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Presidential Determination No. 2003–35 of September 9, 2003**The President****Presidential Determination with Respect to Foreign Governments' Efforts Regarding Trafficking in Persons****Memorandum for the Secretary of State**

Consistent with section 110 of the Trafficking Victims Protection Act of 2000 (Division A of Public Law 106–386) (the “Act”), I hereby:

Make the determination provided in section 110(d)(1)(A)(ii) of the Act, with respect to Burma, Cuba, Liberia, North Korea, and Sudan, not to provide certain funding for those countries’ governments for fiscal year 2004, until such a government complies with the minimum standards or makes significant efforts to bring itself into compliance, as may be determined by the Secretary of State in a report to the Congress pursuant to section 110(b) of the Act;

Make the determination provided in section 110(d)(3) of the Act, concerning the determinations of the Secretary of State with respect to Belize, Bosnia and Herzegovina, the Dominican Republic, Georgia, Greece, Haiti, Kazakhstan, Suriname, Turkey, and Uzbekistan;

Determine, consistent with section 110(d)(4) of the Act, with respect to Liberia, that provision to Liberia of the multilateral assistance described in section 110(d)(1)(B) of the Act would promote the purposes of the Act or is otherwise in the national interest of the United States; and

Determine, consistent with section 110(d)(4) of the Act, with respect to Sudan for all programs, projects, or activities of assistance as may be necessary to implement a peace accord, that provision to Sudan of the multilateral assistance described in section 110(d)(1)(B) of the Act for such programs, projects, or activities would promote the purposes of the Act or is otherwise in the national interest of the United States.

The certification required by section 110(e) of the Act is provided herewith.

You are hereby authorized and directed to submit this determination to the Congress, and to publish it in the **Federal Register**.



THE WHITE HOUSE,
September 9, 2003.

Rules and Regulations

Federal Register

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Monday, September 15, 2003

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 03-018-2]

Asian Longhorned Beetle; Quarantined Areas and Regulated Articles

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the Asian longhorned beetle regulations by adding portions of New York City, NY, and Hudson County, NJ, to the list of quarantined areas and restricting the interstate movement of regulated articles from those areas. The interim rule also updated the list of regulated articles in order to reflect new information concerning host plants. These actions were necessary to prevent the artificial spread of the Asian longhorned beetle to noninfested areas of the United States.

EFFECTIVE DATE: The interim rule became effective on May 13, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. Michael B. Stefan, Director of Emergency Programs, Pest Detection and Management Programs, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737-1236; (301) 734-4387.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective May 13, 2003, and published in the **Federal Register** on May 19, 2003 (68 FR 26983-26985, Docket No. 03-018-1), we amended the Asian longhorned beetle regulations contained in 7 CFR 301.51-1 through 301.51-9 by adding portions of

New York City, NY, and Hudson County, NJ, to the list of quarantined areas in § 301.51-3(c) and restricting the interstate movement of regulated articles from those areas. We also updated the list of regulated articles in § 301.51-2(a) in order to reflect new information concerning host plants gathered through survey experience and research.

Comments on the interim rule were required to be received on or before July 18, 2003. We did not receive any comments. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule.

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

Further, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

List of Subjects in 7 CFR Part 301

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

PART 301—DOMESTIC QUARANTINE NOTICES

■ Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR part 301 and that was published at 68 FR 26983-26985 on May 19, 2003.

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

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

Done in Washington, DC, this 5th day of September, 2003.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03-23354 Filed 9-12-03; 8:45 am]

BILLING CODE 3410-34-D

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 02-003-2]

Importation of Pork-Filled Pasta

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations regarding the importation of pork and pork products from regions affected with swine vesicular disease by establishing procedures for the importation of pork-filled pasta into the United States. The procedures require that the product contain only cooked or dry-cured pork otherwise eligible to enter the United States under the regulations; that the operator of any pork-filled pasta processing facility processing products for export to the United States enter into a cooperative service agreement with the Animal and Plant Health Inspection Service providing for unannounced inspections of the facility which are to be paid for by the facility; that the product not be commingled, directly or indirectly, with products ineligible to enter the United States; and that the product be accompanied by an official veterinary certificate confirming that the product has been prepared in accordance with the regulations. This action provides for the importation of pork-filled pasta under conditions designed to prevent the introduction of swine vesicular disease into the United States.

EFFECTIVE DATE: September 15, 2003.

