issued and outstanding as of June 30, 2003.

Unitil contemplates that the Additional Common Stock would be issued and sold to the public through underwriters, who would acquire the

Additional Common Stock for their own accounts and may resell the shares of the Additional Common Stock in one or more transactions, including negotiated transactions, either at a fixed public offering price or at varying prices determined at the times of sale. The offering is expected to be effected in accordance with an underwriting agreement of a type generally standard in the industry and Unitil may grant the underwriters a "green shoe" option to purchase additional shares at the same price then offered solely for the purpose of covering over-allotments (provided that the total number of shares offered initially, together with the number of shares issued in accordance with any "green shoe" option would not exceed the number of shares authorized for issuance by any order granted under the Application). Applicant states that it is also possible that Unitil would sell the Additional Common Stock through dealers or agents or directly to a limited number of purchasers or a single purchaser.

The aggregate price of the Additional Common Stock being sold through any underwriter or dealer would be calculated based on either the specified selling price to the public or the closing price of the common stock on the day the offering is announced. Public distributions may be in accordance with private negotiation with underwriters, dealers or agents as discussed above or effected through competitive bidding among underwriters. In addition, sales may be made through private placements or other non-public offerings to one or more persons. The sale of the shares of Additional Common Stock would be at rates or prices and under conditions negotiated or based upon, or otherwise determined by, competitive capital markets. The underwriting fees, commissions or other similar remuneration paid in connection with the issue, sale or distribution of the Additional Common Stock in accordance with the Application (not including any original issue discount) would not exceed 7% of the principal or total amount of the Additional Common Stock being issued.

Unitil states that it intends to use the net proceeds of the offering (after deduction of fees, commissions and expenses) (i) to make cash capital contributions to its subsidiaries, including, without limitation, its public utility subsidiaries, Fitchburg Gas and Electric Light Company ("Fitchburg") and Unitil Energy Systems, Inc. ("Unitil Energy"), in accordance with rule 45(a)(4) of the Act; (ii) to repay its outstanding short-term indebtedness; and (iii) for other general corporate

purposes consistent with the requirements of the Act, including to meet working capital needs. Unifil Energy and Fitchburg are expected, in turn, to use any funds contributed by Unifil to repay outstanding short-term indebtedness incurred for additions, extensions and betterments to their respective property, plant and equipment and to finance future expenditures for additions, extensions and betterments to property, plant and equipment. Unifil represents that no proceeds from any offering authorized in any order of the Commission issued on the Application will be used (i) to acquire any exempt wholesale generators or foreign utility companies, as those terms are defined in sections 32 and 33 of the Act, respectively; or (ii) to acquire or form a new subsidiary unless that financing is consummated in accordance with an order of the Commission or an available exemption under the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03-23152 Filed 9-10-03; 8:45 am]

BILLING CODE 8010-01-U

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48447; File No. SR-CHX-2003-15]

Self-Regulatory Organizations; The Chicago Stock Exchange, Incorporated; Order Granting Approval to Proposed Rule Change to Amend the CHX Membership Dues and Fees Schedule to Increase the Specialist Tape Credits for Certain Trades in Tape A and Tape B Securities

September 4, 2003.

I. Introduction

On June 2, 2003, The Chicago Stock Exchange, Incorporated (“CHX” 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 increase the specialist tape credits for certain trades in Tape A and Tape B securities. The proposed rule change was published for comment in the **Federal Register** on June 30, 2003. ³

The Commission received one comment on the proposal. ⁴ On August 11, 2003, the CHX responded to the comment letter. ⁵ This order grants approval to the proposed rule change.

II. Summary of Comments

The NYSE expressed its opposition to “all market data rebates and other forms of payment for order flow” as being inconsistent with the Act and the protection of investors. ⁶ The NYSE stated that the CHX “currently rebates nothing for trades in Nasdaq securities, rebates as much as 50 percent of market data revenues for trades in Tape B securities, and rebates more than 50 percent of market data revenues for certain trades in Tape A securities.” The proposed rule change, according to the NYSE, “would exacerbate this disparity, permitting CHX to provide greater economic incentives to specialist firms to purchase Tape A order flow than to purchase Nasdaq and Tape B order flow.” ⁷ Because the CHX offers “no rationale for different rebate levels based on the market on which a security is listed” the NYSE asks the Commission to institute disapproval proceedings with respect to the proposed rule change. ⁸

In its response to the NYSE Letter, the CHX states that its rules with regard to market data revenue sharing programs are consistent with Commission staff guidance. ⁹ Additionally, the CHX explains that its Tape A credit program “provides only the possibility of a 70% tape credit” and that the rates delineated in the CHX’s fee schedule “are marginal rates and thus apply only to those transactions that exceed identified thresholds.” ¹⁰ Furthermore, the CHX states its market share in Tape A issues has declined, and that it shared “less than 20% of its overall Tape A market data revenues with Exchange specialists” in June 2003. ¹¹

III. Discussion and Commission Findings

As set forth in its July 2, 2002 Order of Summary Abrogation (“Abrogation

⁴ See July 22, 2003 letter from Darla C. Stuckey, Corporate Secretary, New York Stock Exchange, Inc. (“NYSE”), to Jonathan G. Katz, Secretary, Commission (“NYSE Letter”).

⁵ See August 11, 2003 letter from Ellen J. Neely, Senior Vice President and General Counsel, CHX, to John S. Polise, Senior Special Counsel, and Joseph P. Morra, Special Counsel, Division of Market Regulation, Commission (“CHX Letter”).

⁶ NYSE Letter at 2.

⁷ *Id.*

⁸ *Id.*

⁹ CHX Letter at 2.

¹⁰ *Id.*

¹¹ *Id.*

Order”), ¹² the Commission will continue to examine the issues surrounding market data fees, the distribution of market data rebates, and the impact of market data revenue sharing programs on both the accuracy of market data and on the regulatory functions of self-regulatory organizations. In the interim, the Commission believes it is reasonable to allow the CHX to modify the tape credits available to CHX specialists for trades in Tape A and Tape B securities as described in the instant proposed rule change.

Thus, 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 ¹³ and, in particular, the requirements of section 6 of the Act ¹⁴ and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with section 6(b)(5) of the Act, ¹⁵ in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating securities transactions, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The decision to allow the CHX to increase the tape credits for trades in Tape A and Tape B securities, however, is narrowly drawn, and should not be construed as resolving the issues raised in the Abrogation Order, and does not suggest what, if any, future actions the Commission may take with regard to market data revenue sharing programs.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act ¹⁶, that the proposed rule change (SR-CHX-2003-15) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. ¹⁷

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03-23154 Filed 9-10-03; 8:45 am]

BILLING CODE 8010-01-P

¹² Securities Exchange Act Release No. 46159 (July 2, 2002), 67 FR 45775 (July 10, 2002) (File Nos. SR-NASD-2002-61, SR-NASD-2002-68, SR-CSE-2002-06, and SR-PCX-2002-37) (Order of Summary Abrogation).

¹³ 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).

¹⁴ 15 U.S.C. 78f.

¹⁵ 15 U.S.C. 78f(b)(5).

¹⁶ 15 U.S.C. 78s(b)(2).

¹⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 48076 (June 23, 2003), 68 FR 38732.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48448; File No. SR-NASD-2003-136]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Amendments to NASD Rules 1013 and 1140

September 4, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 29, 2003, the National Association of Securities Dealers, Inc. (“NASD”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II and III below, which Items have been prepared by NASD. NASD has designated the proposed rule change as constituting a “non-controversial” rule change pursuant to Rule 19b-4(f)(6) under the Act,³ which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

NASD is proposing to amend NASD Rule 1013 to eliminate the requirement that new member applicants include in their membership applications signed, paper Forms U4 for each proposed associated person who is required to be registered under NASD Rules and, instead, to require new member applicants to file these Forms U4 electronically. NASD is also proposing to amend Rule 1140 to require new member applicants to follow the same procedures members must follow when making electronic Form U4 filings. In addition, NASD is proposing technical changes to Rules 1013 and 1140. Below is the text of the proposed rule change. New text is in *italics*. Proposed deletions are in [brackets].

* * * * *

1000. Membership, Registration and Qualification Requirements

* * * * *

¹ 15 U.S.C. 78s(b)(1).
² 17 CFR 240.19b-4.
³ 17 CFR 240.19b-4(f)(6).

1013. New Member Application and Interview

(a) Filing of Application

(1) Where to File

An Applicant for [Association] NASD membership shall file its application with the Department of Member Regulation at the district office in the district in which the Applicant intends to have its principal place of business as defined in Rule 1011(1).

(2) Contents

- The application shall include:
 - (A) an original signed and notarized paper Form BD, with applicable schedules;
 - [(B) an original signed paper Form U-4 for each Associated Person who is required to be registered under the Rules of the Association;]
 - (C) through (H) Renumbered as (B) through (G).
 - [(I)] (H) documentation of any of the following events, unless the event has been reported to the Central Registration Depository:
 - (i) through (ii) No change.
 - (iii) an investment-related customer complaint or arbitration that is required to be reported on Form U4 [U-4];
 - (iv) through (v) No change.
 - (J) through (S) Renumbered as (I) through (R).

(3) Electronic Filings

Upon approval of the Applicant’s Web CRD entitlement request form, the Applicant shall submit its *Forms U4 for each Associated Person who is required to be registered under NASD Rules*, any amendments to its Forms BD or U4 [U-4, any additional Forms U-4], and any Form U5 [U-5] electronically via Web CRD.

* * * * *

- (4) through (7) No change.
- (b) No change.

* * * * *

1140. Electronic Filing Rules

- (a) through (b) No change.
- (c) Form U4 [U-4] Filing Requirements

(1) [Initial and transfer electronic application filings] *Every initial and transfer electronic Form U4 filing shall be based on a signed Form U4 [U-4] provided to the member or applicant for membership by the person on whose behalf the Form U4 is being filed [applicant]. As part of the member’s recordkeeping requirements, it shall retain the [applicant’s] person’s signed Form U4 [U-4] and make it available promptly upon regulatory request. An applicant for membership also must*

retain every signed Form U4 it receives during the application process and make them available promptly upon regulatory request.

(2) Fingerprint Cards

Upon filing an electronic Form U4 [U-4] on behalf of [an applicant] *a person applying for registration, a member shall promptly submit a fingerprint card for [the applicant] that person.* NASD [Regulation] may make a registration effective pending receipt of the fingerprint card. If a member fails to submit a fingerprint card within 30 days after NASD [Regulation] receives the electronic Form U4 [U-4], the person’s registration shall be deemed inactive. In such case, NASD [Regulation] shall notify the member that the person must immediately cease all activities requiring registration and is prohibited from performing any duties and functioning in any capacity requiring registration. NASD [Regulation] shall administratively terminate a registration that is inactive for a period of two years. A person whose registration is administratively terminated may reactivate the registration only by reapplying for registration and meeting the qualification requirements of the applicable provisions of the Rule 1020 Series and the Rule 1030 Series. Upon application and a showing of good cause, [the Association] NASD may extend the 30-day period.

- (d) through (e) No change.

* * * * *

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASD staff has been working to make its membership application process more efficient and less burdensome for applicants. As part of that effort, NASD staff proposes to eliminate Rule 1013’s current requirement that an applicant for NASD membership submit with its membership application an original,

signed paper Form U4 for each of the applicant's proposed associated persons who are required to be registered with NASD. Instead, the proposed rule change will require that, upon approval of the applicant's Web CRD entitlement request form, the applicant will file such Forms U4 electronically via Web CRD.

NASD Rule 1013(a)(3) already requires that an applicant, upon approval of its Web CRD entitlement request form, electronically submit any amendments to its filed Form BD and Forms U4 and any additional Forms U4 or Forms U5 not submitted with the membership application. By extending the electronic filing requirement to include all Form U4 filings an applicant must submit in connection with its membership application, the proposed rule change allows an applicant to use one unified process for all its Form U4 submissions in the membership application process and reduces the amount of paperwork the applicant must submit with its membership application.

The proposed change will also lessen the burden on NASD staff receiving the membership application because it will eliminate the need to separate the Forms U4 from the membership application material and route them to the appropriate office for review and entry into the Web CRD system. Also, because the proposed change will result in the applicant filing the Forms U4 directly with Web CRD, NASD Web CRD staff will not experience any delays that might occur from the routing process.

In connection with the new electronic Form U4 filing requirement, NASD is also proposing to amend Rule 1140 to apply to applicants the same electronic filing requirements that members must follow when filing electronic Forms U4. Currently, Rule 1140 requires that every electronic Form U4 filing made by a member be based on a signed Form U4 provided by the associated person. Rule 1140 also requires that the member, as part of its recordkeeping requirements, retain the signed Forms U4 and make them available promptly upon regulatory request. The proposed changes to Rule 1140 will require an applicant to follow these same procedures when making electronic Form U4 filings. These requirements will help ensure that associated persons have reviewed and accepted the information and representations provided with the electronic Form U4.

Finally, the proposed rule change makes several technical changes to Rules 1013 and 1140. First, the references in these rules to "Form U-4" and "Form U-5" are being changed to

"Form U4" and "Form U5," respectively.⁴ Second, Rule 1011(a) defines "applicant" to mean either a person applying for NASD membership under Rule 1013 or a member filing an application under Rule 1017 for approval of a change in ownership, control, or business operations. However, the current use of the term "applicant" in Rule 1140 is inconsistent with this definition because it currently uses the term "applicant" to refer to the person on whose behalf the electronic Form U4 filing is being made. Accordingly, the rule change would replace references to "applicant" in Rule 1140 with references to persons on whose behalf Forms U4 filings are being made, as appropriate. Finally, NASD no longer refers to itself or its subsidiary, NASD Regulation, Inc., using its full corporate name, "the Association," "the NASD" or "NASD Regulation." Instead, NASD uses the name "NASD" unless otherwise appropriate for corporate or regulatory reasons. Accordingly, the proposed rule change replaces, as a technical change, several references to "the Association" and "NASD Regulation" in Rules 1013 and 1140 with the name "NASD."

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁵ which requires, among other things, that NASD's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The proposed rule change amends NASD Rule 1013 to eliminate the requirement that new member applicants include in their membership applications signed, paper Forms U4 for each proposed associated person who is required to be registered under NASD Rules and, instead, to require new member applicants to file these Forms U4 electronically. The proposed rule change also amends Rule 1140 to require new member applicants to follow the same procedures members must follow when making electronic Form U4 filings. In addition, the proposed rule change makes certain

⁴ This change is being made in accordance with SR-NASD-2003-57 (Rule Change to Revise Uniform Application for Securities Industry Registration or Transfer (Form U-4) and Uniform Termination Notice for Securities Industry Registration (Form U-5)), which changed the references for Forms "U-4" and "U-5" to "U4" and "U5." SEC Release No. 34-48161 (July 10, 2003) 68 FR 42444 (July 17, 2003).

⁵ 15 U.S.C. 78o-3(b)(6).

technical changes to Rules 1013 and 1140.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has been filed by NASD as a "non-controversial" rule change pursuant to Section 19(b)(3)(A) of the Act⁶ and Rule 19b-4(f)(6) thereunder.⁷ Consequently, because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date on which it was filed, and NASD provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date, it has become effective pursuant to Section 19(b)(3)(A) of the Act⁸ and Rule 19b-4(f)(6) thereunder.⁹

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule

⁶ 15 U.S.C. 78s(b)(3)(A).

⁷ 17 CFR 240.19b-4(f)(6).

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 17 CFR 240.19b-4(f)(6).

change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR-NASD-2003-136 and should be submitted by October 2, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03-23153 Filed 9-10-03; 8:45 am]

BILLING CODE 8010-01-P

SMALL BUSINESS ADMINISTRATION (SBA)

Office of Chief Financial Officer (OCFO); Notice of Intent To Establish the U.S. Small Business Administration's Audit and Financial Management Advisory Committee and Request for Membership Applications

SUMMARY: The U.S. Small Business Administration (SBA) announces its intent to establish the Audit and Financial Management Advisory Committee (AFMAC or "the Committee"). Accordingly, the SBA publishes this notice in compliance with the Federal Advisory Committee Act, as amended, (FACA) (Pub. L 92-463-5 U.S.C. App. 2). The purpose of AFMAC is to provide recommendations and advice regarding the Agency's financial management including the financial reporting process, systems of internal controls, audit process, and process for monitoring compliance with relevant laws and regulations. The SBA Administrator has determined that the establishment of the Committee is in the public interest because it supports proper disclosure and transparency of SBA's financial management. SBA requests applications from qualified individuals and organizations to serve on the Committee. All notices for AFMAC meetings will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For additional information or a membership application, contact Thomas A. Dumaresq, Chief Financial Officer, 409

Third Street, SW.; telephone (202) 205-6449.

SUPPLEMENTARY INFORMATION: AFMAC shall be comprised of at least three members, including one Chairperson, as determined by the SBA's Administrator, who are free from any relationship that would interfere with the exercise of independent judgment as a member of the Committee. Committee membership must be fairly balanced and diverse in terms of occupational background and type of financial expertise. Committee members must have sufficient financial knowledge and experience to enable them to discharge the AFMAC's duties. Each member must be able to: (i) Understand federal financial statements; and (ii) recognize factors affecting the quality of SBA's financial reporting as a basis to make meaningful recommendations about the agencies audited financial statements and related financial management policy. SBA will view very favorably candidates possessing a broad accounting background, extensive financial management expertise, and/or significant experience with federal financial management.

Any qualified individual or organization interested in serving on the Committee should contact SBA for a membership application.

Scott R. Morris,

Deputy Chief of Staff.

[FR Doc. 03-23115 Filed 9-10-03; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

Notice of Advisory Council Public Meeting

The Small Business Administration Region 5 Wisconsin District Advisory Council, located in the geographical area of Milwaukee, Wisconsin, will hold a public meeting at 12 noon on Wednesday, September 17, 2003, at the metro Milwaukee Area Chamber Building 756 North Milwaukee Street 4th Floor, Milwaukee, WI 53202 to discuss such matters as may be presented by members, staff of the Small Business Administration, or others present.

Anyone wishing to make an oral presentation to the Board must contact Yolanda Staples Lassiter, EDA, in writing by letter or by fax at (202) 481-5885 no later than September 15, 2003, in order to be put on the agenda. For further information, write or call Yolanda Staples Lassiter, EDA U.S. Small Business Administration, 310 West Wisconsin Ave., Suite 400

Milwaukee, Wisconsin 53203, (414) 297-1090.

Scott Morris,

Deputy Chief of Staff.

[FR Doc. 03-23114 Filed 9-10-03; 8:45 am]

BILLING CODE 8025-01-P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Disclosure of Additional Fees, Charges and Restrictions on Air Fares in Advertisements, Including "Free" Airfares

This notice is intended to give further guidance to air carriers and other sellers of air transportation on how those additional taxes, fees, and restrictions that are permitted to be listed separately from a fare quotation may be disclosed in advertisements.¹ This guidance will be used by the Office of Aviation Enforcement and Proceedings in its compliance and enforcement activities associated with 14 CFR 399.84, the Department's full fare advertising rule, and 49 U.S.C. 41712, which prohibits unfair and deceptive practices.

As permitted by Department rules, interpretive guidance, and enforcement case precedent, advertisements of air fares frequently do not state the full price charged the consumer, but instead quote a base fare and break out the fees and taxes that are permitted to be separately stated.² Substantial restrictions that apply to the advertised fare, which must be disclosed under Department rules and case precedent, are also generally listed separately. We are concerned that, in some instances, including in print advertisements, the notice of separately stated fees and restrictions is not adequate to alert consumers to the existence and nature

¹ See earlier guidance, most recently the notice dated January 18, 2001, as well as earlier notices, available at <http://airconsumer.ost.dot.gov/rules.htm>.

² While 14 CFR 399.84 requires that any advertisement of an air fare which quotes a price must state the full price to be charged the consumer, a number of exceptions have been recognized in the Department's enforcement case precedent and in advisory letters to the industry. For example, the Department has allowed taxes and fees collected by carriers and other sellers of air transportation to be stated separately in fare advertisements so long as the charges are levied by a government entity, are not *ad valorem* in nature, and are collected on a per-passenger basis (e.g., passenger facility charges and departure taxes). The existence and amount of these additional charges, however, must be clearly indicated in the advertisement so that the consumer can determine the full fare to be paid.

¹⁰ 17 CFR 200.30-3(a)(12).

of such material factors affecting the advertised fare.

Where an advertised fare is not the full fare, the advertisement should clearly indicate the existence and amount of the excluded charges through a description in reasonably close placement and of a reasonable size in relation to the quoted fare. The description should be easily seen and convey to the consumer the fact that additional taxes and fees apply.

We have also recently seen a proliferation of print, Internet, and billboard advertisements promoting "free" air transportation in conjunction with the purchase of one or more other tickets, but without adequate disclosure of the significant conditions that must be met to obtain the "free" air travel. This is particularly troubling not only because significant restrictions pertain to obtaining and using the "free" ticket, but also because, even after meeting the conditions, in most cases consumers still must pay taxes and fees, which, in the case of an international itinerary, may amount to well over \$100. The existence of conditions related to "free" tickets should be noted prominently and proximately to the offer of a free ticket, at a minimum through the use of an asterisk or other symbol that directs the reader's attention to the information explaining the conditions in easily readable print elsewhere in the advertisement. Some examples of conditions that must be noted are any requirements that the consumer pay the taxes and fees that may properly be separately stated from the fare, or the existence of significant restrictions, either to qualify for the free ticket, or to use the free ticket. Similarly prominent notice of the existence of these kinds of conditions should also be made in television and radio advertising.

By this notice and in accordance with recent Department enforcement case precedent, we are also providing further guidance on how to disclose tax, fee, and restriction information in Internet advertising.³ In order to accommodate the emergence of the Internet in the sale of air transportation, the Department has permitted a full explanation of taxes, fees and conditions to be provided by hyperlinks. Specifically, Internet fare advertisements that quote a fare that is not a full fare or that has significant restrictions should have an explicit statement that additional charges apply immediately adjacent to the fare with a hyperlink to a full explanation. Alternatively, those advertisements should highlight the fact that additional fees, restrictions, or conditions apply to

a specific fare or list of fares, including "free" fares, with an asterisk or other symbol immediately next to the fare or list of fares, together with a concise explanation for the asterisk or symbol (e.g., "taxes, fees, and restrictions apply") in reasonably close placement to the relevant fare or fares. A full explanation of the nature and amount of all additional fees and significant restrictions should appear on the same page as the quoted fare or may be linked to the fare by a single hyperlink. This Internet advertising guidance also applies to banner advertisements and pop-up advertisements placed on either vendor or external sites, and e-mail advertisements, as well as to vendors' own Web sites.⁴

Questions regarding this notice may be addressed to Nicholas Lowry, Senior Attorney, Office of Aviation Enforcement and Proceedings (C-70), 400 7th St., SW., Washington, DC 20590.

Dated: September 4, 2003.

Samuel Podbersky,

Assistant General Counsel for Aviation Enforcement and Proceedings.

An electronic version of this document is available on the World Wide Web at <http://dms.dot.gov/reports>.

[FR Doc. 03-23185 Filed 9-10-03; 8:45 am]

BILLING CODE 4910-62-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Valdosta Regional Airport, Valdosta, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Valdosta Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101-508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

⁴ Our June 5, 2002, notice regarding banner advertisements addressed the distinct issue of banner advertisements on external sites offering percentage discounts, which lead a consumer to a general fare quote page on a travel vendor's site with no further information on the relevant discounts.

DATES: Comments must be received on or before October 14, 2003.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Atlanta Airports District Office, Federal Aviation Administration, DOT, 1701 Columbia Avenue, Suite 2-260, College Park, Georgia 30337-2747.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Robert H. Holliday, Executive Director of the Valdosta-Lowndes County Airport Authority at the following address: 1750 Airport Road, Suite 1, Valdosta, Georgia 31601.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Valdosta-Lowndes County Airport Authority under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Philip Cannon, Program Manager, Atlanta Airports District Office, 1701 Columbia Avenue, Suite 2-260, College Park, Georgia 30337-2747, (404) 305-7152.

The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Valdosta Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101-508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On August 28, 2003 the FAA determined that the application to the revenue from a PFC submitted by Valdosta-Lowndes County Airport Authority was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than December 17, 2003.

The following is a brief overview of the application.

PFC Application No.: 03-06-C-00-VLD.

Level of the proposed PFC: \$4.50.

Proposed charge effective date: November 1, 2003.

Proposed charge expiration date: November 1, 2006.

Total estimated PFC revenue: \$355,100.

Brief description of proposed project(s):

Prepare PFC application 00-04-C-00-VLD
Prepare PFC application 01-05-C-00-VLD
Prepare PFC application 03-06-C-00-VLD
Overlay taxiway "A" and six connecting stubs

³ See, *Icelandair* (Order 2003-4-9).

Acquire easement off ends of runway 4/22
 Mark runway 4/22 for non-precision
 approaches
 Expand commuter apron
 Environmental assessment for runway 17/35
 extension
 Extend taxiway "M"
 Extend runway 17/35
 Airfield fencing
 Upgrade tower communications
 Land acquisition

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Non-scheduled large certified route air carriers filing RSPA form T-100.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person, may upon request, inspect the application, notice and other documents germane to the application in person at the Valdosta-Lowndes County Airport Authority.

Issued in College Park, Georgia on September 3, 2003.

Scott L. Seritt,

Manager, Atlanta Airports District Office, Southern Region.

[FR Doc. 03-23184 Filed 9-10-03; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-1999-5880]

Hours of Service of Drivers: Exemption Application From Hulcher Services, Inc.

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Denial of application for exemption.

SUMMARY: The FMCSA denies the petition of Hulcher Services, Inc. (Hulcher) for an exemption from the maximum driving time limitations in the Federal Motor Carrier Safety Regulations (FMCSRs). Hulcher argues that an exemption would ensure its ability to respond to railroad accidents and help restore service. The FMCSA disagrees. We deny the exemption because Hulcher did not explain how granting the exemption would achieve a level of safety that is equivalent to, or greater than, the level of safety achieved by complying with FMCSR driving time limitations.

DATES: The denial of this petition is effective on September 11, 2003.

FOR FURTHER INFORMATION CONTACT: Ms. Mary M. Moehring, Driver and Carrier

Operations Division, Office of Bus and Truck Standards and Operations, MC-PSD, (202) 366-4001, Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Washington, DC 20590-0001.

SUPPLEMENTARY INFORMATION:

Background

Waivers and Exemptions

On June 9, 1998, the President signed the Transportation Equity Act for the 21st Century (TEA-21) (Pub. L. 105-178, 112 Stat. 107). Section 4007 of TEA-21 amended 49 U.S.C. 31315 and 31136(e) concerning the Secretary of Transportation's authority to grant exemptions from the FMCSRs. An exemption may be granted for no longer than two years from its approval date, and may be renewed upon application to the Secretary. On December 8, 1998, the Federal Highway Administration (FHWA) published an interim final rule implementing section 4007 of TEA-21 (63 FR 67600). The regulations at 49 CFR part 381 establish the procedures to be followed to request waivers and to apply for exemptions from the FMCSRs, and the procedures used to process them.

Notice of Application

On July 30, 1999 FHWA published a Notice of application from Hulcher requesting an exemption from 49 CFR 395.3 which provides requirements concerning the maximum driving time for drivers of commercial motor vehicles (CMVs) (64 FR 41483). Hulcher further requested that if this exemption was not possible, the agency permit its drivers a 24-hour restart period for the 70 hour rule after 24 consecutive hours off-duty, irrespective of the number of days used to accumulate the previous 70-hours on-duty. In that same Notice, FHWA announced its intent to deny the application for exemption and requested comments.

Hulcher provides assistance in restoring rail service after train accidents. The company responds to emergencies, makes necessary repairs to tracks and switches and lifts locomotives and rail cars back onto the tracks. Its equipment is maintained and staged strategically throughout the United States in order to respond quickly and efficiently to railroad emergencies. The company states that its average movement of equipment and personnel is less than 200 miles.

Preliminary Determination To Deny the Exemption

In the Notice of preliminary determination to deny the exemption,

FHWA stated its intent to deny because there was no scientific or safety-performance data to support it. In particular, FHWA noted:

(1) Hulcher had failed to explain how it would ensure that it could achieve a level of safety that is equivalent to, or greater than, the level of safety that would be obtained by complying with the hours-of-service (HOS) regulations.

(2) Hulcher failed to describe the impacts it could experience if the exemption was not granted, such as the inability to test new safety management control systems.

(3) Hulcher failed to describe any emergencies that the company has been unable to respond to because of compliance with the hours-of-service regulations.

(4) Hulcher did not explain why the current emergency relief exemption is insufficient for the incidents to which they typically respond.

(5) Hulcher did not provide specific terms or conditions that the agency could evaluate beforehand to ensure that an acceptable level of safety would be achieved, nor did it provide a means to monitor the drivers' safety performance. FHWA stated that Hulcher's safety recognition program was not an acceptable alternative to complying with well-defined terms and conditions that the agency could evaluate during the period of the exemption.

(6) With regard to the request for the 24-hour restart period, FHWA noted that it was unaware of any data that would support granting such an exemption.

Discussion of Comments

The FMCSA received five comments to the notice to propose to deny Hulcher's application for exemption. Three comments supported the intent to deny, one was opposed, and one generally favored a relaxation of the HOS rules.

Hulcher, in its response to the intent to deny, stated:

(1) It had not encountered instances in which the HOS prevented it from responding to an emergency, but was being proactive in addressing what it viewed as a potential problem of being delayed in route;

(2) It has an exceptionally strong and comprehensive company safety culture, including daily safety meetings, as well as safety meetings before and after returning from an incident. Hulcher further stated that it would never consider allowing one of its employees to operate a CMV without adequate rest;

(3) FMCSA's failure to grant the exemption may result in emergency

response personnel concentrating on HOS regulations and paperwork, thereby diverting attention from the main objective of the incident response;

(4) Operation of CMVs is subordinate to its primary business, and most movements are 200 miles or less;

(5) States routinely issue special emergency permits for the movement of Hulcher's oversize or overweight loads, and by issuance of these permits, States have declared the move an emergency;

(6) It wants to receive the same consideration in the FMCSRs as Oil Field Operations, Ground Water Well Drilling Operations, Agricultural Operations, and Construction Materials, and Equipment.

Ms. Rachelle Biggs stated a general observation that the current system of HOS regulation is unduly complex and the regulations should be changed to provide for an 80-hour/8-day maximum on-duty period and a total restart after 24 hours off-duty. The comment did not specifically identify whether Hulcher should be granted or denied its petition.

The Brotherhood of Maintenance of Way Employees (BMWE) supported the intent to deny on the basis that Hulcher is routinely contracted by railroads in the case of a derailment or other railroad accident, and that these situations do not meet the definition of emergency in 49 CFR 390.5. In addition, BMWE stated its concern that the exemption request would be used most frequently, not in responding to an emergency, but rather, subsequent to the employees' cessation of work as laborers and heavy equipment operators. BWME saw the exemption as a means to get more hours of on-duty time rather than a legitimate exemption which permitted workers to get to the site of an emergency. BMWE submits that an exemption from the HOS regulations for employees who have often worked under extreme physical and environmental conditions without sufficient rest is contrary to public safety.

The International Brotherhood of Teamsters (IBT), while supporting the intent to deny, stated its belief that the agency does not have the statutory authority to grant exemptions from HOS regulations.

The Advocates for Highway and Auto Safety (AHAS) also supported the denial, stating that Hulcher had failed to demonstrate that its company's services required elimination of the maximum driving and on-duty hours, or of the minimum off-duty period following the exhaustion of available driving and total duty hours at the end of a seven- or eight-day driver tour of duty. The AHAS also noted its objection to the agency's issuance of notices requesting public

comment on exemption applications that include an indication of the agency's predetermination on the merits.

FMCSA Decision

The FMCSA has carefully reviewed Hulcher's application for an exemption from the HOS regulations and the comments on the request for the exemption, and has decided to deny the application. As stated in the proposal to deny the application, Hulcher has not demonstrated how it will meet the standard of an exemption, and achieve a level of safety equal to, or greater than, the level of safety that would be achieved by complying with the HOS regulations.

The fact that Hulcher has a safety program that it believes exceeds the industry norm is, in itself, an insufficient reason to grant an exemption. The fact that States grant permits for oversize or overweight loads, and may, in some cases, designate these permits as emergency permits, does not constitute an emergency as defined in 49 CFR parts 390.5 and 393.23. In fact, the issuance of oversize and overweight permits is a routine matter for most State highway and transportation departments.

Hulcher has not demonstrated that the current emergency relief provisions of 49 CFR 393.23 are inadequate to meet incidents to which they typically respond. In fact, Hulcher indicates that it has not had any difficulty to date, but is concerned about potential problems that might occur in the future. In the absence of any defined need, it would be inappropriate to grant the request.

Specific statutory exemptions granted to several industries by Congress in section 345 of the National Highway Designation Act of 1995 (Pub. L. 104-59) (109 Stat. 568, 613) are not relevant to Hulcher's request for an exemption under 49 CFR 381.310.

With regard to the comments of the AHAS on the agency's issuance of notices that include preliminary determinations, the FMCSA has discontinued that practice.

Finally, the FMCSA notes that on April 28, 2003, it published new hours-of-service (HOS) regulations for commercial motor vehicle drivers (68 FR 22456). The compliance date for the new regulations is January 4, 2004. Under the new regulations, drivers of CMVs will be allowed to restart the 60- or 70-hour "clock" after taking 34 or more consecutive hours off-duty. This provision may provide some of the flexibility Hulcher sought in its application.

Issued on: September 8, 2003.

Pamela M. Pelcovits,

Office Director, Policy, Plans, and Regulation.

[FR Doc. 03-23189 Filed 9-10-03; 8:45 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Indexing the Annual Operating Revenues of Railroads

This Notice sets forth the annual inflation adjusting index numbers which are used to adjust gross annual operating revenues of railroads for classification purposes. This indexing methodology will insure that regulated carriers are classified based on real business expansion and not from the effects of inflation. Classification is important because it determines the extent of reporting for each carrier.

The railroad's inflation factors are based on the annual average Railroad's Freight Price Index. This index is developed by the Bureau of Labor Statistics (BLS). This index will be used to deflate revenues for comparison with established revenue thresholds.

The base year for railroads is 1991. The inflation index factors are presented as follows:

RAILROAD FREIGHT INDEX

Year	Index	Deflator percent
1991	409.50	100.00
1992	411.80	99.45
1993	415.50	98.55
1994	418.80	97.70
1995	418.17	97.85
1996	417.46	98.02
1997	419.67	97.50
1998	424.54	96.38
1999	423.01	96.72
2000	428.64	95.45
2001	436.48	93.73
2002	445.03	91.92

¹ Ex Parte No. 492, *Montana Rail Link, Inc., and Wisconsin Central Ltd., Joint Petition For Rulemaking With Respect To 49 CFR 1201, 8 I.C.C. 2d 625 (1992)*, raised the revenue classification level for Class I railroads from \$50 million to \$250 million (1991 dollars), effective for the reporting year beginning January 1, 1992. The Class II threshold was also revised to reflect a rebasing from \$10 million (1978 dollars) to \$20 million (1991 dollars).

EFFECTIVE DATE: January 1, 2002.

FOR FURTHER INFORMATION CONTACT: Scott Decker (202)-565-1531. [Federal Information Relay Service (FIRS) for the hearing impaired: 1-800-877-8339.]

By the Board, Leland L. Gardner, Director, Office of Economics, Environmental Analysis, and Administration.

Vernon A. Williams,
Secretary.

[FR Doc. 03-22908 Filed 9-10-03; 8:45 am]

BILLING CODE 4915-00-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB-602X]

Tecumseh Branch Connecting Railroad Company—Abandonment Exemption—in Lenawee County, MI

Tecumseh Branch Connecting Railroad Company (TBCR) has filed a notice of exemption under 49 CFR 1152 subpart F—*Exempt Abandonments* to abandon approximately 0.8 miles of railroad of the Tecumseh Branch of the former Detroit, Toledo & Ironton Railroad extending from TBCR's point of interchange with Adrian & Blissfield Rail Road Company's mainline at milepost 45.5 to the end of track at milepost 46.3 in the City of Adrian, Lenawee County, MI. The line traverses United States Postal Service ZIP Code 49221.

TBCR has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic to be rerouted; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an OFA has been received, this exemption will be effective on October 11, 2003, unless stayed pending reconsideration. Petitions to stay that do not involve

environmental issues,¹ formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),² and trail use/rail banking requests under 49 CFR 1152.29 must be filed by September 22, 2003. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by October 1, 2003, with: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to TBCR's representative: Mr. Myles Paisley, 850 Mandoline, Madison Heights, MI 48071.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

TBCR has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. SEA will issue an environmental assessment (EA) by September 16, 2003. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565-1539. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), TBCR shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned its line. If consummation has not been effected by TBCR's filing of a notice of consummation by September 11, 2004, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at www.stb.dot.gov.

Decided: September 4, 2003.

¹ The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. See *Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

² Each OFA must be accompanied by the filing fee, which currently is set at \$1,100. See 49 CFR 1002.2(f)(25).

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,
Secretary.

[FR Doc. 03-23014 Filed 9-10-03; 8:45 am]

BILLING CODE 4915-00-P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

September 4, 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 October 14, 2003 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545-0098.

Form Number: IRS Form 1045.

Type of Review: Extension.

Title: Application for Tentative Refund.

Description: Form 1045 is used by individuals, estates, and trusts for a quick refund of taxes due to carryback of a net operating loss, unused general business credit, or claim of right adjustment under section 1341(b). The information obtained is used to determine the validity of the application.

Respondents: Individuals or households, Business or other for-profit, Farms.

Estimated Number of Respondents/Recordkeepers: 65,220.

Estimated Burden Hours Respondent/Recordkeepers:

Recordkeeping	4 hr., 9 min.
Learning about the law or the form.	47 min.
Preparing the form	6 hr., 44 min.
Copying, assembling, and sending the form to the IRS.	1 hr., 3 min.

Frequency of Response: On occasion.
Estimated Total Reporting/Recordkeeping Burden: 830,251 hours.
OMB Number: 1545-0219.

Form Number: IRS Form 5884.
Type of Review: Extension.
Title: Work Opportunity Credit.
Description: Internal Revenue Code (IRC) section 38(b)(2) allows a credit against income tax to employers hiring individuals from certain targeted groups such as welfare recipients, etc. The employer uses Form 5884 to figure the credit. IRS uses the information on the form to verify that the correct amount of credit was claimed.
Respondents: Individuals or households, Business or other for-profit.
Estimated Number of Respondents/Recordkeepers: 10,630.
Estimated Burden Hours Respondent/Recordkeeper:

Recordkeeping	7 hr., 39 min.
Learning about the law or the form.	1 hr., 0 min.
Preparing and sending the form to the IRS.	1 hr., 9 min.

Frequency of Response: Annually.
Estimated Total Reporting/Recordkeeping Burden: 104,281 hours.
OMB Number: 1545-1016.
Form Number: IRS Form 8613.
Type of Review: Extension.
Title: Return of Excise Tax on Undistributed Income of Regulated Investment Companies.
Description: Form 8613 is used by regulated investment companies to compute and pay the excise tax on undistributed income imposed under sect IRS uses the information to verify that the correct amount of tax has been reported.
Respondents: Business or other for-profit.
Estimated Number of Respondents/Recordkeepers: 1,500.
Estimated Burden Hours Respondent/Recordkeeper:

Recordkeeping	6 hr., 42 min.
Learning about the law or the form.	2 hr., 28 min.
Preparing and sending the form to the IRS.	2 hr., 42 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 17,820 hours.
OMB Number: 1545-1359.
Regulation Project Number: INTL-978-86 NPRM.
Type of Review: Extension.
Title: Information Reporting by Passport and Permanent Resident Applicants.
Description: The regulations require applicants for passports and permanent residence status to report certain tax information on the applications. The regulations are intended to give the Service notice of non-filers and of persons with foreign source income not subject to normal withholding, and to notify such persons of their duty to file U.S. tax returns.

Respondents: Individuals or households.
Estimated Number of Respondents: 5,500,000.
Estimated Burden Hours Respondent: 30 minutes.

Frequency of Response: On occasion.
Estimated Total Reporting Burden: 750,000 hours.
OMB Number: 1545-1560.
Regulation Project Number: REG-246250-96 Final.

Type of Review: Extension.
Title: Public Disclosure of Material Relating to Tax-Exempt Organizations.
Description: The collections of information in section 301.6104(d)-3, 301.6104(d)-4 and 301.6104(d)-5 are necessary so that tax-exempt organizations can make copies of their applications for tax exemption and annual information returns to the public.

Respondents: Not-for-profit institutions.
Estimated Number of Respondents/Recordkeeping: 1,100,000.
Estimated Burden Hours Respondent/Recordkeeper: 30 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting/Recordkeeping Burden: 551,500 hours.
OMB Number: 1545-1593.
Form Number: IRS Form 1041-QFT.
Type of Review: Extension.

Title: U.S. Income Tax Return for Qualified Funeral Trusts.
Description: Internal Revenue Code (IRC) section 685 allows the trustee of qualified funeral trust to report and pay the tax for the trust. Data is used to determine that the trustee filed the proper return and paid the correct tax.
Respondents: Business or other for-profit.
Estimated Number of Respondents/Recordkeepers: 15,000.
Estimated Burden Hours Respondent/Recordkeeper:

Recordkeeping	9 hr., 34 min.
Learning about the law or the form.	2 hr., 18 min.
Preparing the form	5 hr., 20 min.
Copying, assembling, and sending the form to the IRS.	48 min.

Frequency of Response: Annually.
Estimated Total Reporting/Recordkeeping Burden: 270,150 hours.
OMB Number: 1545-1693.
Form Number: IRS Forms 8871 and 8453-X.

Type of Review: Extension.
Title: Form 8871, Political Organization Notice of Section 527 Status; and Form 8453-X, Political Organization Declaration for Electronic Filing of Notice of Section 527 Status.

Description: Internal Revenue Code section 527, as amended by P.L. 106-230 and P.L. 107-276, requires certain political organizations to provide information to the IRS regarding their name and address, their purpose, and the names and addresses of their officers, highly compensated employees, board of directors, and any related entities (within the meaning of section 168(h)(4)). Forms 8871 and 8453-X are used for this purpose.

Respondents: Not-for-profit institutions.
Estimated Number of Respondents/Recordkeeping: 5,500.
Estimated Burden Hours Respondent/Recordkeeping:

	Form 8871	Form 8453-X
Recordkeeping	5 hr., 15 min.	28 min.
Learning about the law or the form	47 min.	6 min.
Preparing and sending the form to the IRS	55 min.	6 min.

Frequency of Response: On occasion.
Estimated Total Reporting/Recordkeeping Burden: 35,195 hours.
OMB Number: 1545-1842.
Form Number: IRS Form 13441.
Type of Review: Extension.

Title: Health Coverage Tax Credit Registration Form.
Description: Form 13441, Health Coverage Tax Credit Registration Form, will be directly mailed to all individuals who are potentially eligible for the HCTC. Potentially eligible individuals

will use this form to determine if they are eligible for the Health Coverage Tax Credit and to register for the HCTC program. Participation in this program is voluntary. This form will be submitted by the individual to the HCTC program office in a postage-paid,

return envelope. We will accept faxed forms, if necessary. Additionally, recipients may call the HCTC call center for help in completing this form.

Respondents: Individuals or households, Federal Government, State, Local or Tribal Government.

Estimated Number of Respondents: 156,000.

Estimated Burden Hours Respondent: 30 minutes.

Frequency of Response: Other (once).

Estimated Total Reporting Burden: 78,000 hours.

OMB Number: 1545-1846.