FOR FURTHER INFORMATION CONTACT: Dr. Masoud Malik, Senior Staff Veterinarian, Technical Trade Services, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 40, Riverdale, MD 20737-1231; (301) 734-3277.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 (referred to below as the regulations) prohibit or restrict the importation of specified animals and animal products into the United States to prevent the introduction into the U.S. livestock population of certain contagious animal

diseases, including swine vesicular disease (SVD). Section 94.12 of the regulations contains requirements for the importation into the United States of pork and pork products from regions where SVD is known to exist. Section 94.17 of the regulations contains requirements for the importation into the United States of dry-cured pork products from regions where SVD, classical swine fever (CSF), foot-and-mouth disease (FMD), rinderpest, and African swine fever exist.

SVD is a highly contagious disease caused by an enterovirus that shows extraordinary resistance to both environmental factors and common disinfectants. SVD rarely results in mortality in infected swine and does not cause severe production losses. Still, the disease can have a major economic impact because eradication is costly and because SVD-free regions often prohibit imports of swine, pork, and pork products from affected regions.

Certain regions in Italy are considered to be affected with SVD and thus are not among those regions designated in § 94.12 as free of the disease. Similarly, certain regions in Italy are not included among the regions designated in §§ 94.9 and 94.10 as free of CSF. Therefore, cooked and dry-cured pork and pork products imported from certain regions in Italy are subject to the requirements in §§ 94.12 and 94.17.

On January 21, 2003, we published in the **Federal Register** (68 FR 2711–2714, Docket No. 02–003–1) a proposal to amend the regulations in § 94.12 by establishing procedures for the importation of pork-filled pasta into the United States from regions affected with SVD. The proposed procedures required that the product contain only cooked or dry-cured pork otherwise eligible to enter the United States under the regulations; that the product not be commingled, directly or indirectly, with products ineligible to enter the United States; and that the product be accompanied by an official veterinary certificate confirming that the product was prepared in accordance with the regulations.

We solicited comments concerning our proposal for 60 days ending March 24, 2003. We received four comments by that date. They were from foreign and domestic producers and representatives of the Government of Italy. All the commenters favored the proposed rule in its broad outlines, but three of the four requested that we modify certain provisions, arguing that the same level of protection against the introduction of SVD into the United States could be achieved in less intrusive ways. The comments are discussed below by topic.

Commenters pointed out that certain of the proposed requirements assumed that the pork-filled pasta would be produced in a facility used both for products eligible for export to the United States and those not eligible for export to the United States. (Such multi-use facilities are referred to as “non-dedicated facilities.”) The commenters specifically cited the requirements pertaining to storage areas for pork for pork-filled pasta products, cleaning and disinfection of machinery, and restricted use of processing lines, which were contained, respectively, in proposed § 94.12(c)(2) through (c)(4). The commenters maintained that the final rule should also provide for products produced in a dedicated facility that would produce only pork-filled pasta products eligible for export to the United States. The commenters suggested that the provisions of proposed paragraphs (c)(2) through (c)(4) would be irrelevant to such a dedicated facility, which should, therefore, be exempted from them.

We agree with the commenters that dedicated processing facilities that are exempt from the requirements in proposed paragraphs (c)(2) through (c)(4) can safely provide pork-filled pasta products for the U.S. market, and are providing for such an exemption in a new § 94.12(c)(7).

The commenters also urged that we modify the requirements contained in proposed § 94.12(c)(2) for the storage of pork intended for use in pork-filled pasta products for export to the United States. This paragraph stated that, at the pasta processing establishment, pork intended to be used for pork-filled pasta products for export to the United States must be stored in a separate room or facility from any meat or meat products not eligible for export to the United States. The commenters contended that an equivalent level of protection could be provided by storing U.S.-import-eligible pork in a dedicated area within existing refrigerated storage cells rather than in fully dedicated cells, provided these areas are separated by at least 1 meter from areas where ineligible meat is stored, marked with signs, and have their borders outlined on the floor. The commenters noted that the Animal and Plant Health Inspection Service (APHIS) has already adopted this approach for use in Italian prosciutto plants that are eligible to export their products to the United States under §§ 94.12 and 94.17.