Revenue Procedure Number: Revenue Procedure 2003-48.

Type of Review: Extension.

Title: Update of Checklist Questionnaire Regarding Requests for Spin-Off Rulings.

Description: This revenue procedure updates Revenue Procedure 96-30, which sets forth in a check list questionnaire the information that must be included in a request for ruling under section 355. This revenue procedure updates information that taxpayers must provide in order to receive letter rulings under section 355. This information is required to determine whether a taxpayer would qualify for nonrecognition treatment.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 180.

Estimated Burden Hours Respondent: 200 hours.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 36,000 hours.

Clearance Officer: Glenn Kirkland, (202) 622-3428, Internal Revenue Service, Room 6411-03, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Joseph F. Lackey, Jr., (202) 395-7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Treasury PRA Clearance Officer.

[FR Doc. 03-23151 Filed 9-10-03; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0422]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Office of Acquisition and Materiel Management, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Office of Acquisition and Materiel Management (OA&MM), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each revision of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to administer contracts.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before November 10, 2003.

ADDRESSES: Submit written comments on the collection of information to Cathy I. Dailey, Office of Acquisition and Materiel Management (95A), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or e-mail cathy.dailey@mail.va.gov. Please refer to "OMB Control No. 2900-0422" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Cathy I. Dailey at (202) 273-8774.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104-13; 44 U.S.C., 3501-3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, OA&MM invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of OA&MM's functions, including whether the information will have practical utility; (2) the accuracy of OA&MM's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Titles:

a. Veterans Affairs Acquisition Regulation (VAAR) Clause 852.236-72, Performance of Work by the Contractor.

b. Veterans Affairs Acquisition Regulation (VAAR) Clause 852.236-81, Work Coordination. (This Clause will be renumbered as "Alternate 1" to VAAR Clause 852.236-80.)

c. Veterans Affairs Acquisition Regulation (VAAR) Clause 852.236-82, Payments Under Fixed-Price Construction Contracts (without NAS), including Supplement 1 (which will be renamed as "Alternate 1").

d. Veterans Affairs Acquisition Regulation (VAAR) Clause 852.236-83, Payments Under Fixed-Price Construction Contracts (with NAS), including Supplement 1 (which will be renamed as "Alternate 1").

e. Veterans Affairs Acquisition Regulation (VAAR) Clause 852.236-84, Schedule of Work Progress.

f. Veterans Affairs Acquisition Regulation (VAAR) Clause 852.236-88, Contract Changes, Supplements FAR Clause 52.243-4, Changes.

g. Veterans Affairs Acquisition Regulation (VAAR) Clause 852.224-70, Health Insurance Portability and Accountability Act of 1996.

OMB Control Number: 2900-0422.

Type of Review: Revision of a currently approved collection.

Abstract: The information contained VAAR clauses 852.236-72, 852.236-81, 852.236-82, 852.236-83, 852.236-84, 852.236-88 and 852.22-70 is necessary for the VA to administer construction contracts, and to carry out its responsibility to construct, maintain and repair real property for the Department. The information is also necessary for VA to award and administer contracts involving healthcare that may involve equipment, supplies, or services for the Department.

a. VAAR Clause 852.236-72, Performance of Work by the Contractor, requires contractors awarded a construction contract containing Federal Acquisition Regulation (FAR) clause 52.236-1, to submit a statement designating the branch or branches of contract work to be performed by the contractor's own forces. The VAAR clause implements the FAR clause by requiring the contractor to provide information to the contracting officer on how the contractor intends to fulfill this contractual obligation. The contracting officer uses this information to ensure that the contractor complies with the contract requirements.

b. VAAR Clause 852.236-81, Work Coordination. (This Clause will be renumbered as "Alternate 1" to VAAR Clause 852.236-80), requires construction contractors, on contracts involving complex mechanical-electrical work, to furnish coordination drawings showing the manner in which

utility lines will fit into available spaces and relate to each other and to the existing building elements. The information is used by the contracting officer and the VA engineer assigned to the project to resolve any problems relating to the installation of utilities on construction contract.

c. VAAR Clause 852.236-82, Payments Under Fixed-Price Construction Contracts (without NAS), requires construction contractors to submit a schedule of costs for work to be performed under the contract. If the contract includes guarantee period services, Supplement I (which will be renamed as "Alternate 1"), requires contractor to submit information on the total and itemized costs of the guarantee period services and to submit a performance plan/program. The information is needed to allow the contracting officer to determine the correct amount to pay the contractor as work progresses and to properly proportion the amount paid for guarantee period services.

d. VAAR Clause 852.236-83, Payments Under Fixed-Price Construction Contracts (with NAS), requires construction contractors to submit a schedule of costs for work to be performed under the contract. If the contract includes guarantee period services, Supplement I (which will be renamed as "Alternate 1"), requires contractor to submit information on the total and itemized costs of the guarantee period services and to submit a performance plan/program. The information is needed to allow the contracting officer to determine the correct amount to pay the contractor as work progresses and to properly proportion the amount paid for guarantee period services. The difference between this clause and the one above 852.236-82 is that this clause requires the contractor to use a computerized Network Analysis System (NAS) to prepare the cost estimate.

e. VAAR Clause 852.236-84, Schedule of Work Progress, requires construction contractors, on contracts that do not require the use of a NAS, to submit a progress schedule. The information is used by the contracting officer to track the contractor's progress under the contract and to determine whether or not the contractor is making satisfactory progress.

f. VAAR Clause 852.236-88, Contract Changes, Supplements FAR Clause 52.243-4, Changes. FAR Clause 52.243-4 authorizes the contracting officer to order changes to a construction contract but does not specifically require the contractor to submit cost proposals for those changes. VAAR Clause 852.236-

88 requires contractors to submit cost proposal for changes ordered by the contracting officer or for changes proposed by the contractor. This information is needed to allow the contracting officer and the contractor to reach a mutually acceptable agreement on how much to pay the contractor for the proposed changes to the contract. It is also used by the contracting officer to determine whether or not to authorize the proposed changes or whether or not additional or alternate cost proposals for changes are needed.

g. VAAR Clause 852.224-70, Health Insurance Portability and Accountability Act of 1996, requires contractors, involved with the design, development, maintenance, operation or use of any system for the creation, gathering, use, disclosure, storage, transmission, or disposition of any protected health information (PHI) to accomplish an Agency function or involve the release of protected health information to the vendor for the purposes of conducting business with VA under the contract to protect the PHI under the regulations issued by HIPAA.

Affected Public: Business or other for-profit; Individuals and households; and Not-for-profit institutions.

Estimated Annual Burden: 14,745 hours.

Estimated Average Burden per Respondent: 1.1 hours.

Frequency of Response: On occasion.

Estimated Number of Respondents: 12,868.

Estimated Number of Annual Responses: 13,418.

Dated: September 3, 2003.

By direction of the Secretary:

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. 03-23096 Filed 9-10-03; 8:45 am]

BILLING CODE 8320-01-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0074]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501-21), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the

collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

DATES: Comments must be submitted on or before October 14, 2003.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273-8030, Fax (202) 273-5981 or e-mail: denise.mclamb@mail.va.gov. Please refer to "OMB Control No. 2900-0074."

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395-7316. Please refer to "OMB Control No. 2900-0074" in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Request for Change of Program or Place of Training for Veterans, Servicepersons, and Members of the Selected Reserve, VA Form 22-1995.

OMB Control Number: 2900-0074.

Type of Review: Extension of a currently approved collection.

Abstract: VA pays educational benefits to eligible veterans and persons on active duty, and to persons in the Selected Reserve. Each veteran, person on active duty, or person in the Selected Reserve must be pursuing an approved program of training to be eligible for benefits. The eligible student must complete VA Form 22-1995 to identify and request approval for a supplementary educational objective or place of training. VA cannot pay benefits if the veteran, person on active duty, or person in the Selected Reserve changes his or her educational objective or place of training without VA's approval. The information collected is used to determine continued eligibility for educational benefits, and to monitor the number of times a veteran, person on active duty, or person in the Selected Reserve has changed his or her educational objectives. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on April 16, 2003, at pages 18726-18727.

Affected Public: Individuals or households.

Estimated Annual Burden: 16,000 hours.

Estimated Average Burden per

Respondent: 12 minutes.

Frequency of Response: On occasion.

Estimated Annual Responses: 80,000.

Dated: August 27, 2003.

By direction of the Secretary:

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. 03-23097 Filed 9-10-03; 8:45 am]

BILLING CODE 8320-01-P

Corrections

Federal Register

Vol. 68, No. 176

Thursday, September 11, 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. 34-48424; File No. SR-NASD-2003-92]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval to a Proposed Rule Change To Adopt NASD Rule 2370 To Govern Certain Lending Arrangements Between Registered Persons and Customers

August 29, 2003.

Correction

In notice document 03-22656 beginning on page 52806 in the issue of

Friday, September 5, 2003, make the following correction:

On page 52806, in the third column, the docket number is corrected to read as set forth above.

[FR Doc. C3-22656 Filed 9-10-03; 8:45 am]

BILLING CODE 1505-01-D



Federal Register

Thursday,
September 11, 2003

Part II

Department of the Treasury

Office of Foreign Assets Control

**31 CFR Parts 500, 501, 505, et al.
Foreign Assets Control Regulations;
Reporting and Procedures Regulations;
Cuban Assets Control Regulations:
Publication of Revised Civil Penalties
Hearing Regulations; Interim Final Rule
and Proposed Rule**

DEPARTMENT OF THE TREASURY**Office of Foreign Assets Control**

31 CFR Parts 500, 501, 505, 515, 535, 536, 537, 538, 539, 540, 545, 550, 560, 575, 585, 586, 587, 588, 590, 591, 594, 595, 596, 597, and 598

Foreign Assets Control Regulations; Reporting and Procedures Regulations; Cuban Assets Control Regulations; Publication of Revised Civil Penalties Hearing Regulations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Interim final rule with request for comments.

SUMMARY: The Office of Foreign Assets Control ("OFAC") of the U.S. Department of the Treasury ("Treasury") is issuing this interim final rule to provide revisions to its civil penalties regulations promulgated pursuant to the Trading with the Enemy Act. These revisions consolidate substantive changes to the Foreign Assets Control Regulations, and the Cuban Assets Control Regulations, in a new subpart of the Reporting and Procedures Regulations, renamed Reporting, Procedures, and Penalties Regulations. Conforming changes are made to the other parts of the regulations.

DATES: This interim final rule is effective September 11, 2003. Written comments on this interim final rule may be submitted on or before October 14, 2003.

ADDRESSES: Comments may be submitted by mail, by facsimile, or through OFAC's Web site. Because paper mail in the Washington, DC area may be subject to delay, electronic mail submission is recommended.

Mailing address: Chief of Records, ATTN Request for Comments, Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Facsimile number: (202) 622-1657.
OFAC's Web site: <<http://www.treas.gov/ofac.html>>. Comments must be in writing. OFAC will not accept comments accompanied by a request that all or part of the submission be treated confidentially because of its business proprietary nature or for any other reason. All comments received by the deadline will be a matter of public record and will be made available on OFAC's Web site.

FOR FURTHER INFORMATION CONTACT: Chief of Penalties, tel.: (202) 622-6140, or Chief Counsel, tel.: (202) 622-2410.

SUPPLEMENTARY INFORMATION:**Electronic Availability**

This document and additional information concerning OFAC are available from OFAC's Web site <<http://www.treas.gov/ofac.html>> or via facsimile through a 24-hour fax-on-demand service, tel: (202) 622-0077. Comments on this interim final rule may be submitted electronically through OFAC's Web site <http://www.treas.gov/ofac.html>.

Analysis of the Interim Final Rule*Background*

OFAC hereby publishes as revisions to 31 CFR parts 500, 501, and 515 its civil penalties regulations promulgated pursuant to the Trading with the Enemy Act. These revisions expand on and clarify existing civil penalties procedures. They are intended to promote the transparency of OFAC's procedures and to streamline the existing regulatory scheme. In order to effect a procedurally fair and expeditious resolution of civil penalties cases, OFAC intends that the revised rules for the conduct and review of agency hearings, contained at 31 CFR §§ 501.710-501.761, shall be effective for all hearings regardless of whether the request for hearing was made before the effective date of these revisions.

Currently, the only sanctions programs implemented pursuant to the Trading with the Enemy Act, and significantly affected by these changes, are the Foreign Assets Control Regulations (applicable to North Korea and Vietnam), the Cuban Assets Control Regulations (applicable to Cuba), and the Transaction Control Regulations, at 31 CFR part 505 (applicable to certain offshore trade in strategic goods with the former Soviet Bloc). For ease of the reader, the relevant subparts of parts 500, 501, and 515 are being republished in their entirety. OFAC is also making non-substantive conforming amendments to each of the other parts of 31 CFR chapter V.

Narrative Overview

The administrative process for enforcing TWEA sanctions programs proceeds as follows:

(a) The Director of the Office of Foreign Assets Control will notify a suspected violator (hereinafter "respondent") of an alleged violation by issuing a "Prepenalty Notice." The Prepenalty Notice shall describe the alleged violation(s) and include a proposed civil penalty amount.

(b) The respondent will have 60 days from the date the Prepenalty Notice is served to make a written presentation either defending against the alleged violation or admitting the violation. A respondent who admits a violation may offer information as to why a monetary penalty should not be imposed or why, if imposed, the monetary penalty should be in a lesser amount than proposed. Information presented during this period may also be used in informal settlement negotiations.

(c) Absent a settlement agreement or a finding that no violation occurred, the Director of the Office of Foreign Assets Control will issue a "Penalty Notice." The respondent will have 30 days from the date of service to either pay the penalty or request a hearing.

(d) If the respondent requests a hearing, the Director of the Office of Foreign Assets Control will have two options:

(1) The Director may issue an "Order Instituting Proceedings" and refer the matter to an Administrative Law Judge for a hearing and decision; or

(2) The Director may determine to discontinue the penalty action based on information presented by the respondent.

(e) Absent review by a Secretary's designee, the decision of the Administrative Law Judge will become the final decision of the Department without further proceedings.

(f) If review is taken by a Secretary's designee, the Secretary's designee reaches a final Department decision.

Procedural Requirements

Because this interim final rule pertains to a foreign affairs function of the United States, it is not subject to Executive Order 12866.

Pursuant to 5 U.S.C. 553(a)(1), general notice of proposed rule making is not applicable to this interim final rule because it involves a foreign affairs function of the United States. Moreover, Treasury finds, in accordance with 5 U.S.C. 553(b)(A), that notice and public procedure is not required because this interim final rule involves agency procedure and practice. Moreover, this rule merely re-orders and clarifies the existing administrative process for civil penalty cases and will facilitate the provision of hearings for persons who have already requested them.

Notwithstanding the above findings, however, in the interest of receiving full public comment, Treasury is also issuing a companion proposed rule with request for comment on all aspects of the interim final rule. Published elsewhere in a separate part of this issue of the **Federal Register** is a notice of

proposed rulemaking proposing to adopt the provisions of this interim final rule as a final rule.

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply.

The collections of information in the proposed rule arise during the conduct of administrative actions or investigations by OFAC against specific individuals or entities. Pursuant to 44 U.S.C. 3518(c)(1)(B)(ii), these collections are not subject to the requirements of the Paperwork Reduction Act.

List of Subjects

31 CFR Part 500

Administrative practice and procedure, Banks, banking, Cambodia, Currency, Foreign claims, Foreign investments in United States, Foreign trade, Korea, Democratic Peoples Republic of, Penalties, Reporting and recordkeeping requirements, Sanctions, Securities, Vietnam.

31 CFR Part 501

Administrative practice and procedure, Penalties, Reporting and recordkeeping requirements, Sanctions.

31 CFR Part 505

Administrative practice and procedure, Penalties, Foreign trade, Sanctions.

31 CFR Part 515

Administrative practice and procedure, Banks, banking, Cuba, Currency, Foreign investments in United States, Foreign trade, Penalties, Reporting and recordkeeping requirements, Sanctions, Securities, Travel restrictions.

31 CFR Part 535

Administrative practice and procedure, Iran, Sanctions.

31 CFR Part 536

Administrative practice and procedure, Narcotics, Sanctions.

31 CFR Part 537

Administrative practice and procedure, Burma, Sanctions.

31 CFR Part 538

Administrative practice and procedure, Sanctions, Sudan.

31 CFR Part 539

Administrative practice and procedure, Sanctions, Weapons of mass destruction.

31 CFR Part 540

Administrative practice and procedure, Highly enriched uranium, Sanctions.

31 CFR Part 545

Administrative practice and procedure, Afghanistan, Sanctions.

31 CFR Part 550

Administrative practice and procedure, Libya, Sanctions.

31 CFR Part 560

Administrative practice and procedure, Iran, Sanctions.

31 CFR Part 575

Administrative practice and procedure, Iraq, Sanctions.

31 CFR Part 585

Administrative practice and procedure, Sanctions, Federal Republic of Yugoslavia.

31 CFR Part 586

Administrative practice and procedure, Sanctions, Federal Republic of Yugoslavia.

31 CFR Part 587

Administrative practice and procedure, Sanctions, Federal Republic of Yugoslavia.

31 CFR Part 588

Administrative practice and procedure, Sanctions, Western Balkans.

31 CFR Part 590

Administrative practice and procedure, Angola, Sanctions.

31 CFR Part 591

Administrative practice and procedure, Diamonds, Sanctions.

31 CFR Part 594

Administrative practice and procedure, Sanctions, Global Terrorism.

31 CFR Part 595

Administrative practice and procedure, Sanctions, Terrorism.

31 CFR Part 596

Administrative practice and procedure, Sanctions, Terrorism.

31 CFR Part 597

Administrative practice and procedure, Sanctions, Terrorism.

31 CFR Part 598

Administrative practice and procedure, Narcotics, Sanctions.

■ For the reasons set forth in the preamble, 31 CFR parts 500, 501, 505,

515, 535, 536, 537, 538, 539, 540, 545, 550, 560, 575, 585, 586, 587, 588, 590, 591, 594, 595, 596, 597, and 598 are amended as follows:

PART 500—FOREIGN ASSETS CONTROL REGULATIONS

■ 1. The authority for part 500 continues to read:

Authority: 18 U.S.C. 2332d; 31 U.S.C. 321(b); 50 U.S.C. App. 1–44; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); E.O. 9193, 7 FR 5205, 3 CFR, 1938–1943 Comp., p. 1174; E.O. 9989, 13 FR 4891, 3 CFR, 1943–1948 Comp., p. 748.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

■ 2. Section 500.501 is added to Subpart E to read as follows:

§ 500.501 General and specific licensing procedures.

For provisions relating to licensing procedures, see part 501, subpart E, of this chapter. Licensing actions taken pursuant to part 501 of this chapter with respect to the prohibitions contained in this part are considered actions taken pursuant to this part.

Subpart G—Penalties

■ 3. Section 500.701 is revised to read as follows:

§ 500.701 Penalties.

For provisions relating to penalties, see part 501, subpart D, of this chapter.

§§ 500.702–500.718 [Removed]

■ 4. Sections 500.702–500.718 are removed from subpart G.

Subpart H—Procedures

§ 500.801 [Amended]

■ 5. Section 500.801 is amended by revising “subpart D of part 501” to read “part 501, subpart E.”

PART 501—REPORTING, PROCEDURES AND PENALTIES REGULATIONS

■ 1. The heading of Part 501 is revised to read as set forth above.

■ 2. The authority for part 501 is revised to read as follows:

Authority: 18 U.S.C. 2332d; 21 U.S.C. 1901–1908; 22 U.S.C. 287c; 22 U.S.C. 2370(a); 31 U.S.C. 321(b); 50 U.S.C. 1701–1706; 50 U.S.C. App. 1–44; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); E.O. 9193, 7 FR 5205, 3 CFR, 1938–1943 Comp., p. 1174; E.O. 9989, 13 FR 4891, 3 CFR, 1943–1948 Comp., p. 748; E.O. 12854, 58 FR 36587, 3 CFR, 1993 Comp., p. 614.

- 3. Subpart E of Part 501 is redesignated as new Subpart F.
- 4. Subpart D of Part 501 is redesignated as new Subpart E.
- 5. A new Subpart D is added to Part 501 to read as follows:

Subpart D—Trading With the Enemy Act (TWEA) Penalties

- Sec.
- 501.700 Applicability.
 - 501.701 Penalties.
 - 501.702 Definitions.
 - 501.703 Overview of civil penalty process and construction of rules.
 - 501.704 Appearance and practice.
 - 501.705 Service and filing.
 - 501.706 Prepenalty Notice; issuance by Director.
 - 501.707 Response to Prepenalty Notice.
 - 501.708 Director's finding of no penalty warranted.
 - 501.709 Penalty Notice.
 - 501.710 Settlement.
 - 501.711 Hearing request.
 - 501.712 Acknowledgment of hearing request.
 - 501.713 Order Instituting Proceedings.
 - 501.714 Answer to Order Instituting Proceedings.
 - 501.715 Notice of hearing.
 - 501.716 Default.
 - 501.717 Consolidation of proceedings.
 - 501.718 Conduct and order of hearings.
 - 501.719 Ex parte communications.
 - 501.720 Separation of functions.
 - 501.721 Hearings to be public.
 - 501.722 Prehearing conferences.
 - 501.723 Prehearing disclosures; methods to discover additional matter.
 - 501.724 Documents that may be withheld.
 - 501.725 Confidential treatment of information in certain filings.
 - 501.726 Motions.
 - 501.727 Motion for summary disposition.
 - 501.728 Subpoenas.
 - 501.729 Sanctions.
 - 501.730 Depositions upon oral examination.
 - 501.731 Depositions upon written questions.
 - 501.732 Evidence.
 - 501.733 Evidence: confidential information; protective orders.
 - 501.734 Introducing prior sworn statements of witnesses into the record.
 - 501.735 Proposed findings, conclusions and supporting briefs.
 - 501.736 Authority of Administrative Law Judge.
 - 501.737 Adjustments of time, postponements and adjournments.
 - 501.738 Disqualification and withdrawal of Administrative Law Judge.
 - 501.739 Record in proceedings before Administrative Law Judge; retention of documents; copies.
 - 501.740 Decision of Administrative Law Judge.
 - 501.741 Review of decision or ruling.
 - 501.742 Secretary's designee's consideration of decisions by Administrative Law Judge.
 - 501.743 Briefs filed with the Secretary's designee.