The commenters also suggested that we modify proposed § 94.12(c)(4), which stated that processing lines working with pork-filled pasta products for export to the United States must process only pasta containing pork

eligible for such exportation and that, when such processing lines are working with pasta products containing pork for export to the United States, other lines may work only on pasta products that do not contain meat. Again citing APHIS’ practices in regard to Italian prosciutto plants, the commenters asserted that the cleaning and disinfection requirements set forth in proposed § 94.12(c)(3) were sufficient to prevent contamination of pork intended for the U.S. market and that requiring dedicated processing lines was unnecessary. The commenters recommended that, instead of requiring dedicated processing lines, the regulations require dedicated processing times, which the commenters said would be a less costly and intrusive but equally effective way to guard against commingling. Specifically, they proposed that a production line be dedicated to producing pork-filled pasta products for export to the United States only for the time necessary to complete a lot destined for the U.S. market, and that, when any line in the facility was processing such a lot, no other processing lines in the same facility be allowed to process products using meat that is not eligible for export to the United States. The commenters stated that these changes would allow the entire facility to be dedicated to producing pork-filled pasta products for export to the United States for the time needed to produce a specified amount of such products and then to be used to make other products.

We are incorporating the changes recommended by the commenters into our final rule. If strictly adhered to, the suggested provisions will prevent the introduction of SVD into the United States via imports of pork-filled pasta products from affected regions, while offering processors greater flexibility in the utilization of their facilities than the corresponding paragraphs in the proposed rule would have. However, to ensure that these changes will not increase the risk of introducing SVD into the United States, we consider it necessary to augment some of the requirements of the proposed rule.

We consider a more rigorous inspection requirement than that prescribed in the proposed rule to be necessary to ensure that processors comply with the regulations. The proposed rule, in § 94.12(c)(6), provided for periodic inspections of processing facilities and their records and operations by APHIS inspectors. In place of that general requirement, this final rule describes the terms of a cooperative service agreement, modeled on similar provisions for certain

imported dry cured pork products in § 94.17, that the pork-filled pasta processing establishment must enter into with APHIS prior to receiving pork for use in pork-filled pasta products intended for export to the United States. In order for APHIS to verify that dedicated processing facilities are, in fact, producing only pork-filled pasta products for export to the United States and that non-dedicated facilities are complying with all applicable provisions of the regulations, both types of facilities will be required to enter into such agreements. Under the terms of the cooperative service agreement, the establishment must state that all such pork will be processed only in accordance with § 94.12 or § 94.17; must allow the unannounced entry into the establishment of APHIS representatives, or other persons authorized by the Administrator, for the purpose of inspecting the facilities, operations, and records of the establishment; and must be current in paying all costs for such inspections, which may occur up to four times per year. The costs to be covered by the processing establishment include those for travel, salary, subsistence, administrative overhead, and other incidental expenses (including an excess baggage provision up to 150 pounds). The operator of the processing establishment must deposit with the Administrator an amount equal to the approximate costs for APHIS to inspect the establishment one time, and as funds from that amount are obligated, bills for costs incurred based on official accounting records will be issued to restore the deposit to its original level. Amounts to restore the deposit to its original level must be paid within 14 days of receipt of such bills. These provisions are contained in a new § 94.12(c)(2) of this final rule.

Because this final rule, unlike the proposed rule, allows pork for pork-filled pasta products intended for export to the United States to be stored in the same room as meat and meat products that are ineligible for export to the United States, we determined that we needed to provide greater protection against the risk that workers handling both types of products could contaminate those eligible for export to the United States. We are, therefore, adding a provision to require that, prior to handling pork used for pork-filled pasta products intended for export to the United States, workers at the processing facility who handle pork or pork products in the facility shower and put on a full set of clean clothes, or wait 24 hours after handling pork or pork products that are not eligible for

importation into the United States. This provision is contained in a new § 94.12(c)(4) of this final rule.

By incorporating these new handling and cooperative service agreement requirements, as well as the modifications proposed by the commenters, this final rule will provide for the safe importation of pork-filled pasta products from SVD-affected regions while allowing processors maximal flexibility in the use of their facilities.

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

Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**.

Executive Order 12866 and Regulatory Flexibility Act

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

This rule amends the regulations in § 94.12 that deal with the importation of pork and pork products from regions affected with SVD by establishing procedures for the safe importation of pork-filled pasta into the United States from SVD-affected regions in Italy and elsewhere. These procedures will allow the importation of this product into the United States while ensuring that the health of the U.S. swine population and the economic viability of the U.S. swine and pork and pork products industries will not be threatened by an incursion of SVD.