- 501.744 Record before the Secretary's designee.
- 501.745 Orders and decisions: signature, date and public availability.
- 501.746 Referral to United States Department of Justice; administrative collection measures.
- 501.747 Procedures on remand of decisions.

§ 501.700 Applicability.

This subpart is applicable only to those parts of chapter V promulgated pursuant to the TWEA, which include parts 500, 505, and 515.

§ 501.701 Penalties.

(a) Attention is directed to section 16 of the TWEA, as adjusted pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101-410, as amended, 28 U.S.C. 2461 note), which provides that:

(1) Persons who willfully violate any provision of TWEA or any license, rule, or regulation issued thereunder, and persons who willfully violate, neglect, or refuse to comply with any order of the President issued in compliance with the provisions of TWEA shall, upon conviction, be fined not more than \$1,000,000 or, if an individual, be fined not more than \$100,000 or imprisoned for not more than 10 years, or both; and an officer, director, or agent of any corporation who knowingly participates in such violation shall, upon conviction, be fined not more than \$100,000 or imprisoned for not more than 10 years, or both.

(2) Any property, funds, securities, papers, or other articles or documents, or any vessel, together with its tackle, apparel, furniture, and equipment, concerned in a violation of TWEA may upon conviction be forfeited to the United States Government.

(3) The Secretary of the Treasury may impose a civil penalty of not more than \$55,000 per violation on any person who violates any license, order, or regulation issued under TWEA. *Note:* The current \$55,000 civil penalty cap may be adjusted for inflation pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990.

(4) Any property, funds, securities, papers, or other articles or documents, or any vessel, together with its tackle, apparel, furniture, and equipment, that is the subject of a violation subject to a civil penalty issued pursuant to TWEA shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States Government.

(b) The criminal penalties provided in TWEA are subject to increase pursuant to 18 U.S.C. 3571 which, when read in conjunction with section 16 of TWEA, provides that persons convicted of violating TWEA may be fined up to the

greater of either \$250,000 for individuals and \$1,000,000 for organizations or twice the pecuniary gain or loss from the violation.

(c) Attention is directed to 18 U.S.C. 1001, which provides that whoever, in any matter within the jurisdiction of any department or agency of the United States, knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined under title 18, United States Code, or imprisoned not more than 5 years, or both.

§ 501.702 Definitions.

(a) *Chief Counsel* means the Chief Counsel (Foreign Assets Control), Office of the General Counsel, Department of the Treasury.

(b) *Day* means calendar day. In computing any period of time prescribed in or allowed by this subpart, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday, or Federal legal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or Federal legal holiday. Intermediate Saturdays, Sundays, and Federal legal holidays shall be excluded from the computation when the period of time prescribed or allowed is seven days or less, not including any additional time allowed for service by mail. If on the day a filing is to be made, weather or other conditions have caused the designated filing location to close, the filing deadline shall be extended to the end of the next day that the filing location is not closed and that is not a Saturday, a Sunday, or a Federal legal holiday. If service is made by mail, three days shall be added to the prescribed period for response.

(c) *Department* means the Department of the Treasury.

(d) *Director* means the Director of the Office of Foreign Assets Control, Department of the Treasury.

(e) *Ex Parte Communication* means any material oral or written communication not on the public record concerning the merits of a proceeding with respect to which reasonable prior notice to all parties is not given, on any material matter or proceeding covered by these rules, that takes place between: A party to the proceeding, a party's counsel, or any other interested

individual; and the Administrative Law Judge or Secretary's designee handling that proceeding. A request to learn the status of a proceeding does not constitute an ex parte communication; and settlement inquiries and discussions do not constitute ex parte communications.

(f) *General Counsel* means the General Counsel of the U.S. Department of the Treasury.

(g) *Order of Settlement* means a written order issued by the Director terminating a civil penalty action. An Order of Settlement does not constitute an agency decision that any violation took place.

(h) *Order Instituting Proceedings* means a written order issued by the Director to initiate a civil penalty hearing.

(i) *Prepenalty Notice* means a written notification from the Director informing a respondent of the alleged violation(s) and the respondent's right to respond.

(j) *Penalty Notice* means a written notification from the Director informing a respondent that the Director has made a finding of violation and, absent a request for a hearing, will impose a civil monetary penalty.

(k) *Proceeding* means any agency process initiated by an "Order Instituting Proceedings," or by the filing of a petition for review of an Administrative Law Judge's decision or ruling.

(l) *Respondent* means any individual alleged by the Director to have violated a TWEA-based sanctions regulation.

(m) *Secretary's designee* means a U.S. Treasury Department official delegated responsibility by the Secretary of the Treasury to consider petitions for review of Administrative Law Judge decisions made in civil penalty hearings conducted pursuant to this subpart.

(n) *Secretary* means the Secretary of the Treasury.

§ 501.703 Overview of civil penalty process and construction of rules.

(a) The administrative process for enforcing TWEA sanctions programs proceeds as follows:

(1) The Director of the Office of Foreign Assets Control will notify a suspected violator (hereinafter "respondent") of an alleged violation by issuing a "Prepenalty Notice." The Prepenalty Notice shall describe the alleged violation(s) and include a proposed civil penalty amount.

(2) The respondent will have 60 days from the date the Prepenalty Notice is served to make a written presentation either defending against the alleged violation or admitting the violation. A respondent who admits a violation may

offer information as to why a monetary penalty should not be imposed or why, if imposed, the monetary penalty should be in a lesser amount than proposed.

(3) Absent a settlement agreement or a finding that no violation occurred, the Director of the Office of Foreign Assets Control will issue a "Penalty Notice." The respondent will have 30 days from the date of service to either pay the penalty or request a hearing.

(4) If the respondent requests a hearing, the Director of the Office of Foreign Assets Control will have two options:

(i) The Director may issue an "Order Instituting Proceedings" and refer the matter to an Administrative Law Judge for a hearing and decision; or

(ii) The Director may determine to discontinue the penalty action based on information presented by the respondent.

(5) Absent review by a Secretary's designee, the decision of the Administrative Law Judge will become the final decision of the Department without further proceedings.

(6) If review is taken by a Secretary's designee, the Secretary's designee reaches the final decision of the Department.

(7) A respondent may seek judicial review of the final decision of the Department.

(b) *Construction of rules.* The rules contained in this subpart shall be construed and administered to promote the just, speedy, and inexpensive determination of every action. To the extent there is a conflict between the rules contained in this subpart and a procedural requirement contained in any statute, the requirement in the statute shall control.

§ 501.704. Appearance and practice.

No person shall be represented before the Director in any civil penalty matter, or an Administrative Law Judge or the Secretary's designee in a civil penalty hearing, under this subpart except as provided in this section.

(a) *Representing oneself.* In any proceeding, an individual may appear on his or her own behalf.

(b) *Representative.* Upon written notice to the Director,

(1) A respondent may be represented by a personal representative. If a respondent wishes to be represented by counsel, such counsel must be an attorney at law admitted to practice before the Supreme Court of the United States, the highest court of any State, commonwealth, possession, or territory of the United States, or the District of Columbia;

(2) a duly authorized member of a partnership may represent the partnership; and

(3) a bona fide officer, director, or employee of a corporation, trust or association may represent the corporation, trust or association.

(c) *Director representation.* The Director shall be represented by members of the Office of Chief Counsel or any other counsel specifically assigned by the General Counsel.

(d) *Conflicts of interest*—(1) Conflict of interest in representation. No individual shall appear as representative for a respondent in a proceeding conducted pursuant to this subpart if it reasonably appears that such representation may be materially limited by that representative's responsibilities to a third person, or by that representative's own interests.

(2) *Corrective measures.* An Administrative Law Judge may take corrective measures at any stage of a proceeding to cure a conflict of interest in representation, including the issuance of an order limiting the scope of representation or disqualifying an individual from appearing in a representative capacity for the duration of the proceeding.

§ 501.705 Service and filing.

(a) *Service of Prepenalty Notice, Penalty Notice, Acknowledgment of Hearing Request and Order Instituting Proceedings.* The Director shall cause any Prepenalty Notice, Penalty Notice, Acknowledgment of Hearing Request, Order Instituting Proceedings, and other related orders and decisions, or any amendments or supplements thereto, to be served upon the respondent.

(1) *Service on individuals.* Service shall be complete:

(i) Upon the date of mailing by first class (regular) mail to the respondent at the respondent's last known address, or to a representative authorized to receive service, including qualified representatives noticed to the Director pursuant to § 501.704. Absent satisfactory evidence in the administrative record to the contrary, the Director may presume that the date of mailing is the date stamped on the first page of the notice or order. The respondent may rebut the presumption that a notice or order was mailed on the stamped mailing date only by presenting evidence of the postmark date on the envelope in which the notice or order was mailed;

(ii) Upon personal service on the respondent; or leaving a copy at the respondent's place of business with a clerk or other person in charge thereof; or leaving a copy at the respondent's

dwelling house or usual place of abode with a person at least 18 years of age then residing therein; or with any other representative authorized by appointment or by law to accept or receive service for the respondent, including representatives noticed to the Director pursuant to § 501.704; and evidenced by a certificate of service signed and dated by the individual making such service, stating the method of service and the identity of the individual with whom the notice or order was left; or

(iii) Upon proof of service on a respondent who is not resident in the United States by any method of service permitted by the law of the jurisdiction in which the respondent resides or is located, provided the requirements of such foreign law satisfy due process requirements under United States law with respect to notice of administrative proceedings, and where applicable laws or intergovernmental agreements or understandings make the methods of service set forth in paragraphs (a)(1)(i) and (ii) of this section inappropriate or ineffective for service upon the nonresident respondent.

(2) *Service on corporations and other entities.* Service is complete upon delivering a copy of the notice or order to a partner, bona fide officer, director, managing or general agent, or any other agent authorized by appointment or by law to receive such notice, by any method specified in paragraph (a)(1) of this section.

(b) *Service of responses to Prepenalty Notice, Penalty Notice, and requests for a hearing.* A respondent shall serve a response to a Prepenalty Notice and any request for a hearing on the Director through the Chief of Civil Penalties, Office of Foreign Assets Control, U.S. Treasury Department, 1500 Pennsylvania Avenue, NW., Washington DC 20220, with the envelope prominently marked "Urgent: Part 501 Action." Service shall be complete upon the date of mailing, as evidenced by the post-mark date on the envelope, by first class (regular) mail.

(c) *Service or filing of papers in connection with any hearing by an Administrative Law Judge or review by the Secretary's designee.* (1) Service on the Director and/or each respondent. (i) Each paper, including each notice of appearance, written motion, brief, petition for review, statement in opposition to petition for review, or other written communication, shall be served upon the Director and/or each respondent in the proceeding in accordance with paragraph (a) of this section; provided, however, that no service shall be required in the case of

documents that are the subject of a motion seeking a protective order to limit or prevent disclosure to another party.

(ii) Service upon the Director shall be made through the Chief Counsel (Foreign Assets Control), U.S. Treasury Department, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, with the envelope prominently marked "Urgent: Part 501 Proceeding."

(iii) Service may be made:

(A) As provided in paragraph (a) of this section;

(B) By mailing the papers through the U.S. Postal Service by Express Mail; or

(C) By transmitting the papers by facsimile machine where the following conditions are met:

(1) The persons serving each other by facsimile transmission have agreed to do so in a writing, signed by each party, which specifies such terms as they deem necessary with respect to facsimile machine telephone numbers to be used, hours of facsimile machine operation, the provision of non-facsimile original or copy, and any other such matters; and

(2) Receipt of each document served by facsimile is confirmed by a manually signed receipt delivered by facsimile machine or other means agreed to by the parties.

(iv) Service by U.S. Postal Service Express Mail is complete upon delivery as evidenced by the sender's receipt. Service by facsimile is complete upon confirmation of transmission by delivery of a manually signed receipt.

(2) *Filing with the Administrative Law Judge.* Unless otherwise provided, all briefs, motions, objections, applications or other filings made during a proceeding before an Administrative Law Judge, and all requests for review by the Secretary's designee, shall be filed with the Administrative Law Judge.

(3) *Filing with the Secretary's designee.* And all briefs, motions, objections, applications or other filings made during a proceeding before the Secretary's designee shall be filed with the Secretary's designee.

(4) *Certificate of service.* Papers filed with an Administrative Law Judge or Secretary's designee shall be accompanied by a certificate stating the name of each person served, the date of service, the method of service and the mailing address or facsimile telephone number to which service was made, if not made in person. If the method of service to any person is different from the method of service to any other person, the certificate shall state why a different means of service was used.

(5) *Form of briefs.* All briefs containing more than 10 pages shall, to the extent applicable, include a table of contents, an alphabetized table of cases, a table of statutes, and a table of other authorities cited, with references to the pages of the brief wherein they are cited.

(6) *Specifications.* All original documents shall be filed with the Administrative Law Judge or Secretary's designee, as appropriate. Papers filed in connection with any proceeding shall:

(i) Be on one grade of unglazed white paper measuring 8.5 x 11 inches, except that, to the extent that the reduction of larger documents would render them illegible, such documents may be filed on larger paper;

(ii) Be typewritten or printed in either 10- or 12-point typeface or otherwise reproduced by a process that produces permanent and plainly legible copies;

(iii) Include at the head of the paper, or on a title page, the title of the proceeding, the name(s) of each respondent, the subject of the particular paper or pleading, and the file number assigned to the proceeding;

(iv) Be formatted with all margins at least 1 inch wide;

(v) Be double-spaced, with single-spaced footnotes and single-spaced indented quotations; and

(vi) Be stapled, clipped or otherwise fastened in the upper left corner.

(7) *Signature requirement and effect.* All papers must be dated and signed by a member of the Office of Chief Counsel, or other counsel assigned by the General Counsel to represent the Director, or a respondent or respondent's representative, as appropriate. If a filing is signed by a respondent's representative it shall state that representative's mailing address and telephone number. A respondent who represents himself or herself shall sign his or her individual name and state his or her address and telephone number on every filing. A witness deposition shall be signed by the witness.

(i) *Effect of signature.* The signature shall constitute a certification that:

(A) The person signing the filing has read the filing;

(B) To the best of his or her knowledge, information, and belief, formed after reasonable inquiry, the filing is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and

(C) The filing is not made for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of adjudication.

(ii) If a filing is not signed, the Administrative Law Judge (or the

Secretary's designee) shall strike the filing, unless it is signed promptly after the omission is called to the attention of the person making the filing.

(d) Service of written orders or decisions issued by the Administrative Law Judge or Secretary's designee. Written orders or decisions issued by the Administrative Law Judge or the Secretary's designee shall be served promptly on each respondent and the Director pursuant to any method of service authorized under paragraph (a) of this section. Service of such orders or decisions shall be made by the Administrative Law Judge or the Secretary's designee, as appropriate.

§ 501.706 Prepenalty Notice; issuance by Director.

(a) *When required.* If the Director has reason to believe there has occurred a violation of any provision of parts 500 or 515 of this chapter or a violation of the provisions of any license, ruling, regulation, order, direction or instruction issued by or pursuant to the direction or authorization of the Secretary pursuant to parts 500 or 515 of this chapter or otherwise under the Trading With the Enemy Act, and the Director determines that further civil proceedings are warranted, the Director shall issue a Prepenalty Notice. The Prepenalty Notice may be issued whether or not another agency has taken any action with respect to the matter.

(b) *Contents of notice.*

(1) *Facts of violation.* The Prepenalty Notice shall describe the alleged violation, specify the laws and regulations allegedly violated, and state the amount of the proposed monetary penalty.

(2) *Right to respond.* The Prepenalty Notice shall inform the respondent of respondent's right to make a written presentation within the time prescribed in § 501.707 as to why the respondent believes there should be no finding of a violation or why, if the respondent admits the violation, a monetary penalty should not be imposed or why, if imposed, the monetary penalty should be in a lesser amount than proposed. The Prepenalty Notice shall also inform the respondent that:

(i) The act of submitting a written response by the respondent is a factor that may result in a lower penalty absent any aggravating factors; and

(ii) If the respondent fails to respond to the Prepenalty Notice within the applicable 60-day period set forth in § 501.707, the Director may proceed with the issuance of a Penalty Notice.

(3) *Right to request a hearing.* The Prepenalty Notice shall inform the respondent of respondent's right, if a

subsequent Penalty Notice is issued, to request an administrative hearing. The Director will not consider any request for an administrative hearing until a Penalty Notice has been issued.

§ 501.707 Response to Prepenalty Notice.

(a) *Deadline for response.*

(1) The respondent shall have 60 days after the date of service of the Prepenalty Notice pursuant to § 501.705(a) to respond thereto. The response, signed and dated, shall be served as provided in § 501.705(b).

(2) In response to a written request by the respondent, the Director may, at his or her discretion for the purpose of conducting settlement negotiations or for other valid reasons, grant additional time for a respondent to submit a response to the Prepenalty Notice.

(3) The failure to submit a response within the time period set forth in this paragraph (a), including any additional time granted by the Director, shall be deemed to be a waiver of the right to respond to the Prepenalty Notice.

(b) *Form and contents of response.*

(1) *In general.* The response need not be in any particular form, but must be typewritten and contain the heading "Response to Prepenalty Notice" and the Office of Foreign Assets Control identification number shown near the top of the Prepenalty Notice. It should be responsive to the allegations contained therein and set forth the nature of the respondent's admission of the violation, or defenses and claims for mitigation, if any.

(i) The response must admit or deny specifically each separate allegation of violation made in the Prepenalty Notice. If the respondent is without knowledge as to an allegation, the response shall so state, and such statement shall constitute a denial. Any allegation not specifically addressed in the response shall be deemed admitted.

(ii) The response must set forth any additional or new matter or arguments the respondent seeks, or shall seek, to use in support of all defenses or claims for mitigation. Any defense the respondent wishes to assert must be included in the response.

(iii) The response must accurately state (for each respondent, if applicable) the respondent's full name and address for future service, together with a current telephone and, if applicable, facsimile machine number. If respondent is represented, the representative's full name and address, together with telephone and facsimile numbers, may be provided instead of service information for the respondent. The respondent or respondent's representative of record is responsible

for providing timely written notice to the Director of any subsequent changes in the information provided.

(iv) *Financial disclosure statement requirement.* Any respondent who asserts financial hardship or an inability to pay a penalty shall include with the response a financial disclosure statement setting forth in detail the basis for asserting the financial hardship or inability to pay a penalty, subject to 18 U.S.C. 1001.

(2) *Settlement.* In addition, or as an alternative, to a written response to a Prepenalty Notice, the respondent or respondent's representative may seek settlement of the alleged violation(s). See § 501.710. In the event of settlement prior to the issuance of a Penalty Notice, the claim proposed in the Prepenalty Notice will be withdrawn and the respondent will not be required to make a written response to the Prepenalty Notice. In the event no settlement is reached, a written response to the Prepenalty Notice is required pursuant to paragraph (c) of this section.

§ 501.708 Director's finding of no penalty warranted.

If after considering any written response to the Prepenalty Notice submitted pursuant to § 501.707 and any other relevant facts, the Director determines that there was no violation or that the violation does not warrant the imposition of a civil monetary penalty, the Director promptly shall notify the respondent in writing of that determination and that no civil monetary penalty pursuant to this subpart will be imposed.

§ 501.709 Penalty notice.

(a) If, after considering any written response to the Prepenalty Notice, and any other relevant facts, the Director determines that there was a violation by the respondent and that a monetary penalty is warranted, the Director promptly shall issue a Penalty Notice informing the respondent that, absent a timely request for an administrative hearing, the Director will impose the civil monetary penalty described in the Penalty Notice. The Penalty Notice shall inform the respondent:

(1) Of the respondent's right to submit a written request for an administrative hearing not later than 30 days after the date of service of the Penalty Notice;

(2) That in the absence of a timely request for a hearing, the issuance of the Penalty Notice constitutes final agency action;

(3) That, absent a timely request for a hearing, payment (or arrangement with the Financial Management Service of the Department for installment

payment) of the assessed penalty must be made not later than 30 days after the date of service of the Penalty Notice; and

(4) That absent a timely request for a hearing, the respondent must furnish respondent's taxpayer identification number pursuant to 31 U.S.C. 7701 and that the Director intends to use such information for the purposes of collecting and reporting on any delinquent penalty amount in the event of a failure to pay the penalty imposed.

§ 501.710 Settlement.

(a) *Availability.* Either the Director or any respondent may, at any time during the administrative civil penalty process described in this subpart, propose an offer of settlement. The amount accepted in settlement may be less than the civil penalty that might be imposed in the event of a formal determination of violation. Upon mutual agreement by the Director and a respondent on the terms of a settlement, the Director shall issue an Order of Settlement.

(b) Procedure.

(1) *Prior to issuance of Penalty Notice.* Any offer of settlement made by a respondent prior to the issuance of a Penalty Notice shall be submitted, in writing, to the Chief of Civil Penalties, Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

(2) *After issuance of Penalty Notice.* Any offer of settlement made by a respondent after issuance of a Penalty Notice shall state that it is made pursuant to this section; shall recite or incorporate as a part of the offer the provisions of paragraphs (b)(5)(ii) and (b)(6) of this section; shall be signed by the respondent making the offer, and not only by his or her representative; and shall be submitted to the Chief Counsel.

(3) *Extensions of time.* The submission of any settlement offer does not provide a basis for adjourning or otherwise delaying all or any portion of the administrative civil penalty process.

(i) *Prior to issuance of Order Instituting Proceedings.* Any respondent (or potential respondent in the case of a pending Prepenalty Notice) may request, in writing, that the Director withhold issuance of any such notice, or grant an extension of time to respond to a any such Notice, for a period not to exceed 60 days for the exclusive purpose of effecting settlement. The Director may grant any such request, in writing, under terms and conditions within his or her discretion.

(ii) *After issuance of Order Instituting Proceedings.* Upon mutual agreement of

the Director and a respondent, the Administrative Law Judge may grant an extension of time, for a period not to exceed 60 days, for the exclusive purpose of effecting settlement.

(4) *Views of Administrative Law Judge.* Where an Administrative Law Judge is assigned to a proceeding, the Director or the respondent may request that the Administrative Law Judge express his or her views regarding the appropriateness of the offer of settlement. A request for the Administrative Law Judge to express his or her views on an offer of settlement or otherwise to participate in a settlement conference constitutes a waiver by the party making the request of any right to claim bias or prejudice by the Administrative Law Judge based on the views expressed.

(5) Waivers.

(i) By submitting an offer of settlement, a respondent making the offer waives, subject to acceptance of the offer:

(A) All hearings pursuant to section 16 of the Trading with the Enemy Act (50 U.S.C. App. 16);

(B) The filing of proposed findings of fact and conclusions of law;

(C) Proceedings before, and a decision by, an Administrative Law Judge;

(D) All post-hearing procedures; and

(E) Judicial review by any court.

(ii) By submitting an offer of settlement the respondent further waives:

(A) Such provisions of this subpart or other requirements of law as may be construed to prevent any member of the Director's staff, or members of the Office of Chief Counsel or other counsel assigned by the General Counsel, from participating in or advising the Director as to any order, opinion, finding of fact, or conclusion of law to be entered pursuant to the offer; and

(B) Any right to claim bias or prejudice by the Director based on the consideration of or discussions concerning settlement of all or any part of the proceeding.

(6) If the Director rejects the offer of settlement, the respondent shall be so notified in writing and the offer of settlement shall be deemed withdrawn. The rejected offer shall not constitute a part of the record in any proceeding against the respondent making the offer, provided, however, that rejection of an offer of settlement does not affect the continued validity of waivers pursuant to paragraph (b)(5) of this section with respect to any discussions concerning the rejected offer of settlement.

(7) No settlement offer or proposal, or any subsequent negotiation or resolution, is admissible as evidence in

any administrative proceeding initiated by the Director.

§ 501.711 Hearing request.

(a) *Deadline for request.* A request for an agency hearing shall be served on the Director not later than 30 days after the date of service of the Penalty Notice. See § 501.705(b). A respondent may not reserve the right to request a hearing after expiration of the 30 calendar day period. A request for a hearing that is not made as required by this paragraph shall constitute a waiver of the respondent's right to a hearing.

(b) *Form and contents of request.* The request need not be in any particular form, but must be typewritten and contain the heading "Request for Agency Hearing". The request must include the Office of Foreign Assets Control identification number shown near the top of the Penalty Notice. It should be responsive to the determination contained in the Penalty Notice and set forth the nature of the respondent's defenses or claims for mitigation, if any.

(1) The request must admit or deny specifically each separate determination of violation made in the Penalty Notice. If the respondent is without knowledge as to a determination, the request shall so state, and such statement shall constitute a denial. Any determination not specifically addressed in the response shall be deemed admitted.

(2) The request must set forth any additional or new matter or arguments the respondent seeks, or shall seek, to use in support of all defenses or claims for mitigation. Any defense the respondent wishes to assert must be included in the request.

(3) The request must accurately state, for each respondent (if applicable), the respondent's full name and address for future service, together with current telephone and, if applicable, a facsimile machine number. If respondent is represented, the representative's full name and address, together with telephone and facsimile numbers, may be provided in lieu of service information for the respondent. The respondent or respondent's representative is responsible for providing timely written notice to the Director of any subsequent changes in the information provided.

(c) *Signature requirement.* The respondent or, if represented, the respondent's representative, must sign the hearing request.

§ 501.712 Acknowledgment of hearing request.

No later than 60 days after service of any hearing request, the Director shall

acknowledge receipt and inform a respondent, in writing, whether an Order Instituting Proceedings shall be issued.

§ 501.713 Order Instituting Proceedings.

If a respondent makes a timely request for a hearing, the Director shall determine, at his or her option, whether to dismiss the violation(s) set forth in the Penalty Notice or to issue an Order Instituting Proceedings to initiate the hearing process. The Order shall be served on the respondent(s) as provided in § 501.705(c)(1). The Director may, in his or her discretion, withdraw an Order Instituting Proceedings at any time prior to the issuance of a decision by the Administrative Law Judge.

(a) *Content of Order.* The Order Instituting Proceedings shall:

(1) Be prepared by the Office of the Chief Counsel or other counsel assigned by the General Counsel and based on information provided by the Director;

(2) State the legal authority under which the hearing is to be held;

(3) Contain a short and plain statement of the alleged violation(s) to be considered and determined (including the matters of fact and law asserted) in such detail as will permit a specific response thereto;

(4) State the amount of the penalty sought in the proceeding; and

(5) Be signed by the Director.

(b) *Combining penalty actions.* The Director may combine claims contained in two or more Penalty Notices involving the same respondent, and for which hearings have been requested, into a single Order Instituting Proceedings.

(c) *Amendment to Order Instituting Proceedings.* Upon motion by the Director, the Administrative Law Judge may, at any time prior to issuance of a decision, permit the Director to amend an Order Instituting Proceedings to include new matters of fact or law that are within the scope of the original Order Instituting Proceedings.

§ 501.714 Answer to Order Instituting Proceedings.

(a) *When required.* Not later than 45 days after service of the Order Instituting Proceedings, the respondent shall file, with the Administrative Law Judge and the Office of Chief Counsel, an answer to each of the allegations contained therein. If the Order Instituting Proceedings is amended, the Administrative Law Judge may require that an amended answer be filed and, if such an answer is required, shall specify a date for the filing thereof.

(b) *Contents; effect of failure to deny.* Unless otherwise directed by the

Administrative Law Judge, an answer shall specifically admit, deny, or state that the respondent does not have, and is unable to obtain, sufficient information to admit or deny each allegation in the Order Instituting Proceedings. When a respondent intends to deny only a part of an allegation, the respondent shall specify so much of it as is true and shall deny only the remainder. A statement of lack of information shall have the effect of a denial. A defense of res judicata, statute of limitations or any other matter constituting an affirmative defense shall be asserted in the answer. Any allegation not specifically addressed in the answer shall be deemed admitted.

(c) *Motion for more definite statement.* A respondent may file with an answer a motion for a more definite statement of specified matters of fact or law to be considered or determined. Such motion shall state the respects in which, and the reasons why, each such matter of fact or law should be required to be made more definite. If the motion is granted, the order granting such motion shall set the periods for filing such a statement and any answer thereto.

(d) *Amendments.* A respondent may amend its answer at any time by written consent of the Director or with permission of the Administrative Law Judge. Permission shall be freely granted when justice so requires.

(e) *Failure to file answer: default.* If a respondent fails to file an answer required by this subpart within the time prescribed, such respondent may be deemed in default pursuant to § 501.716(a). A party may make a motion to set aside a default pursuant to § 501.726(e).

§ 501.715 Notice of Hearing.

(a) If the Director issues an Order Instituting Proceedings, the respondent shall receive not less than 45 days notice of the time and place of the hearing.

(b) *Time and place of hearing.* All hearings shall be held in the Washington, DC metropolitan area unless, based on extraordinary reasons, otherwise mutually agreed by the respondent and the Director. The time for any hearing shall be fixed with due regard for the public interest and the convenience and necessity of the parties or their representatives. Requests to change the time of a hearing may be submitted to the Administrative Law Judge, who may modify the hearing date(s) and/or time(s) and place. All requests for a change in the date and time and/or place of a hearing must be received by the Administrative Law

Judge and served upon the parties no later than 15 days before the scheduled hearing date.

(c) *Failure to appear at hearings: default.* Any respondent named in an order instituting proceedings as a person against whom findings may be made or penalties imposed who fails to appear (in person or through a representative) at a hearing of which he or she has been duly notified may be deemed to be in default pursuant to § 501.716(a). Without further proceedings or notice to the respondent, the Administrative Law Judge may enter a finding that the right to a hearing was waived, and the Penalty Notice shall constitute final agency action as provided in § 501.709(a)(2). A respondent may make a motion to set aside a default pursuant to § 501.726(e).

§ 501.716 Default.

(a) A party to a proceeding may be deemed to be in default and the Administrative Law Judge (or the Secretary's designee during review proceedings) may determine the proceeding against that party upon consideration of the record if that party fails:

(1) To appear, in person or through a representative, at any hearing or conference of which the party has been notified;

(2) To answer, to respond to a dispositive motion within the time provided, or otherwise to prosecute or defend the proceeding; or

(3) To cure a deficient filing within the time specified by the Administrative Law Judge (or the Secretary's designee) pursuant to § 501.729(b).

(b) In deciding whether to determine the proceedings against a party deemed to be in default, the Administrative Law Judge shall consider the record of the proceedings (including the Order Instituting Proceedings) and shall construe contested matters of fact and law against the party deemed to be in default.

(c) For information and procedures pertaining to a motion to set aside a default, see § 501.726(e).

§ 501.717 Consolidation of proceedings.

By order of the Administrative Law Judge, proceedings involving common questions of law and fact may be consolidated for hearing of any or all the matters at issue in such proceedings. The Administrative Law Judge may make such orders concerning the conduct of such proceedings as he or she deems appropriate to avoid unnecessary cost or delay. Consolidation shall not prejudice any rights under this subpart and shall not

affect the right of any party to raise issues that could have been raised if consolidation had not occurred.

§ 501.718 Conduct and order of hearings.

All hearings shall be conducted in a fair, impartial, expeditious and orderly manner. Each party has the right to present its case or defense by oral and documentary evidence and to conduct such cross examination as may be required for full disclosure of the relevant facts. The Director shall present his or her case-in-chief first. The Director shall be the first party to present an opening statement and a closing statement and may make a rebuttal statement after the respondent's closing statement.

§ 501.719 Ex parte communications.

(a) Prohibition.

(1) From the time the Director issues an Order Instituting Proceedings until the date of final decision, no party, interested person, or representative thereof shall knowingly make or cause to be made an ex parte communication.

(2) Except to the extent required for the disposition of ex parte communication matters as authorized by law, the Secretary's designee and the Administrative Law Judge presiding over any proceeding may not:

(i) consult a person or party on an issue, unless on notice and opportunity for all parties to participate; or

(ii) be responsible to or subject to the supervision, direction of, or evaluation by, an employee engaged in the performance of investigative or prosecutorial functions for the Department.

(b) Procedure upon occurrence of ex parte communication. If an ex parte communication is received by the Administrative Law Judge or the Secretary's designee, the Administrative Law Judge or the Secretary's designee, as appropriate, shall cause all of such written communication (or, if the communication is oral, a memorandum stating the substance of the communication) to be placed on the record of the proceeding and served on all parties. A party may, not later than 10 days after the date of service, file a response thereto and may recommend that the person making the prohibited communication be sanctioned pursuant to paragraph (c) of this section.

(c) *Sanctions.* Any party to the proceeding, a party's representative, or any other interested individual, who makes a prohibited ex parte communication, or who encourages or solicits another to make any such communication, may be subject to any appropriate sanction or sanctions

imposed by the Administrative Law Judge or the Secretary's designee, as appropriate, for good cause shown, including, but not limited to, exclusion from the hearing and an adverse ruling on the issue that is the subject of the prohibited communication.

§ 501.720 Separation of functions.

Any officer or employee engaged in the performance of investigative or prosecutorial functions for the Department in a proceeding as defined in § 501.702 may not, in that proceeding or one that is factually related, participate or advise in the decision pursuant to Section 557 of the Administrative Procedure Act, 5 U.S.C. 557, except as a witness or counsel in the proceeding.

§ 501.721 Hearings to be public.

All hearings, except hearings on applications for confidential treatment filed pursuant to § 501.725(b), shall be public unless otherwise ordered by the Administrative Law Judge or the Secretary's designee, as appropriate, on his or her own motion or the motion of a party.

§ 501.722 Prehearing conferences.

(a) *Purposes of conferences.* The purposes of prehearing conferences include, but are not limited to:

(1) Expediting the disposition of the proceeding;

(2) Establishing early and continuing control of the proceeding by the Administrative Law Judge; and

(3) Improving the quality of the hearing through more thorough preparation.

(b) *Procedure.* On his or her own motion or at the request of a party, the Administrative Law Judge may direct a representative or any party to attend one or more prehearing conferences. Such conferences may be held with or without the Administrative Law Judge present as the Administrative Law Judge deems appropriate. Where such a conference is held outside the presence of the Administrative Law Judge, the Administrative Law Judge shall be advised promptly by the parties of any agreements reached. Such conferences also may be held with one or more persons participating by telephone or other remote means.

(c) *Subjects to be discussed.* At a prehearing conference consideration may be given and action taken with respect to the following:

(1) Simplification and clarification of the issues;

(2) Exchange of witness and exhibit lists and copies of exhibits;

(3) Admissions of fact and stipulations concerning the contents,

authenticity, or admissibility into evidence of documents;

(4) Matters of which official notice may be taken;

(5) The schedule for exchanging prehearing motions or briefs, if any;

(6) The method of service for papers;

(7) Summary disposition of any or all issues;

(8) Settlement of any or all issues;

(9) Determination of hearing dates (when the Administrative Law Judge is present);

(10) Amendments to the Order Instituting Proceedings or answers thereto;

(11) Production of documents as set forth in § 501.723, and prehearing production of documents in response to subpoenas duces tecum as set forth in § 501.728; and

(12) Such other matters as may aid in the orderly and expeditious disposition of the proceeding.

(d) *Timing of conferences.* Unless the Administrative Law Judge orders otherwise, an initial prehearing conference shall be held not later than 14 days after service of an answer. A final conference, if any, should be held as close to the start of the hearing as reasonable under the circumstances.

(e) *Prehearing orders.* At or following the conclusion of any conference held pursuant to this rule, the Administrative Law Judge shall enter written rulings or orders that recite the agreement(s) reached and any procedural determinations made by the Administrative Law Judge.

(f) *Failure to appear: default.* A respondent who fails to appear, in person or through a representative, at a prehearing conference of which he or she has been duly notified may be deemed in default pursuant to § 501.716(a). A respondent may make a motion to set aside a default pursuant to § 501.726(e).

§ 501.723 Prehearing disclosures; methods to discover additional matter.

(a) *Initial disclosures.* (1) Except to the extent otherwise stipulated or directed by order of the Administrative Law Judge, a party shall, without awaiting a discovery request, provide to the opposing party:

(i) The name and, if known, the address and telephone number of each individual likely to have discoverable information that the disclosing party may use to support its claims or defenses, unless solely for impeachment of a witness appearing in person or by deposition, identifying the subjects of the information; and

(ii) A copy, or a description by category and location, of all documents,

data compilations, and tangible things that are in the possession, custody, or control of the party and that the disclosing party may use to support its claims or defenses, unless solely for impeachment of a witness appearing in person or by deposition;

(2) The disclosures described in paragraph (a)(1)(i) of this section shall be made not later than 30 days after the issuance of an Order Instituting Proceedings, unless a different time is set by stipulation or by order of the Administrative Law Judge.

(b) *Prehearing disclosures.*

(1) In addition to the disclosures required by paragraph (a) of this section, a party must provide to the opposing party, and promptly file with the Administrative Law Judge, the following information regarding the evidence that it may present at hearing for any purpose other than solely for impeachment of a witness appearing in person or by deposition:

(i) An outline or narrative summary of its case or defense (the Order Instituting Proceedings will usually satisfy this requirement for the Director and the answer thereto will usually satisfy this requirement for the respondent);

(ii) The legal theories upon which it will rely;

(iii) Copies and a list of documents or exhibits that it intends to introduce at the hearing; and

(iv) A list identifying each witness who will testify on its behalf, including the witness's name, occupation, address, phone number, and a brief summary of the expected testimony.

(2) Unless otherwise directed by the Administrative Law Judge, the disclosures required by paragraph (b)(1) of this section shall be made not later than 30 days before the date of the hearing.

(c) *Disclosure of expert testimony.* A party who intends to call an expert witness shall submit, in addition to the information required by paragraph (b)(1)(iv) of this section, a statement of the expert's qualifications, a list of other proceedings in which the expert has given expert testimony, and a list of publications authored or co-authored by the expert.

(d) *Form of disclosures.* Unless the Administrative Law Judge orders otherwise, all disclosures under paragraphs (a) through (c) of this section shall be made in writing, signed, and served as provided in § 501.705.

(e) *Methods to discover additional matter.* Parties may obtain discovery by one or more of the following methods: Depositions of witnesses upon oral examination or written questions; written interrogatories to another party;

production of documents or other evidence for inspection; and requests for admission. All depositions of Federal employees must take place in Washington, DC, at the Department of the Treasury or at the location where the Federal employee to be deposed performs his or her duties, whichever the Federal employee's supervisor or the Office of Chief Counsel shall deem appropriate. All depositions shall be held at a date and time agreed by the Office of Chief Counsel and the respondent or respondent's representative, and for an agreed length of time.

(f) *Discovery scope and limits.* Unless otherwise limited by order of the Administrative Law Judge in accordance with paragraph (f)(2) of this section, the scope of discovery is as follows:

(1) *In general.* The availability of information and documents through discovery is subject to the assertion of privileges available to the parties and witnesses. Privileges available to the Director and the Department include exemptions afforded pursuant to the Freedom of Information Act (5 U.S.C. 552(b)(1) through (9)) and the Privacy Act (5 U.S.C. 552a). Parties may obtain discovery regarding any matter, not privileged, that is relevant to the merits of the pending action, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of any persons having knowledge of any discoverable matter. For good cause, the Administrative Law Judge may order discovery of any matter relevant to the subject matter involved in the proceeding. Relevant information need not be admissible at the hearing if the discovery appears reasonably calculated to lead to the discovery of admissible evidence.

(2) *Limitations.* The Administrative Law Judge may issue any order that justice requires to ensure that discovery requests are not unreasonable, oppressive, excessive in scope or unduly burdensome, including an order to show cause why a particular discovery request is justified upon motion of the objecting party. The frequency or extent of use of the discovery methods otherwise permitted under this section may be limited by the Administrative Law Judge if he or she determines that:

(i) The discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive;

(ii) The party seeking discovery has had ample opportunity by discovery in

the action to obtain the information sought; or

(iii) The burden or expense of the proposed discovery outweighs its likely benefit, taking into account the needs of the hearing, the importance of the issues at stake, and the importance of the proposed discovery in resolving the issues.

(3) *Interrogatories.* Respondent's interrogatories shall be served upon the Office of the Chief Counsel not later than 30 days after issuance of the Order Instituting Proceedings. The Director's interrogatories shall be served by the later of 30 days after the receipt of service of respondent's interrogatories or 40 days after issuance of the Order Instituting Proceedings if no interrogatories are filed by respondent. Parties shall respond to interrogatories not later than 30 days after the date interrogatories are received. Interrogatories shall be limited to 20 questions only. Each subpart, section, or other designation of a part of a question shall be counted as one complete question in computing the permitted 20 question total. Where more than 20 questions are served upon a party, the receiving party may determine which of the 20 questions the receiving party shall answer. The limitation on the number of questions in an interrogatory may be waived by the Administrative Law Judge.

(4) *Privileged matter.* Privileged documents are not discoverable. Privileges include, but are not limited to, the attorney-client privilege, attorney work-product privilege, any government's or government agency's deliberative-process or classified information privilege, including materials classified pursuant to Executive Order 12958 (3 CFR, 1995 Comp., p. 333) and any future Executive orders that may be issued relating to the treatment of national security information, and all materials and information exempted from release to the public pursuant to the Privacy Act (5 U.S.C. 552a) or the Freedom of Information Act (5 U.S.C. 552(b)(1) through (9)).

(g) *Updating discovery.* A party who has made an initial disclosure under paragraph (a) of this section or responded to a request for discovery with a disclosure or response is under a duty to supplement or correct the disclosure or response to include information thereafter acquired whenever:

(1) The party learns that in some material respect the information disclosed is incomplete or incorrect, if the additional or corrective information has not otherwise been made known to

the other party during the discovery process or in writing; or

(2) Ordered by the Administrative Law Judge. The Administrative Law Judge may impose sanctions for failure to supplement or correct discovery.

(h) *Time limits.* All discovery, including all responses to discovery requests, shall be completed not later than 20 days prior to the date scheduled for the commencement of the hearing, unless the Administrative Law Judge finds on the record that good cause exists to grant additional time to complete discovery.

(i) *Effect of failure to comply.* No witness may testify and no document or exhibit may be introduced at the hearing if such witness, document, or exhibit is not listed in the prehearing submissions pursuant to paragraphs (b) and (c) of this section, except for good cause shown.

§ 501.724 Documents that may be withheld.

(a) Notwithstanding § 501.723(f), the Director or respondent may withhold a document if:

- (1) The document is privileged;
- (2) The document would disclose the identity of a confidential source; or
- (3) The Administrative Law Judge grants leave to withhold a document or category of documents as not relevant to the subject matter of the proceeding or otherwise, for good cause shown.

(b) Nothing in paragraph (a) of this section authorizes the Director to withhold documents that contain material exculpatory evidence.

(c) *Withheld document list.* The Director and respondent shall provide the Administrative Law Judge, for review, a list of documents withheld pursuant to paragraphs (a)(1)–(3) of this section. The Administrative Law Judge shall determine whether any such document should be made available for inspection and copying.

§ 501.725 Confidential treatment of information in certain filings.

(a) *Filing document under seal.*

(1) The Director may file any document or any part of a document under seal and/or seek a protective order concerning any document if disclosure of the document would be inconsistent with the protection of the public interest or if justice requires protection of any person, including a source or a party, from annoyance, threat, oppression, or undue burden or expense, or the disclosure of the information would be, or might reasonably lead to a disclosure, contrary to Executive Order 12958, as amended by Executive Order 13292, or other

Executive orders concerning disclosure of information, Department regulations, or the Privacy Act, or information exempt from release under the Freedom of Information Act. The Administrative Law Judge shall allow placement of any such document under seal and/or grant a protective order upon a showing that the disclosure would be inconsistent with any such statute or Executive order, or that the harm resulting from disclosure would outweigh the benefits of disclosure.