These industries play an important role in the U.S. economy. There was a total inventory of 58.698 million swine in the United States as of March 1, 2002.¹ Cash receipts from swine farming in 2001 were about \$12.1 billion.² The industry marketed 26.7 billion pounds of pork in 2001. Additionally, the United States earned a substantial amount of money from exports of swine and swine products. The United States exported 1.075 billion pounds of pork, valued at \$1.283 billion, in 2001. Also 64,912 live swine were exported, which were valued at about \$12 million. The

¹ USDA/NASS, Quarterly Hogs and Pigs, Agricultural Statistics Board, March 2002.

² USDA/ERS, U.S. farm sector cash receipts from sales of agricultural commodities, 1998–2002, February 2002.

United States also imported 717 million pounds of pork in 2001, valued at \$771 million, and imported 5,337,088 live swine, all from Canada, valued at \$349 million. Domestically, other related agricultural and nonagricultural sectors are dependent on the swine and the swine-product industries for their economic activity. These activities provide employment and income to many households. Maintaining the stability of these industries depends in part on continued efforts to prevent any introduction of SVD into the United States.

The Regulatory Flexibility Act requires that agencies specifically consider the economic impact of their rules on small entities. The domestic entities most likely to be affected by allowing importation of pork-filled pasta products from regions in Italy affected with SVD are durum wheat producers and pasta manufacturing companies.

In 1997, 6,887 farms, over 99 percent of which were considered small,³ produced about 5.160 billion pounds of durum wheat.⁴ In 2001, durum wheat production was estimated at about 5.013 billion pounds on 2.789 million harvested acres.⁵ In 2001, the United States exported 3 billion pounds of durum wheat, valued at \$215 million. The major destinations were Italy (39 percent), Tunisia (10 percent), Algeria (9 percent), and Mexico (7 percent).⁶

As a new product, dry, shelf-stable, pork-filled tortellini is expected to have a small market. The economic impact, if any, on durum wheat producers as a result of importation of this product into the United States is also likely to be small. Producers of durum wheat could benefit in the future from any expansion of product range that results from these imports.

There were 141 pasta manufacturing plants in the United States in 2000. Of these, 5 companies accounted for 55 percent of the sales. The total domestic capacity is estimated to be about 3.4 billion pounds of pasta.⁷ Pasta

³ North American Industry Classification System (NAICS) code 111140, Wheat Farming. The Small Business Administration has established guidelines for determining which types of firms are to be considered small under the Regulatory Flexibility Act. A wheat farm is considered small if it has annual receipts of \$750,000 or less.

⁴ USDA/NASS, 1997 Census of Agriculture (for AZ, CA, MN, MT, ND, and SD). These are durum wheat-producing States.

⁵ USDA/NASS, Crop Production 2001 Summary, Agricultural Statistics Board, January 2002.

⁶ Global Trade Information Services, Inc., World Trade Atlas, United States Edition, December 2001.

⁷ Michael Boland and David Barton, "How Dakota Growers Pasta co-op found success in a highly competitive market," July 2001 (<http://>

producers are considered small businesses if they employ 500 workers or fewer.⁸ Most U.S. pasta manufacturers can be considered small.

Compared to total imports of pasta, valued at \$324 million in 2001, imports of stuffed pasta make up a relatively small proportion.⁹ Additionally, tortellini is just one of the many varieties of stuffed pasta. Other varieties include agnolotti, calazoncelli, cappelletti, fazzoletti, ravioli, and tordelli. Each of these has variations, depending on whether the filling ingredients are fish-based, ground meat, vegetables, cheese, mushrooms, or herbs and spices. Although information on the exact amount of each type imported is not available, the share of each is likely to be small.

As a new variant of these products, dry, shelf-stable, pork-filled tortellini is also likely to have a small market. Imports of this product are likely to be too small to have any price effect at the industry level. No direct price competition can be expected when imports are initiated because there are no known domestic producers of pork-filled tortellini. Price competition with other filled pasta products is also considered unlikely because, as a new product with a small market, pork-filled tortellini is unlikely to have a major effect on consumer demand for those other products. Allowing imports of pork-filled tortellini may eventually stimulate new competition by encouraging domestic pasta manufacturers to develop a similar product. Consumers may also benefit from having their choices of pasta products expanded.

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

Executive Order 12988

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

www.rurdev.usda.gov/rbs/pub/jul01/niche.htm. About 80 million bushels of durum wheat were allocated for food use in 2001. Assuming a bushel of wheat yields 42 pounds of pasta, the amount of wheat in food use equals 3,360 million pounds of pasta.

⁸ NAICS code 311823, dry pasta manufacturers.