(2) A respondent may file any document or any part of a document under seal and/or seek a protective order to limit such document from disclosure to other parties or to the public. The Administrative Law Judge shall allow placement of any document under seal and/or grant a protective order upon a showing that the harm resulting from disclosure would outweigh the benefits of disclosure.

(3) The Administrative Law Judge shall safeguard the security and integrity of any documents under seal or protective order and shall take all appropriate steps to preserve the confidentiality of such documents or any parts thereof, including closing a hearing or portions of a hearing to the public. Release of any information under seal or to the extent inconsistent with a protective order, in any form or manner, is subject to the sanctions and the exercise of the authorities as are provided with respect to ex parte communications under § 501.719.

(4) If the Administrative Law Judge denies placement of any document under seal or under protective order, any party, and any person whose document or material is at issue, may obtain interlocutory review by the Secretary's designee. In such cases the Administrative Law Judge shall not release or expose any of the records or documents in question to the public or to any person for a period of 20 days from the date of the Administrative Law Judge's ruling, in order to permit a party the opportunity either to withdraw the records and documents or obtain interlocutory review by the Secretary's designee and an order that the records be placed under seal or a protective order.

(5) Upon settlement, final decision, or motion to the Administrative Law Judge for good cause shown, all materials (including all copies) under seal or protective order shall be returned to the submitting parties, except when it may be necessary to retain a record until any judicial process is completed.

(6)(i) Written notice of each request for release of documents or materials under seal or subject to a protective

order shall be given to the parties at least 20 days prior to any permitted release or prior to any access not specifically authorized under a protective order. A copy of each request for information, including the name, address, and telephone number of the requester, shall be provided to the parties.

(ii) Each request for access to protected material shall include the names, addresses, and telephone numbers of all persons on whose behalf the requester seeks access to protected information. The Administrative Law Judge may impose sanctions as provided under § 501.729 for failure to provide this information.

(b) *Application.* An application for a protective order or to place under seal shall be filed with the Administrative Law Judge. The application shall be accompanied by a sealed copy of the materials as to which confidential treatment is sought.

(1) *Procedure for supplying additional information.* The person making the application may be required to furnish in writing additional information with respect to the grounds for objection to public disclosure. Failure to supply the information so requested within 14 days from the date of receipt of a notice of the information required shall be deemed a waiver of the objection to public disclosure of that portion of the information to which the additional information relates, unless the Administrative Law Judge shall otherwise order for good cause shown at or before the expiration of such 14-day period.

(2) *Confidentiality of materials pending final decision.* Pending the determination of the application for confidential treatment, transcripts, non-final orders including an initial decision, if any, and other materials in connection with the application shall be placed under seal; shall be for the confidential use only of the Administrative Law Judge, the Secretary's designee, the applicant, the Director, and any other respondent and representative; and shall be made available to the public only in accordance with orders of the Administrative Law Judge or the Secretary's designee.

(3) *Public availability of orders.* Any final order of the Administrative Law Judge or the Secretary's designee denying or sustaining an application for confidential treatment shall be made public. Any prior findings or opinions relating to an application for confidential treatment under this section shall be made public at such time as the material as to which

confidentiality was requested is made public.

§ 501.726 Motions.

(a) *Generally.* Unless made during a hearing or conference, a motion shall be in writing, shall state with particularity the grounds therefor, shall set forth the relief or order sought, and shall be accompanied by a written brief of the points and authorities relied upon. Motions by a respondent must be filed with the Administrative Law Judge and served upon the Director through the Office of Chief Counsel and with any other party respondent or respondent's representative, unless otherwise directed by the Administrative Law Judge. Motions by the Director must be filed with the Administrative Law Judge and served upon each party respondent or respondent's representative. All written motions must be served in accordance with, and otherwise meet the requirements of, § 501.705. The Administrative Law Judge may order that an oral motion be submitted in writing. No oral argument shall be heard on any motion unless the Administrative Law Judge otherwise directs.

(b) *Opposing and reply briefs.* Except as provided in § 501.741(e), briefs in opposition to a motion shall be filed not later than 15 days after service of the motion. Reply briefs shall be filed not later than 3 days after service of the opposition. The failure of a party to oppose a written motion or an oral motion made on the record shall be deemed a waiver of objection by that party to the entry of an order substantially in the form of any proposed order accompanying the motion.

(c) *Dilatory motions.* Frivolous, dilatory, or repetitive motions are prohibited. The filing of such motions may form the basis for sanctions.

(d) *Length limitation.* Except as otherwise ordered by the Administrative Law Judge, a brief in support of, or in opposition to, a motion shall not exceed 15 pages, exclusive of pages containing any table of contents, table of authorities, or addendum.

(e) A motion to set aside a default shall be made within a reasonable time as determined by the Administrative Law Judge, state the reasons for the failure to appear or defend, and, if applicable, specify the nature of the proposed defense in the proceeding. In order to prevent injustice and on such conditions as may be appropriate, the Administrative Law Judge, at any time prior to the filing of his or her decision, or the Secretary's designee, at any time

during the review process, may for good cause shown set aside a default.

§ 501.727 Motion for summary disposition.

(a) At any time after a respondent's answer has been filed, the respondent or the Director may make a motion for summary disposition of any or all allegations contained in the Order Instituting Proceedings. If the Director has not completed presentation of his or her case-in-chief, a motion for summary disposition shall be made only with permission of the Administrative Law Judge. The facts of the pleadings of the party against whom the motion is made shall be taken as true, except as modified by stipulations or admissions made by that party, by uncontested affidavits, or by facts officially noticed pursuant to § 501.732(b).

(b) *Decision on motion.* The Administrative Law Judge may promptly decide the motion for summary disposition or may defer decision on the motion. The Administrative Law Judge shall issue an order granting a motion for summary disposition if the record shows there is no genuine issue with regard to any material fact and the party making the motion is entitled to a summary disposition as a matter of law.

(c) A motion for summary disposition must be accompanied by a statement of the material facts as to which the moving party contends there is no genuine issue. Such motion must be supported by documentary evidence, which may take the form of admissions in pleadings, stipulations, depositions, transcripts, affidavits, and any other evidentiary materials that the moving party contends support its position. The motion must also be accompanied by a brief containing the points and authorities in support of the moving party's arguments. Any party opposing a motion for summary disposition must file a statement setting forth those material facts as to which such party contends a genuine dispute exists. The opposition must be supported by evidence of the same type as that submitted with the motion for summary disposition and a brief containing the points and authorities in support of the contention that summary disposition would be inappropriate.

§ 501.728 Subpoenas.

(a) *Availability; procedure.* In connection with any hearing before an Administrative Law Judge, either the respondent or the Director may request the issuance of subpoenas requiring the attendance and testimony of witnesses at the designated time and place of hearing, and subpoenas requiring the

production of documentary or other tangible evidence returnable at a designated time and place. Unless made on the record at a hearing, requests for issuance of a subpoena shall be made in writing and served on each party pursuant to § 501.705.

(b) *Standards for issuance.* If it appears to the Administrative Law Judge that a subpoena sought may be unreasonable, oppressive, excessive in scope, or unduly burdensome, he or she may, in his or her discretion, as a condition precedent to the issuance of the subpoena, require the person seeking the subpoena to show the general relevance and reasonable scope of the testimony or other evidence sought. If after consideration of all the circumstances, the Administrative Law Judge determines that the subpoena or any of its terms is unreasonable, oppressive, excessive in scope, or unduly burdensome, he or she may refuse to issue the subpoena, or issue a modified subpoena as fairness requires. In making the foregoing determination, the Administrative Law Judge may inquire of the other participants whether they will stipulate to the facts sought to be proved.

(c) *Service.* Service of a subpoena shall be made pursuant to the provisions of § 501.705.

(d) *Application to quash or modify.*

(1) *Procedure.* Any person to whom a subpoena is directed or who is an owner, creator or the subject of the documents or materials that are to be produced pursuant to a subpoena may, prior to the time specified therein for compliance, but not later than 15 days after the date of service of such subpoena, request that the subpoena be quashed or modified. Such request shall be made by application filed with the Administrative Law Judge and served on all parties pursuant to § 501.705. The party on whose behalf the subpoena was issued may, not later than 5 days after service of the application, file an opposition to the application.

(2) *Standards governing application to quash or modify.* If the Administrative Law Judge determines that compliance with the subpoena would be unreasonable, oppressive or unduly burdensome, the Administrative Law Judge may quash or modify the subpoena, or may order return of the subpoena only upon specified conditions. These conditions may include, but are not limited to, a requirement that the party on whose behalf the subpoena was issued shall make reasonable compensation to the person to whom the subpoena was addressed for the cost of copying or

transporting evidence to the place for return of the subpoena.

(e) *Witness fees and mileage.*

Witnesses summoned to appear at a proceeding shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States. Witness fees and mileage shall be paid by the party at whose instance the witnesses appear.

§ 501.729 Sanctions.

(a) *Contemptuous conduct.*

(1) *Subject to exclusion or suspension.* Contemptuous conduct by any person before an Administrative Law Judge or the Secretary's designee during any proceeding, including any conference, shall be grounds for the Administrative Law Judge or the Secretary's designee to:

(i) Exclude that person from such hearing or conference, or any portion thereof; and/or

(ii) If a representative, summarily suspend that person from representing others in the proceeding in which such conduct occurred for the duration, or any portion, of the proceeding.

(2) *Adjournment.* Upon motion by a party represented by a representative subject to an order of exclusion or suspension, an adjournment shall be granted to allow the retention of a new representative. In determining the length of an adjournment, the Administrative Law Judge or the Secretary's designee shall consider, in addition to the factors set forth in § 501.737, the availability of another representative for the party or, if the representative was a counsel, of other members of a suspended counsel's firm.

(b) *Deficient filings; leave to cure deficiencies.* The Administrative Law Judge, or the Secretary's designee in the case of a request for review, may in his or her discretion, reject, in whole or in part, any filing that fails to comply with any requirements of this subpart or of any order issued in the proceeding in which the filing was made. Any such filings shall not be part of the record. The Administrative Law Judge or the Secretary's designee may direct a party to cure any deficiencies and to resubmit the filing within a fixed time period.

(c) *Failure to make required filing or to cure deficient filing.* The Administrative Law Judge (or the Secretary's designee during review proceedings) may enter a default pursuant to § 501.716, dismiss the case, decide the particular matter at issue against that person, or prohibit the

introduction of evidence or exclude testimony concerning that matter if a person fails:

(1) To make a filing required under this subpart; or

(2) To cure a deficient filing within the time specified by the Administrative Law Judge or the Secretary's designee pursuant to paragraph (b) of this section.

(d) *Failure to make required filing or to cure deficient filing in the case of a request for review.* The Secretary's designee, in any case of a request for review, may decide the issue against that person, or prohibit the introduction of evidence or exclude testimony concerning that matter if a person fails:

(1) To make a filing required under this subpart; or

(2) To cure a deficient filing within the time specified by the Secretary's designee pursuant to paragraph (b) of this section.

§ 501.730 Depositions upon oral examination.

(a) *Procedure.* Any party desiring to take the testimony of a witness by deposition shall make a written motion setting forth the reasons why such deposition should be taken including the specific reasons why the party believes the witness may be unable to attend or testify at the hearing; the name and address of the prospective witness; the matters concerning which the prospective witness is expected to be questioned; and the proposed time and place for the taking of the deposition.

(b) *Required finding when ordering a deposition.* In the discretion of the Administrative Law Judge, an order for deposition may be issued upon a finding that the prospective witness will likely give testimony material to the proceeding, that it is likely the prospective witness will be unable to attend or testify at the hearing because of age, sickness, infirmity, imprisonment or other disability, and that the taking of a deposition will serve the interests of justice.

(c) *Contents of order.* An order for deposition shall designate by name a deposition officer. The designated officer may be the Administrative Law Judge or any other person authorized to administer oaths by the laws of the United States or of the place where the deposition is to be held. An order for deposition also shall state:

(1) The name of the witness whose deposition is to be taken;

(2) The scope of the testimony to be taken;

(3) The time and place of the deposition;

(4) The manner of recording, preserving and filing the deposition; and

(5) The number of copies, if any, of the deposition and exhibits to be filed upon completion of the deposition.

(d) *Procedure at depositions.* A witness whose testimony is taken by deposition shall swear or affirm before any questions are put to him or her. Examination and cross-examination of witnesses may proceed as permitted at a hearing. A witness being deposed may have counsel or a representative present during the deposition.

(e) *Objections to questions or evidence.* Objections to questions or evidence shall be in short form, stating the grounds of objection relied upon. Objections to questions or evidence shall be noted by the deposition officer upon the deposition, but a deposition officer (other than an Administrative Law Judge) shall not have the power to decide on the competency, materiality or relevance of evidence. Failure to object to questions or evidence before the deposition officer shall not be deemed a waiver unless the ground of the objection is one that might have been obviated or removed if presented at that time.

(f) *Filing of depositions.* The questions asked and all answers or objections shall be recorded or transcribed verbatim, and a transcript shall be prepared by the deposition officer, or under his or her direction. The transcript shall be subscribed by the witness and certified by the deposition officer. The original deposition transcript and exhibits shall be filed with the Administrative Law Judge. A copy of the deposition transcript and exhibits shall be served on the opposing party or parties. The cost of the transcript (including copies) shall be paid by the party requesting the deposition.

§ 501.731 Depositions upon written questions.

(a) *Availability.* Depositions may be taken and submitted on written questions upon motion of any party. The motion shall include the information specified in § 501.730(a). A decision on the motion shall be governed by § 501.730(b).

(b) *Procedure.* Written questions shall be filed with the motion. Not later than 10 days after service of the motion and written questions, any party may file objections to such written questions and any party may file cross-questions. When a deposition is taken pursuant to this section no persons other than the witness, representative or counsel to the witness, the deposition officer, and, if the deposition officer does not act as reporter, a reporter, shall be present at the examination of the witness. No party

shall be present or represented unless otherwise permitted by order. The deposition officer shall propound the questions and cross-questions to the witness in the order submitted.

(c) *Additional requirements.* The order for deposition, filing of the deposition, form of the deposition and use of the deposition in the record shall be governed by paragraphs (b) through (g) of § 501.730, except that no cross-examination shall be made.

§ 501.732 Evidence.

The applicable evidentiary standard for proceedings under this subpart is proof by a preponderance of reliable, probative, and substantial evidence. The Administrative Law Judge shall admit any relevant and material oral, documentary, or demonstrative evidence. The Federal Rules of Evidence do not apply, by their own force, to proceedings under this subpart, but shall be employed as general guidelines. The fact that evidence submitted by a party is hearsay goes only to the weight of the evidence and does not affect its admissibility.

(a) *Objections and offers of proof.*

(1) *Objections.* Objections to the admission or exclusion of evidence must be made on the record and shall be in short form, stating the grounds relied upon. Exceptions to any ruling thereon by the Administrative Law Judge need not be noted at the time of the ruling. Such exceptions will be deemed waived on review by the Secretary's designee, however, unless raised:

(i) Pursuant to interlocutory review in accordance with § 501.741;

(ii) In a proposed finding or conclusion filed pursuant to § 501.738; or

(iii) In a petition for the Secretary's designee's review of an Administrative Law Judge's decision filed in accordance with § 501.741.

(2) *Offers of proof.* Whenever evidence is excluded from the record, the party offering such evidence may make an offer of proof, which shall be included in the record. Excluded material shall be retained pursuant to § 501.739(b).

(b) *Official notice.* An Administrative Law Judge or Secretary's designee may take official notice of any material fact that might be judicially noticed by a district court of the United States, any matter in the public official records of the Secretary, or any matter that is particularly within the knowledge of the Department as an expert body. If official notice is requested or taken of a material fact not appearing in the evidence in the record, a party, upon timely request to

the Administrative Law Judge, shall be afforded an opportunity to establish the contrary.

(c) *Stipulations.* The parties may, by stipulation, at any stage of the proceeding agree upon any pertinent fact in the proceeding. A stipulation may be received in evidence and, when accepted by the Administrative Law Judge, shall be binding on the parties to the stipulation.

(d) *Presentation under oath or affirmation.* A witness at a hearing for the purpose of taking evidence shall testify under oath or affirmation.

(e) *Presentation, rebuttal and cross-examination.* A party is entitled to present its case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as, in the discretion of the Administrative Law Judge, may be required for a full and true disclosure of the facts.

§ 501.733 Evidence: confidential information, protective orders.

(a) *Procedure.* In any proceeding as defined in § 501.702, a respondent; the Director; any person who is the owner, subject or creator of a document subject to subpoena or which may be introduced as evidence; or any witness who testifies at a hearing may file a motion requesting a protective order to limit from disclosure to other parties or to the public documents or testimony containing confidential information. The motion should include a general summary or extract of the documents without revealing confidential details. If a person seeks a protective order against disclosure to other parties as well as the public, copies of the documents shall not be served on other parties. Unless the documents are unavailable, the person shall file for inspection by the Administrative Law Judge a sealed copy of the documents as to which the order is sought.

(b) *Basis for issuance.* Documents and testimony introduced in a public hearing are presumed to be public. A motion for a protective order shall be granted only upon a finding that the harm resulting from disclosure would outweigh the benefits of disclosure.

(c) *Requests for additional information supporting confidentiality.* A person seeking a protective order under paragraph (a) of this section may be required to furnish in writing additional information with respect to the grounds for confidentiality. Failure to supply the information so requested not later than 5 days from the date of receipt by the person of a notice of the information required shall be deemed a waiver of the objection to public

disclosure of that portion of the documents to which the additional information relates, unless the Administrative Law Judge shall otherwise order for good cause shown at or before the expiration of such 5-day period.

(d) *Confidentiality of documents pending decision.* Pending a determination of a motion under this section, the documents as to which confidential treatment is sought and any other documents that would reveal the confidential information in those documents shall be maintained under seal and shall be disclosed only in accordance with orders of the Administrative Law Judge. Any order issued in connection with a motion under this section shall be made public unless the order would disclose information as to which a protective order has been granted, in which case that portion of the order that would reveal the protected information shall not be made public.

§ 501.734 Introducing prior sworn statements of witnesses into the record.

(a) At a hearing, any person wishing to introduce a prior, sworn statement of a witness who is not a party to the proceeding, that is otherwise admissible in the proceeding, may make a motion setting forth the reasons therefor. If only part of a statement is offered in evidence, the Administrative Law Judge may require that all relevant portions of the statement be introduced. If all of a statement is offered in evidence, the Administrative Law Judge may require that portions not relevant to the proceeding be excluded. A motion to introduce a prior sworn statement may be granted if:

(1) The witness is dead;

(2) The witness is out of the United States, unless it appears that the absence of the witness was procured by the party offering the prior sworn statement;

(3) The witness is unable to attend or testify because of age, sickness, infirmity, imprisonment or other disability;

(4) The party offering the prior sworn statement has been unable to procure the attendance of the witness by subpoena; or,

(5) In the discretion of the Administrative Law Judge, it would be desirable, in the interests of justice, to allow the prior sworn statement to be used. In making this determination, due regard shall be given to the presumption that witnesses will testify orally in an open hearing. If the parties have stipulated to accept a prior sworn statement in lieu of live testimony, consideration shall also be given to the

convenience of the parties in avoiding unnecessary expense.

§ 501.735 Proposed findings, conclusions and supporting briefs.

(a) *Opportunity to file.* Before a decision is issued by the Administrative Law Judge, each party shall have an opportunity, reasonable in light of all the circumstances, to file in writing proposed findings and conclusions.

(b) *Procedure.* Proposed findings of fact must be supported by citations to specific portions of the record. If successive filings are directed, the proposed findings and conclusions of the party assigned to file first shall be set forth in serially numbered paragraphs, and any counter statement of proposed findings and conclusions shall, in addition to any other matter presented, indicate those paragraphs of the proposals already filed as to which there is no dispute. A reply brief may be filed by the party assigned to file first, or, where simultaneous filings are directed, reply briefs may be filed by each party, within the period prescribed therefor by the Administrative Law Judge. No further briefs may be filed except with permission of the Administrative Law Judge.

(c) *Time for filing.* In any proceeding in which a decision is to be issued:

(1) At the close of each hearing, the Administrative Law Judge shall, by order, after consultation with the parties, prescribe the period within which proposed findings and conclusions and supporting briefs are to be filed. The party directed to file first shall make its initial filing not later than 30 days after the end of the hearing unless the Administrative Law Judge, for good cause shown, permits a different period and sets forth in the order the reasons why the different period is necessary.

(2) The total period within which all such proposed findings and conclusions and supporting briefs and any counter statements of proposed findings and conclusions and reply briefs are to be filed shall be no longer than 90 days after the close of the hearing unless the Administrative Law Judge, for good cause shown, permits a different period and sets forth in an order the reasons why the different period is necessary.

§ 501.736 Authority of Administrative Law Judge.

The Administrative Law Judge shall have authority to do all things necessary and appropriate to discharge his or her duties. No provision of these rules shall be construed to limit the powers of the Administrative Law Judge provided by the Administrative Procedure Act, 5

U.S.C. 556, 557. The powers of the Administrative Law Judge include, but are not limited to:

- (a) Administering oaths and affirmations;
- (b) Issuing subpoenas authorized by law and revoking, quashing, or modifying any such subpoena;
- (c) Receiving relevant evidence and ruling upon the admission of evidence and offers of proof;
- (d) Regulating the course of a proceeding and the conduct of the parties and their representatives;
- (e) Holding prehearing and other conferences as set forth in § 501.726 and requiring the attendance at any such conference of at least one representative of each party who has authority to negotiate concerning the resolution of issues in controversy;
- (f) Subject to any limitations set forth elsewhere in this subpart, considering and ruling on all procedural and other motions;

(g) Upon notice to all parties, reopening any hearing prior to the issuance of a decision;

(h) Requiring production of records or any information relevant to any act or transaction subject to a hearing under this subpart, and imposing sanctions available under Federal Rule of Civil Procedure 37(b)(2) (Fed. R. Civ. P. 37(b)(2), 28 U.S.C.) for a party's failure to comply with discovery requests;

(i) Establishing time, place, and manner limitations on the attendance of the public and the media for any hearing; and

(j) Setting fees and expenses for witnesses, including expert witnesses.