⁹ Global Trade Information Services, Inc., World Trade Atlas, United States Edition, December 2001.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579-0214.

Government Paperwork Elimination Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. For information pertinent to GPEA compliance related to this rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734-7477.

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

■ Accordingly, we are amending 9 CFR part 94 as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, CLASSICAL SWINE FEVER, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

■ 1. The authority citation for part 94 continues to read as follows:

Authority: 7 U.S.C. 450, 7701-7772, and 8301-8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.4.

■ 2. In § 94.12, a new paragraph (c) is added and the OMB control number citation at the end of the section is revised to read as follows:

§ 94.12 Pork and pork products from regions where swine vesicular disease exists.

* * * * *

(c) *Requirements for pork-filled pasta products from regions affected with swine vesicular disease.* (1) Pork-filled pasta products processed for export to the United States may only be filled with pork or pork products that are otherwise eligible to be exported to the United States and that meet the requirements of paragraph (b)(1)(i), (ii), or (v) of this section or of § 94.17.

(2) The operator of the pork-filled pasta processing facility must have signed a cooperative service agreement with APHIS prior to receipt of the pork intended to be used in pork-filled pasta products, stating that all such pork will be processed only in accordance with § 94.12 or § 94.17. Pursuant to the cooperative service agreement, the establishment must allow the unannounced entry into the establishment of APHIS representatives, or other persons authorized by the Administrator, for the purpose of inspecting the facilities, operations, and records of the establishment. The establishment must be current in paying all costs for such inspections (it is anticipated that such inspections will occur up to four times per year). These costs include travel, salary, subsistence, administrative overhead, and other incidental expenses (including an excess baggage provision up to 150 pounds). In accordance with the terms of the cooperative service agreement, the operator of the processing establishment must deposit with the Administrator an amount equal to the approximate costs for APHIS to inspect the establishment one time, including travel, salary, subsistence, administrative overhead and other incidental expenses (including an excess baggage provision up to 150 pounds), and, as funds from that amount are obligated, bills for costs incurred based on official accounting records will be issued to restore the deposit to its original level. Amounts to restore the deposit to its original level must be paid within 14 days of receipt of such bills.

(3) At the pasta processing establishment, pork intended to be used for pork-filled pasta products for export to the United States must be stored apart from any meat or meat products not eligible for export to the United States, either in a separate storage room or facility or in a separate area of the same storage room. Any storage room area reserved for pork or pork products eligible for export to the United States must be separated by at least 1 meter from any storage room area where meat or meat products ineligible for export to the United States are stored and must be marked by signs and by having its borders outlined on the floor.

(4) Prior to handling pork used for pork-filled pasta products intended for export to the United States, workers at the processing facility who handle pork or pork products in the facility must shower and put on a full set of clean clothes, or wait 24 hours after handling pork or pork products that are not

eligible for importation into the United States.

(5) All equipment and machinery that will come in contact with the pork or other ingredients of pork-filled pasta products intended for export to the United States must be cleaned and disinfected before each use.

(6) Processing lines working with pork-filled pasta products for export to the United States must be totally dedicated to the production of such products for the time needed to complete a given lot. When any processing line in a facility is working with pork-filled pasta products intended for export to the United States, no other processing lines in the same facility may work on products using meat that is not eligible for export to the United States.

(7) Processing facilities that are completely dedicated to producing only pork-filled pasta products for export to the United States and do not receive, handle, or process any animal product not intended for export to the United States are exempt from the requirements of paragraphs (c)(3) through (c)(6) of this section.

(8) During processing, the pork-filled pasta must be steam-heated to a minimum internal temperature of 90 °C, then dried, cooled, and packed to make the product shelf stable without refrigeration.

(9) The processing facility must maintain under lock and key, for a minimum of 2 years, an original record of each lot of pork or pork products used for pork-filled pasta products for export to the United States. Each record must include the following:

- (i) The date that the cooked or dry-cured pork product was received in the processing facility;
- (ii) The number of packages, the number of hams or cooked pork products per package, and the weight of each package;
- (iii) A lot number or other identification marks;
- (iv) The health certificate that accompanied the cooked or dry-cured pork product from the slaughter/processing facility to the meat-filled pasta product processing facility; and
- (v) The date that the pork or pork product used in the pasta started dry curing (if the product used is a dry-cured ham) or the date that the product was cooked (if the product used is a cooked pork product).