§ 501.737 Adjustments of time, postponements and adjournments.

(a) *Availability.* Except as otherwise provided by law, the Administrative Law Judge or the Secretary's designee, as appropriate, at any time prior to the filing of his or her decision, may, for good cause and in the interest of justice, modify any time limit prescribed by this subpart and may, consistent with paragraph (b) of this section, postpone or adjourn any hearing.

(b) *Limitations on postponements, adjournments and adjustments.* A hearing shall begin at the time and place ordered, provided that, within the limits provided, the Administrative Law Judge or the Secretary's designee, as appropriate, may for good cause shown postpone the commencement of the hearing or adjourn a convened hearing for a reasonable period of time.

(1) *Additional considerations.* In considering a motion for postponement of the start of a hearing, adjournment once a hearing has begun, or extensions

of time for filing papers, the Administrative Law Judge or the Secretary's designee, as appropriate, shall consider, in addition to any other factors:

(i) The length of the proceeding to date;

(ii) The number of postponements, adjournments or extensions already granted;

(iii) The stage of the proceedings at the time of the request; and

(iv) Any other matter as justice may require.

(2) *Time limit.* Postponements, adjournments or extensions of time for filing papers shall not exceed 21 days unless the Administrative Law Judge or the Secretary's designee, as appropriate, states on the record or sets forth in a written order the reasons why a longer period of time is necessary.

§ 501.738 Disqualification and withdrawal of Administrative Law Judge.

(a) *Notice of disqualification.* If at any time an Administrative Law Judge or Secretary's designee believes himself or herself to be disqualified from considering a matter, the Administrative Law Judge or Secretary's designee, as appropriate, shall issue a notice stating that he or she is withdrawing from the matter and setting forth the reasons therefor.

(b) *Motion for Withdrawal.* Any party who has a reasonable, good faith basis to believe an Administrative Law Judge or Secretary's designee has a personal bias, or is otherwise disqualified from hearing a case, may make a motion to the Administrative Law Judge or Secretary's designee, as appropriate, that the Administrative Law Judge or Secretary's designee withdraw. The motion shall be accompanied by a statement subject to 18 U.S.C. 1001 setting forth in detail the facts alleged to constitute grounds for disqualification. If the Administrative Law Judge or Secretary's designee finds himself or herself qualified, he or she shall so rule and shall continue to preside over the proceeding.

§ 501.739 Record in proceedings before Administrative Law Judge; retention of documents; copies.

(a) *Recordation.* Unless otherwise ordered by the Administrative Law Judge, all hearings shall be recorded and a written transcript thereof shall be prepared.

(1) *Availability of a transcript.* Transcripts of hearings shall be available for purchase.

(2) *Transcript correction.* Prior to the filing of post-hearing briefs or proposed findings and conclusions, or within

such earlier time as directed by the Administrative Law Judge, a party or witness may make a motion to correct the transcript. Proposed corrections of the transcript may be submitted to the Administrative Law Judge by stipulation pursuant to § 501.732(c), or by motion. Upon notice to all parties to the proceeding, the Administrative Law Judge may, by order, specify corrections to the transcript.

(b) *Contents of the record.* The record of each hearing shall consist of:

(1) The Order Instituting Proceedings, Answer to Order Instituting Proceedings, Notice of Hearing and any amendments thereto;

(2) Each application, motion, submission or other paper, and any amendments, motions, objections, and exceptions to or regarding them;

(3) Each stipulation, transcript of testimony, interrogatory, deposition, and document or other item admitted into evidence;

(4) With respect to a request to disqualify an Administrative Law Judge or to allow the Administrative Law Judge's withdrawal under § 501.738, each affidavit or transcript of testimony taken and the decision made in connection with the request;

(5) All proposed findings and conclusions;

(6) Each written order issued by the Administrative Law Judge; and

(7) Any other document or item accepted into the record by the Administrative Law Judge.

(c) Retention of documents not admitted. Any document offered as evidence but excluded, and any document marked for identification but not offered as an exhibit, shall not be part of the record. The Administrative Law Judge shall retain any such document until the later of the date the proceeding becomes final, or the date any judicial review of the final proceeding is no longer available.

(d) *Substitution of copies.* A true copy of a document may be substituted for any document in the record or any document retained pursuant to paragraph (c) of this section.

§ 501.740 Decision of Administrative Law Judge.

The Administrative Law Judge shall prepare a decision that constitutes his or her final disposition of the proceedings.

(a) *Content.* (1) The Administrative Law Judge shall determine whether or not the respondent has violated any provision of parts 500 and 515 of this chapter or the provisions of any license, ruling, regulation, order, direction or instruction issued by or under the authority of the Secretary pursuant to

part 500 or 515 of this chapter or otherwise under the Trading with the Enemy Act.

(2) The Administrative Law Judge's decision shall include findings and conclusions, and the reasons or basis therefor, as to all the material issues of fact, law or discretion presented on the record.

(3) (i) Upon a finding of violation, the Administrative Law Judge shall award an appropriate monetary civil penalty in an amount consistent with the Penalty Guidelines published by the Director.

(ii) Notwithstanding paragraph (a)(3)(i) of this section, the Administrative Law Judge:

(A) Shall provide an opportunity for a respondent to assert his or her inability to pay a penalty, or financial hardship, by filing with the Administrative Law Judge a financial disclosure statement subject to 18 U.S.C. 1001 that sets forth in detail the basis for the financial hardship or the inability to pay; and

(B) Shall consider any such filing in determining the appropriate monetary civil penalty.

(b) *Administrative Law Judge's decision.*

(1) *Service.* The Administrative Law Judge shall serve his or her decision on the respondent and on the Director through the Office of Chief Counsel, and shall file a copy of the decision with the Secretary's designee.

(2) *Filing of report with the Secretary's designee.* If the respondent or Director files a petition for review pursuant to § 501.741, or upon a request from the Secretary's designee, the Administrative Law Judge shall file his or her report with the Secretary's designee not later than 20 days after service of his or her decision on the parties. The report shall consist of the record, including the Administrative Law Judge's decision, and any petition from the respondent or the Director seeking review.

(3) *Correction of errors.* Until the Administrative Law Judge's report has been directed for review by the Secretary's designee or, in the absence of a direction for review, until the decision has become a final order, the Administrative Law Judge may correct clerical errors and errors arising through oversight or inadvertence in decisions, orders, or other parts of the record.

(c) *Administrative Law Judge's decision final unless review directed.* Unless the Secretary's designee determines to review a decision in accordance with § 501.741(a)(1), the decision of the Administrative Law Judge shall become the final decision of the Department.

(d) *Penalty awarded.* The Director is charged with implementing all final decisions of the Department and, upon a finding of violation and/or award of a civil monetary penalty, shall carry out the necessary steps to close the action.

§ 501.741 Review of decision or ruling.

(a) *Availability.* (1)(i) Review of the decision of the Administrative Law Judge by the Secretary's designee is not a right. The Secretary's designee may, in his or her discretion, review the decision of the Administrative Law Judge on the petition of either the respondent or the Director, or upon his or her own motion. The Secretary's designee shall determine whether to review a decision:

(A) If a petition for review has been filed by the respondent or the Director, not later than 30 days after that date the Administrative Law Judge filed his or her report with the Secretary's designee pursuant to paragraph (b)(2) of this section; or

(B) If no petition for review has been filed by the respondent or the Director, not later than 40 days after the date the Administrative Law Judge filed his or her decision with the Secretary's designee pursuant to paragraph (b)(1) of this section.

(ii) In determining whether to review a decision upon petition of the respondent or the Director, the Secretary's designee shall consider whether the petition for review makes a reasonable showing that:

(A) a prejudicial error was committed in the conduct of the proceeding; or

(B) the decision embodies:

(1) a finding or conclusion of material fact that is clearly erroneous;

(2) a conclusion of law that is erroneous; or

(3) an exercise of discretion or decision of law or policy that is important and that the Secretary's designee should review.

(2) *Interlocutory review of ruling.* The Secretary's designee shall review any ruling of an Administrative Law Judge involving privileged or confidential material that is the subject of a petition for review. See § 501.725.

(b) *Filing.* Either the respondent or the Director, when adversely affected or aggrieved by the decision or ruling of the Administrative Law Judge, may seek review by the Secretary's designee by filing a petition for review. Any petition for review shall be filed with the Administrative Law Judge within 10 days after service of the Administrative Law Judge's decision or the issuance of a ruling involving privileged or confidential material.

(c) *Contents.* The petition shall state why the Secretary's designee should review the Administrative Law Judge's decision or ruling, including: Whether the Administrative Law Judge's decision or ruling raises an important question of law, policy or discretion; whether review by the Secretary's designee will resolve a question about which the Department's Administrative Law Judges have rendered differing opinions; whether the Administrative Law Judge's decision or ruling is contrary to law or Department precedent; whether a finding of material fact is not supported by a preponderance of the evidence; or whether a prejudicial error of procedure or an abuse of discretion was committed. A petition should concisely state the portions of the decision or ruling for which review is sought. A petition shall not incorporate by reference a brief or legal memorandum.

(d) *When filing effective.* A petition for review is filed when received by the Administrative Law Judge.

(e) *Statements in opposition to petition.* Not later than 8 days after the filing of a petition for review, either the respondent or the Director may file a statement in opposition to a petition. A statement in opposition to a petition for review shall be filed in the manner specified in this section for filing of petitions for review. Statements in opposition shall concisely state why the Administrative Law Judge's decision or ruling should not be reviewed with respect to each portion of the petition to which it is addressed.

(f) *Number of copies.* An original and three copies of a petition or a statement in opposition to a petition shall be filed with the Administrative Law Judge.

(g) *Prerequisite to judicial review.* Pursuant to section 704 of the Administrative Procedure Act, 5 U.S.C. 704, a petition for review by the Secretary's designee of an Administrative Law Judge decision or ruling is a prerequisite to the seeking of judicial review of a final order entered pursuant to such decision or ruling.

§ 501.742 Secretary's designee's consideration of decisions by Administrative Law Judges.

(a) *Scope of review.* The Secretary's designee may affirm, reverse, modify, set aside or remand for further proceedings, in whole or in part, a decision or ruling by an Administrative Law Judge and may make any findings or conclusions that in his or her judgment are proper and on the basis of the record and such additional evidence as the Secretary's designee may receive in his or her discretion.

(b) *Summary affirmance.* The Secretary's designee may summarily affirm an Administrative Law Judge's decision or ruling based upon the petition for review and any response thereto, without further briefing, if he or she finds that no issue raised in the petition for review warrants further consideration.

§ 501.743 Briefs filed with the Secretary's designee.

(a) *Briefing schedule order.* If review of a determination is mandated by judicial order or whenever the Secretary's designee reviews a decision or ruling, the Secretary's designee shall, unless such review results in summary affirmance pursuant to § 501.742(b), issue a briefing schedule order directing the parties to file opening briefs and specifying particular issues, if any, as to which briefing should be limited or directed. Unless otherwise provided, opening briefs shall be filed not later than 40 days after the date of the briefing schedule order. Opposition briefs shall be filed not later than 30 days after the date opening briefs are due. Reply briefs shall be filed not later than 14 days after the date opposition briefs are due. No briefs in addition to those specified in the briefing schedule order may be filed without permission of the Secretary's designee. The briefing schedule order shall be issued not later than 21 days after the later of:

(1) The last day permitted for filing a brief in opposition to a petition for review pursuant to § 501.741(e); or

(2) Receipt by the Secretary's designee of the mandate of a court with respect to a judicial remand.

(b) *Contents of briefs.* Briefs shall be confined to the particular matters at issue. Each exception to the findings or conclusions being reviewed shall be stated succinctly. Exceptions shall be supported by citation to the relevant portions of the record, including references to the specific pages relied upon, and by concise argument including citation of such statutes, decisions and other authorities as may be relevant. If the exception relates to the admission or exclusion of evidence, the substance of the evidence admitted or excluded shall be set forth in the brief, in an appendix thereto, or by citation to the record. If the exception relates to interlocutory review, there is no requirement to reference pages of the transcript. Reply briefs shall be confined to matters in opposition briefs of other parties.

(c) *Length limitation.* Opening and opposition briefs shall not exceed 30 pages and reply briefs shall not exceed 20 pages, exclusive of pages containing

the table of contents, table of authorities, and any addendum, except with permission of the Secretary's designee.

§ 501.744 Record before the Secretary's designee.

The Secretary's designee shall determine each matter on the basis of the record and such additional evidence as the Secretary's designee may receive in his or her discretion. In any case of interlocutory review, the Administrative Law Judge shall direct that a transcript of the relevant proceedings be prepared and forwarded to the Secretary's designee.

(a) *Contents of the record.* In proceedings for final decision before the Secretary's designee the record shall consist of:

(1) All items that are part of the record in accordance with § 501.739;

(2) Any petitions for review, cross-petitions or oppositions;

(3) All briefs, motions, submissions and other papers filed on appeal or review; and

(4) Any other material of which the Secretary's designee may take administrative notice.

(b) *Review of documents not admitted.* Any document offered in evidence but excluded by the Administrative Law Judge and any document marked for identification but not offered as an exhibit shall not be considered a part of the record before the Secretary's designee on review but shall be transmitted to the Secretary's designee if he or she so requests. In the event that the Secretary's designee does not request the document, the Administrative Law Judge shall retain the document not admitted into the record until the later of:

(1) The date upon which the Secretary's designee's order becomes final; or

(2) The conclusion of any judicial review of that order.

§ 501.745 Orders and decisions: signature, date and public availability.

(a) *Signature required.* All orders and decisions of the Administrative Law Judge or Secretary's designee shall be signed.

(b) *Date of entry of orders.* The date of entry of an order by the Administrative Law Judge or Secretary's designee shall be the date the order is signed. Such date shall be reflected in the caption of the order, or if there is no caption, in the order itself.

(c) *Public availability of orders.* (1) In general, any final order of the Department shall be made public. Any supporting findings or opinions relating

to a final order shall be made public at such time as the final order is made public.

(2) *Exception.* Any final order of the Administrative Law Judge or Secretary's designee pertaining to an application for confidential treatment shall only be available to the public in accordance with § 501.725(b)(3).

§ 501.746 Referral to United States Department of Justice; administrative collection measures.

In the event that the respondent does not pay any penalty imposed pursuant to this part within 30 calendar days of the mailing of the written notice of the imposition of the penalty, the matter may be referred for administrative collection measures or to the United States Department of Justice for appropriate action to recover the penalty in a civil suit in a Federal district court.

§ 501.747 Procedures on remand of decisions.

Either an Administrative Law Judge or a Secretary's designee, as appropriate, shall reconsider any Department decision on judicial remand to the Department. The rules of practice contained in this subpart shall apply to all proceedings held on judicial remand.

PART 505—REGULATIONS PROHIBITING TRANSACTIONS INVOLVING THE SHIPMENT OF CERTAIN MERCHANDISE BETWEEN FOREIGN COUNTRIES

■ 1. The authority for part 505 continues to read:

Authority: 31 U.S.C. 321(b); 50 U.S.C. App. 1–44; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); E.O. 9193, 7 FR 5205, 3 CFR, 1938–1943 Comp., p. 1174; E.O. 9989, 13 FR 4891, 3 CFR, 1943–1948 Comp., p. 748.

■ 2. Section 505.30 is amended by adding the following sentences at the end of the section:

§ 505.30 Licenses

* * * For provisions relating to licensing procedures, see part 501, subpart E, of this chapter. Licensing actions taken pursuant to part 501 of this chapter with respect to the prohibitions contained in this part are considered actions taken pursuant to this part.

§ 505.50 [Amended]

■ 3. Section 505.50 is amended by revising the reference “subpart G of part 500” to read “part 501, subpart D,”.

§ 505.60 [Amended]

■ 4. Section 505.60 is amended by revising the reference “§ 500.802 and

subpart D of part 501” to read “part 501, subpart E,”.

PART 515—CUBAN ASSETS CONTROL REGULATIONS

■ 1. The authority for part 515 continues to read:

Authority: 18 U.S.C. 2332d; 22 U.S.C. 2370(a), 6001–6010; 31 U.S.C. 321(b); 50 U.S.C. App. 1–44; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 106–387, 114 Stat. 1549; E.O. 9193, 7 FR 5205, 3 CFR, 1938–1943 Comp., p. 1147; E.O. 9989, 13 FR 4891, 3 CFR, 1943–1948 Comp., p. 748; Proc. 3447, 27 FR 1085, 3 CFR, 1959–1963 Comp., p. 157; E.O. 12854, 58 FR 36587, 3 CFR, 1993 Comp., p. 614.

■ 2. Section 515.501 is added to Subpart E to read as follows:

§ 515.501 General and specific licensing procedures.

For provisions relating to licensing procedures, see part 501, subpart E, of this chapter. Licensing actions taken pursuant to part 501 of this chapter with respect to the prohibitions contained in this part are considered actions taken pursuant to this part.

Subpart G—Penalties

■ 3. Section 515.701 is revised to read as follows:

§ 515.701 Penalties.

For provisions relating to penalties, see part 501, subpart D, of this chapter.

§§ 515.702–515.718 [Removed]

■ 4. Sections 515.702–515.718 are removed from subpart G.

Subpart H—Procedures

§ 515.801 [Amended]

■ 5. Section 515.801 is amended by revising the reference “subpart D of part 501” to read “part 501, subpart E,”.

PART 535—IRANIAN ASSETS CONTROL REGULATIONS

■ 1. The authority for Part 535 continues to read:

Authority: 18 U.S.C. 2332d; 28 U.S.C. 2461; 31 U.S.C. 321(b); 50 U.S.C. 1701–1706; E.O. 12170, 44 FR 65729, 3 CFR 1979 Comp., p. 457; E.O. 12205, 45 FR 24099, 3 CFR 1980 Comp., p. 248; E.O. 12211, 45 FR 26685, 3 CFR 1980 Comp., p. 253; E.O. 12276, 46 FR 7913, 3 CFR 1981 Comp., p. 104; E.O. 12279, 46 FR 7919, 3 CFR 1981 Comp., p. 109; E.O. 12280, 46 FR 7921, 3 CFR 1981 Comp., p. 110; E.O. 12281, 46 FR 7923, 3 CFR 1981 Comp., p. 110; E.O. 12282, 46 FR 7925, 3 CFR 1981 Comp., p. 113; E.O. 12283, 46 FR 7927, 3 CFR 1981 Comp., p. 114; and E.O. 12294, 46 FR 14111, 3 CFR 1981 Comp., p. 139.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

■ 2. Section 535.501 is added to Subpart E to read as follows:

§ 535.501 General and specific licensing procedures.

For provisions relating to licensing procedures, see part 501, subpart E, of this chapter. Licensing actions taken pursuant to part 501 of this chapter with respect to the prohibitions contained in this part are considered actions taken pursuant to this part.

Subpart H—Procedures

§ 535.801 [Amended]

■ 3. Section 515.801 is amended by revising the reference “subpart D of part 501” to read “part 501, subpart E,”.

PART 536—NARCOTICS TRAFFICKING SANCTIONS REGULATIONS

■ 1. The authority for part 536 is revised to read:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1641, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); E.O. 12978, 60 FR 54579, 3 CFR, 1995 Comp., p. 415; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; E.O. 13286, 68 FR 10619, March 5, 2003.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

■ 2. Section 536.100 is added to subpart E to read as follows:

§ 536.100 Licensing procedures.

For provisions relating to licensing procedures, see part 501, subpart E, of this chapter. Licensing actions taken pursuant to part 501 of this chapter with respect to the prohibitions contained in this part are considered actions taken pursuant to this part.

Subpart H—Procedures

§ 536.801 [Amended]

■ 3. Section 536.801 is amended by revising the reference “subpart D of part 501” to read “part 501, subpart E,”.

PART 537—BURMESE SANCTIONS REGULATIONS

■ 1. The authority for part 537 is revised to read:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; sec 570, Pub. L. 104–208, 110 stat. 3009–166; Pub. L. 108–61; E.O. 13047, 61 FR 28301, 3 CFR, Comp., p. 202; E.O. 13310, 68 FR 44853, July 28, 2003.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

- 2. Section 537.501 is revised to read as follows:

§ 537.501 General and specific licensing procedures.

For provisions relating to licensing procedures, see part 501, subpart E, of this chapter. Licensing actions taken pursuant to part 501 of this chapter with respect to the prohibitions contained in this part are considered actions taken pursuant to this part.

Subpart H—Procedures

- 3. Section 537.801 is revised to read as follows:

§ 537.801 Procedures.

For license application procedures and procedures relating to amendments, modifications, or revocations of licenses; administrative decisions; rulemaking; and requests for documents pursuant to the Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a), see part 501, subpart E, of this chapter.

PART 538—SUDANESE SANCTIONS REGULATIONS

- 1. The authority for part 538 continues to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 18 U.S.C. 2339B, 2332d; 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 106–387, 114 Stat. 1549; E.O. 13067, 62 FR 59989, 3 CFR, 1997 Comp., p. 230.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

- 2. Section 538.500 is added to subpart E to read as follows:

§ 538.500 Licensing procedures.

For provisions relating to licensing procedures, see part 501, subpart E, of this chapter. Licensing actions taken pursuant to part 501 of this chapter with respect to the prohibitions contained in this part are considered actions taken pursuant to this part.

Subpart H—Procedures**§ 538.801 [Amended]**

- 3. Section 538.801 is amended by revising the reference “subpart D of part 501” to read “part 501, subpart E,”.

PART 539—WEAPONS OF MASS DESTRUCTION TRADE CONTROL REGULATIONS

- 1. The authority for part 539 continues to read as follows:

Authority: 3 U.S.C. 301; 22 U.S.C. 2751–2799aa–2; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13094, 63 FR 40803, 3 CFR, 1998 Comp., p. 200.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy**§ 539.501 [Amended]**

- 2. Section 539.501 is amended by revising the reference “subpart D” to read “subpart E”.

Subpart H—Procedures**§ 539.801 [Amended]**

- 3. Section 539.801 is amended by revising the reference “subpart D” to read “subpart E”.

PART 540—HIGHLY ENRICHED URANIUM (HEU) AGREEMENT ASSETS CONTROL REGULATIONS

- 1. The authority for part 540 continues to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); E.O. 13159, 65 FR 39279, 3 CFR, Comp., p. 277.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

- 2. Section 540.500 is added to subpart E to read as follows:

§ 540.500 Licensing procedures.

For provisions relating to licensing procedures, see part 501, subpart E, of this chapter. Licensing actions taken pursuant to part 501 of this chapter with respect to the prohibitions contained in this part are considered actions taken pursuant to this part.

Subpart H—Procedures**§ 540.801 [Amended]**

- 3. Section 540.801 is amended by revising the reference “subpart D” to read “subpart E”.

PART 545—TALIBAN (AFGHANISTAN) SANCTIONS REGULATIONS

- 1. The authority for part 545 continues to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); E.O. 13129, 64 FR 36759, 3 CFR, 1999 Comp., p. 200.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

- 2. Section 545.500 is added to subpart E to read as follows:

§ 545.500 Licensing procedures.

For provisions relating to licensing procedures, see part 501, subpart E, of this chapter. Licensing actions taken pursuant to part 501 of this chapter with respect to the prohibitions contained in this part are considered actions taken pursuant to this part.

Subpart H—Procedures**§ 545.801 [Amended]**

- 3. Section 545.801 is amended by revising the reference “subpart D” to read “subpart E”.

PART 550—LIBYAN SANCTIONS REGULATIONS

- 1. The authority for part 550 continues to read as follows:

Authority: 3 U.S.C. 301; 18 U.S.C. 2339B, 2332d; 22 U.S.C. 287c, 2349aa–8 and 2349aa–9; 31 U.S.C. 321(b); 49 U.S.C. 40106(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 106–387, 114 Stat. 1549; E.O. 12543, 51 FR 875, 3 CFR, 1986 Comp., p. 181; E.O. 12544, 51 FR 1235, 3 CFR, 1986 Comp., p. 183; E.O. 12801, 57 FR 14319, 3 CFR, 1992 Comp., p. 294.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

- 2. Section 550.500 is added to subpart E to read as follows:

§ 550.500 Licensing procedures.

For provisions relating to licensing procedures, see part 501, subpart E, of this chapter. Licensing actions taken pursuant to part 501 of this chapter with respect to the prohibitions contained in this part are considered actions taken pursuant to this part.

Subpart H—Procedures**§ 550.801 [Amended]**

- 3. Section 550.801 is amended by revising the reference “subpart D of part 501” to read “part 501, subpart E,”.

PART 560—IRANIAN TRANSACTIONS REGULATIONS

- 1. The authority for part 560 continues to read as follows:

Authority: 3 U.S.C. 301; 18 U.S.C. 2339B, 2332d; 22 U.S.C. 2349aa–9; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 106–387, 114 Stat. 1549; E.O. 12613, 52 FR 41940, 3 CFR, 1987 Comp., p. 256; E.O. 12957, 60 FR 14615, 3 CFR, 1995 Comp., p. 332; E.O. 12959, 60 FR 24757, 3 CFR, 1995 Comp., p. 356; E.O. 13059, 62 FR 44531, 3 CFR, 1997 Comp., p. 217.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

■ 2. Section 560.500 is added directly under the heading of subpart E to read as follows:

§ 560.500 Licensing procedures.

For provisions relating to licensing procedures, see part 501, subpart E, of this chapter. Licensing actions taken pursuant to part 501 of this chapter with respect to the prohibitions contained in this part are considered actions taken pursuant to this part.

Subpart H—Procedures**§ 560.801 [Amended]**

■ 3. Section 560.801 is amended by revising the reference “subpart D of part 501” to read “part 501, subpart E.”.

PART 575—IRAQI SANCTIONS REGULATIONS

■ 1. The authority for part 575 is revised to read as follows:

Authority: 3 U.S.C. 301; 18 U.S.C. 2332d; 22 U.S.C. 287c; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–513, 104 Stat. 2047–2055 (50 U.S.C. 1701 note); E.O. 12722, 55 FR 31803, 3 CFR, 1990 Comp., p. 294; E.O. 12724, 55 FR 33089, 3 CFR, 1990 Comp., p. 297; E.O. 12817, 57 FR 48433, 3 CFR, 1992 Comp., p. 317; E.O. 13290, 68 FR 14307, March 20, 2003.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

■ 2. Section 575.500 is added directly under the heading of subpart E to read as follows:

§ 575.500 Licensing procedures.

For provisions relating to licensing procedures, see part 501, subpart E, of this chapter. Licensing actions taken pursuant to part 501 of this chapter with respect to the prohibitions contained in this part are considered actions taken pursuant to this part.

Subpart H—Procedures**§ 575.801 [Amended]**

■ 3. Section 575.801 is amended by revising the reference “subpart D of part 501” to read “part 501, subpart E.”.

PART 585—FEDERAL REPUBLIC OF YUGOSLAVIA (SERBIA AND MONTENEGRO) AND BOSNIAN SERB-CONTROLLED AREAS OF THE REPUBLIC OF BOSNIA AND HERZEGOVINA SANCTIONS REGULATIONS

■ 1. The authority for part 585 is revised to read as follows:

Authority: 3 U.S.C. 301; 22 U.S.C. 287c; 31 U.S.C. 321(b); 49 U.S.C. 40106; 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); E.O. 12808, 57 FR 23299, 3 CFR, 1992 Comp., p. 305; E.O. 12810, 57 FR 24347, 3 CFR, 1992 Comp., p. 307; E.O. 12831, 58 FR 5253, 3 CFR, 1993 Comp., p. 576; E.O. 12846, 58 FR 25771, 3 CFR, 1993 Comp., p. 599; E.O. 12934, 59 FR 54117, 3 CFR, 1994 Comp., p. 930; E.O. 13304, 68 FR 32315, May 29, 2003.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

■ 2. Section 585.500 is added directly under the heading of subpart E to read as follows:

§ 585.500 Licensing procedures.

For provisions relating to licensing procedures, see part 501, subpart E, of this chapter. Licensing actions taken pursuant to part 501 of this chapter with respect to the prohibitions contained in this part are considered actions taken pursuant to this part.

Subpart H—Procedures**§ 585.801 [Amended]**

■ 3. Section 585.801 is amended by revising the reference “subpart D of part 501” to read “part 501, subpart E.”.

PART 586—FEDERAL REPUBLIC OF YUGOSLAVIA (SERBIA & MONTENEGRO) KOSOVO SANCTIONS REGULATIONS

■ 1. The authority for part 586 is revised to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; E.O. 13088, 63 FR 32109, 3 CFR, 1998 Comp., p. 191; E.O. 13121, 64 FR 24021, 3 CFR, 1999 Comp., p. 176; E.O. 13192, 66 FR 7379, 3 CFR, 2002 Comp., p. 733; E.O. 13304, 68 FR 32315, May 29, 2003.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy**§ 586.501 [Amended]**

■ 2. Section 586.501 is amended by revising the reference “subpart D of part 501” to read “part 501, subpart E.”.

Subpart H—Procedures**§ 586.801 [Amended]**

■ 3. Section 586.801 is amended by revising the reference “subpart D of part 501” to read “part 501, subpart E.”.

PART 587—FEDERAL REPUBLIC OF YUGOSLAVIA (SERBIA AND MONTENEGRO) MILOSEVIC SANCTIONS REGULATIONS

■ 1. The authority for part 587 is revised to read as follows:

Authority: 3 U.S.C. 301; 22 U.S.C. 287c; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; E.O. 13088, 63 FR 32109, 3 CFR, 1998 Comp., p. 191; E.O. 13121, 64 FR 24021, 3 CFR, 1999 Comp., p. 176; E.O. 13192, 66 FR 7379, 3 CFR, 2002 Comp., p. 733; E.O. 13304, 68 FR 32315, May 29, 2003.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy**§ 587.501 [Amended]**

■ 2. Section 587.501 is amended by revising the reference “subpart D” to read “subpart E.”.

Subpart H—Procedures**§ 587.801 [Amended]**

■ 3. Section 587.801 is amended by revising the reference “subpart D” to read “subpart E”.

PART 588—WESTERN BALKANS STABILIZATION REGULATIONS

■ 1. The authority for part 588 is revised to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; E.O. 13219, 66 FR 34777, 3 CFR, 2002 Comp., p. 778; E.O. 13304, 68 FR 32315, May 29, 2003.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy**§ 588.501 [Amended]**

■ 2. Section 588.501 is amended by revising the reference “subpart D” to read “subpart E”.

Subpart H—Procedures**§ 588.801 [Amended]**

■ 3. Section 588.801 is amended by revising the reference “subpart D” to read “subpart E”.

PART 590—ANGOLA (UNITA) SANCTIONS REGULATIONS

■ 1. The authority for part 590 is revised to read:

Authority: 3 U.S.C. 301; 22 U.S.C. 287c; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); E.O. 12865, 58 FR 51005, 3 CFR, 1993 Comp., p. 636; E.O. 13069, 62 FR 65989, 3 CFR, 1997 Comp., p. 232; E.O. 13098, 63 FR 44771, 3 CFR, 1998 Comp., p. 206; E.O. 13298, 69 FR 24857, May 6, 2003.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy**§ 590.501 [Amended]**

■ 2. Section 590.501 is amended by revising the reference “subpart D” to read “subpart E.”.

Subpart H—Procedures**§ 590.801 [Amended]**

■ 3. Section 590.801 is amended by revising the reference “subpart D” to read “subpart E.”.

PART 591—ROUGH DIAMONDS (SIERRA LEONE & LIBERIA) SANCTIONS REGULATIONS

■ 1. The authority for part 591 is revised to read as follows:

Authority: 3 U.S.C. 301; 22 U.S.C. 287c; 31 U.S.C. 321(b); 50 U.S.C. 1601–1641, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); E.O. 13194, 66 FR 7389, 3 CFR, 2001 Comp., p.741; E.O. 13213, 66 FR 28829, 3 CFR, 2001 Comp., p.770; E.O. 13312, 68 FR 147, July 29, 2003.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy**§ 591.501 [Amended]**

■ 2. Section 591.501 is amended by revising the reference “subpart D” to read “subpart E”.

Subpart H—Procedures**§ 591.801 [Amended]**

■ 3. Section 591.801 is amended by revising the reference “subpart D” to read “subpart E”.

PART 594—GLOBAL TERRORISM SANCTIONS REGULATIONS

■ 1. The authority for part 594 is revised to read as follows:

Authority: 3 U.S.C. 301; 22 U.S.C. 287c; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); E.O. 13224, 66 FR 49079, September 25, 2001; E.O. 13268, 67 FR 44751, July 3, 2002; 3 CFR, 2002 Comp., p. 240; E.O. 13284, 64 FR 4075, January 28, 2003.

Subpart E—Licenses, Authorizations and Statements of Licensing Policy

■ 2. Section 594.501 is revised to read as follows:

§ 594.501 General and specific licensing procedures.

For provisions relating to licensing procedures, see part 501, subpart E, of this chapter. Licensing actions taken pursuant to part 501 of this chapter with respect to the prohibitions contained in this part are considered actions taken pursuant to this part.

Subpart H—Procedures

■ 3. Section 594.801 is revised to read as follows:

§ 594.801 Procedures.

For license application procedures and procedures relating to amendments, modifications, or revocations of licenses; administrative decisions; rulemaking; and requests for documents pursuant to the Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a), see part 501, subpart E, of this chapter.

PART 595—TERRORISM SANCTIONS REGULATIONS

■ 1. The authority for part 595 continues to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 319; E.O. 13224, 66 FR 49079, September 25, 2001.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

■ 2. Section 595.500 is added directly under the heading of subpart E to read as follows:

§ 595.500 Licensing procedures.

For provisions relating to licensing procedures, see part 501, subpart E, of this chapter. Licensing actions taken pursuant to part 501 of this chapter with respect to the prohibitions contained in this part are considered actions taken pursuant to this part.

Subpart H—Procedures**§ 595.801 [Amended]**

■ 3. Section 595.801 is amended by revising the reference “subpart D of part 501” to read “part 501, subpart E.”.

PART 596—TERRORISM LIST GOVERNMENTS SANCTIONS REGULATIONS

■ 1. The authority for part 596 continues to read as follows:

Authority: 18 U.S.C. 2332d; 31 U.S.C. 321(b).

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

■ 2. Section 596.500 is added directly under the heading of subpart E to read as follows:

§ 596.500 Licensing procedures.

For provisions relating to licensing procedures, see part 501, subpart E, of this chapter. Licensing actions taken pursuant to part 501 of this chapter with respect to the prohibitions contained in this part are considered actions taken pursuant to this part.

Subpart H—Procedures**§ 596.801 [Amended]**

■ 3. Section 596.801 is amended by revising the reference “subpart D of part 501” to read “part 501, subpart E.”.

PART 597—FOREIGN TERRORIST ORGANIZATION SANCTIONS REGULATIONS

■ 1. The authority for part 597 is revised to read:

Authority: 31 U.S.C. 321(b); Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 104–132, 110 Stat. 1214, 1248–53 (8 U.S.C. 1189, 18 U.S.C. 2339B).

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

■ 2. Section 597.500 is added directly under the heading of subpart E to read as follow:

§ 597.500 Licensing procedures.

For provisions relating to licensing procedures, see part 501, subpart E, of this chapter. Licensing actions taken pursuant to part 501 of this chapter with respect to the prohibitions contained in this part are considered actions taken pursuant to this part.

Subpart H—Procedures**§ 597.801 [Amended]**

■ 3. Section 597.801 is amended by revising the reference “subpart D of part 501” to read “part 501, subpart E.”.

PART 598—FOREIGN NARCOTICS KINGPIN SANCTIONS REGULATIONS**Subpart E—Licenses, Authorizations, and Statements of Licensing Policy**

■ 1. The authority for part 598 continues to read:

Authority: 3 U.S.C. 301; 21 U.S.C. 1901–1908; 31 U.S.C. 321(b); Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note).

§ 598.501 [Amended]

■ 2. Section 598.501 is amended by revising the reference “subpart D” to read “subpart E.”.

Subpart H—Procedures**§ 598.801 [Amended]**

■ 3. Section 598.801 is amended by revising the reference “subpart D” to read “subpart E”.

Dated: August 29, 2003.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: August 29, 2003.

Juan Zarate,

*Deputy Assistant Secretary (Terrorist
Financing and Financial Crimes), Department
of the Treasury.*

[FR Doc. 03-22968 Filed 9-5-03; 4:30 pm]

BILLING CODE 4810-25-P

DEPARTMENT OF THE TREASURY**Office of Foreign Assets Control**

31 CFR Parts 500, 501, 505, 515, 535, 536, 537, 538, 539, 540, 545, 550, 560, 575, 585, 586, 587, 588, 590, 591, 594, 595, 596, 597, and 598

Foreign Assets Control Regulations; Reporting and Procedures Regulations; Cuban Assets Control Regulations; Publication of Revised Civil Penalties Hearing Regulations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to interim final rule.

SUMMARY: The Office of Foreign Assets Control ("OFAC") of the U.S. Department of the Treasury ("Treasury") is proposing to adopt as a final rule the interim final rule published elsewhere in this issue of the **Federal Register** that revises its civil penalties regulations promulgated pursuant to the Trading with the Enemy Act. These revisions consolidate substantive changes to the Foreign Assets Control Regulations, and the Cuban Assets Control Regulations, in a new subpart of the Reporting and Procedures Regulations, renamed Reporting, Procedures, and Penalties Regulations. Conforming changes are made to the other parts of the regulations.

DATES: Written comments may be submitted on or before October 14, 2003.

ADDRESSES: Comments may be submitted by mail, by facsimile, or through OFAC's Web site. Because paper mail in the Washington, DC area may be subject to delay, electronic mail submission is recommended.

Mailing address: Chief of Records, ATTN Request for Comments, Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Facsimile number: (202) 622-1657.

OFAC's Web site: <<http://www.treas.gov/ofac.html>>.

FOR FURTHER INFORMATION CONTACT: Chief of Penalties, tel.: (202) 622-6140, or Chief Counsel, tel.: (202) 622-2410.

SUPPLEMENTARY INFORMATION:**I. The Proposed Rule**

Published elsewhere in this separate part of the **Federal Register** is an interim final rule by which OFAC is revising its civil penalties regulations promulgated pursuant to the Trading with the Enemy Act. These revisions

consolidate substantive changes to the Foreign Assets Control Regulations, 31 CFR part 500, and the Cuban Assets Control Regulations, 31 CFR part 515, in a new subpart of the Reporting and Procedures Regulations, 31 CFR part 501, renamed Reporting, Procedures, and Penalties Regulations. Conforming changes are made to the other parts of 31 CFR chapter V. The preamble to the interim final rule explains these provisions of the proposed rule in detail, and the text of the interim final rule serves as the text for this proposed rule.

II. Procedural Requirements

Because this interim final rule pertains to a foreign affairs function of the United States, it is not subject to Executive Order 12866.

Although we are issuing this notice of proposed rulemaking to obtain public comments on the interim final rule published elsewhere in this separate part of this issue of the **Federal Register**, notice and public procedure are not required for the reasons stated in the preamble to the interim final rule. Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply.

The collections of information in the proposed rule arise during the conduct of administrative actions or investigations by OFAC against specific individuals or entities. Pursuant to 44 U.S.C. 3518(c)(1)(B)(ii), these collections are not subject to the requirements of the Paperwork Reduction Act.

List of Subjects*31 CFR Part 500*

Administrative practice and procedure, Banks, Banking, Cambodia, Currency, Foreign claims, Foreign investments in United States, Foreign trade, Korea, Democratic Peoples Republic of, Penalties, Reporting and recordkeeping requirements, Sanctions, Securities, Vietnam.

31 CFR Part 501

Administrative practice and procedure, Penalties, Reporting and recordkeeping requirements, Sanctions.

31 CFR Part 505

Administrative practice and procedure, Penalties, Foreign trade, Sanctions.

31 CFR Part 515

Administrative practice and procedure, Banks, Banking, Cuba, Currency, Foreign investments in United States, Foreign trade, Penalties, Reporting and recordkeeping

requirements, Sanctions, Securities, Travel restrictions.

31 CFR Part 535

Administrative practice and procedure, Iran, Sanctions.

31 CFR Part 536

Administrative practice and procedure, Narcotics, Sanctions.

31 CFR Part 537

Administrative practice and procedure, Burma, Sanctions.

31 CFR Part 538

Administrative practice and procedure, Sanctions, Sudan.

31 CFR Part 539

Administrative practice and procedure, Sanctions, Weapons of mass destruction.

31 CFR Part 540

Administrative practice and procedure, Highly enriched uranium, Sanctions.

31 CFR Part 545

Administrative practice and procedure, Afghanistan, Sanctions.

31 CFR Part 550

Administrative practice and procedure, Libya, Sanctions.

31 CFR Part 560

Administrative practice and procedure, Iran, Sanctions.

31 CFR Part 575

Administrative practice and procedure, Iraq, Sanctions.

31 CFR Part 585

Administrative practice and procedure, Sanctions, Federal Republic of Yugoslavia.

31 CFR Part 586

Administrative practice and procedure, Sanctions, Federal Republic of Yugoslavia.

31 CFR Part 587

Administrative practice and procedure, Sanctions, Federal Republic of Yugoslavia.

31 CFR Part 588

Administrative practice and procedure, Sanctions, Western Balkans.

31 CFR Part 590

Administrative practice and procedure, Angola, Sanctions.

31 CFR Part 591

Administrative practice and procedure, Diamonds, Sanctions.

31 CFR Part 594

Administrative practice and procedure, Sanctions, Global terrorism.

31 CFR Part 595

Administrative practice and procedure, Sanctions, Terrorism.

31 CFR Part 596

Administrative practice and procedure, Sanctions, Terrorism.

31 CFR Part 597

Administrative practice and procedure, Sanctions, Terrorism.

31 CFR Part 598

Administrative practice and procedure, Narcotics, Sanctions.

Authority and Issuance

For the reasons set forth above, OFAC proposes to adopt as a final rule the interim final rule providing revisions to its civil penalties regulations promulgated pursuant to the Trading with the Enemy Act.

[The text of the proposed amendments is the same as the text of the interim final rule published

elsewhere in this separate part of this issue of the **Federal Register**.]

Dated: August 29, 2003.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: August 29, 2003.

Juan Zarate,

Deputy Assistant Secretary (Terrorist Financing and Financial Crimes), Department of the Treasury.

[FR Doc. 03-22969 Filed 9-5-03; 4:30 pm]

BILLING CODE 4810-25-P

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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 SEPTEMBER 11, 2003**AGRICULTURE DEPARTMENT****Agricultural Marketing Service**

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TREASURY DEPARTMENT

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Economic Growth and Regulatory Paperwork Reduction Act of 1996; implementation:

Regulatory publication and review; comments due by 9-15-03; published 6-16-03 [FR 03-15088]

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 "PLUS" (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. 2738/P.L. 108-77

United States-Chile Free Trade Agreement Implementation Act (Sept. 3, 2003; 117 Stat. 909)

H.R. 2739/P.L. 108-78

United States-Singapore Free Trade Agreement Implementation Act (Sept. 3, 2003; 117 Stat. 948)

S. 1435/P.L. 108-79

Prison Rape Elimination Act of 2003 (Sept. 4, 2003; 117 Stat. 972)

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