(10) The pork-filled pasta must be accompanied by a certificate issued by an official of the National Government of the region in which the pasta product is processed who is authorized to issue the foreign meat inspection certificate required under § 327.4 of this title,

stating that the pork-filled pasta product has been processed in accordance with the requirements of this section.

Upon arrival of the pork-filled pasta in the United States, the certificate must be presented to an inspector at the port of arrival.

(Approved by the Office of Management and Budget under control numbers 0579-0015 and 0579-0214)

Done in Washington, DC, this 8th day of September 2003.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03-23431 Filed 9-12-03; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 121, 125, and 135

[Docket No.: FAA-2003-15682; Amendment Nos. 121-288, 125-42, 135-84]

RIN 2120-AH89

Digital Flight Data Recorder Requirements—Changes to Recording Specifications and Additional Exceptions; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction.

SUMMARY: This document makes corrections to the correction to the final rule published in the **Federal Register** on August 20, 2003 (68 FR 50069). This document makes a minor change to a section number that was changed in the previous correction to the final rule. In the first correction document, we inserted a corrected Parameter 15 into the appendixes for part 121 and part 125 in the final rule. We inadvertently cited § 135.152(j) in the “Seconds per sampling interval” column when we should have cited § 121.344(f).

DATES: This correction is effective August 18, 2003.

FOR FURTHER INFORMATION CONTACT: Gary Davis, Flight Standards Service, Air Transportation Division; telephone (202) 267-8166; facsimile (202) 267-5229; e-mail gary.davis@faa.gov.

Background

In response to a series of recommendations issued by the National Transportation Safety Board (NTSB), the FAA revised and updated parts 121, 125 and 135 of Title 14, Code of Federal Regulations (14 CFR) in 1997 to require that flight data recorders on

U.S. registered airplanes be upgraded to record additional parameters of data (62 FR 38362, July 17, 1997). The exact number of parameters required depends on the age of the airplane; airplanes manufactured after August 19, 2002, must record 88 parameters of flight data.

The final rule published on July 18, 2003 (68 FR 42932) amends the flight data recorder regulations by expanding the recording specifications of certain data parameters for specified airplanes, and by adding aircraft models to the lists of aircraft excepted from the 1997 regulations. In addition, this rule corrects specifications in an operating rule appendix that were inadvertently omitted in previous actions. These changes are necessary to allow the continued operation of certain aircraft that are unable to meet the existing recorder criteria using installed equipment. The changes are also necessary for certain aircraft for which the cost to retrofit under 1997 regulatory changes would be cost prohibitive.

List of Subjects

14 CFR Part 121

Air carriers, Aircraft, Aviation safety, Reporting and recordkeeping requirements, Safety, Transportation.

14 CFR Part 125

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 135

Air taxis, Aircraft, Aviation safety, Reporting and record keeping requirements.

Correction

In the correction to the final rule “Digital Flight Data Recorder Requirements—Changes to Recording Specifications and Additional Exceptions” published in the **Federal Register** on August 20, 2003, FR Doc. No. 03-21329 (68 FR 50069) make the following correction:

1. On page 50069, in the chart for Parameter 15, in the fourth column, correct “0.5 or 0.25 for airplanes operated under § 135.152(j).” to read “0.5 or 0.25 for airplanes operated under § 121.344(f).”

Issued in Washington, DC on September 9, 2003.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

[FR Doc. 03-23505 Filed 9-12-03; 8:45 am]

BILLING CODE 4910-13-P

AGENCY FOR INTERNATIONAL DEVELOPMENT**22 CFR Part 230****Israel Loan Guarantees Issued Under the Emergency Wartime Supplemental Appropriations Act of 2003—Standard Terms and Conditions**

AGENCY: Agency for International Development.

ACTION: Final rule.

SUMMARY: This regulation prescribes the procedures and standard terms and conditions applicable to loan guarantees issued for the benefit of the Government of Israel on behalf of the State of Israel pursuant to the Emergency Wartime Supplemental Appropriations Act of 2003.

EFFECTIVE DATE: September 15, 2003.

FOR FURTHER INFORMATION CONTACT:

Christopher F.D. Ryder, Office of General Counsel, U.S. Agency for International Development, Washington, DC 20523-6601; tel. 202-712-4775, fax 202-216-3055.

SUPPLEMENTARY INFORMATION: Pursuant to the Emergency Wartime Supplemental Appropriations Act of 2003 (Pub. L. 108-11), the United States of America, acting through the U.S. Agency for International Development, may issue loan guarantees applicable to sums borrowed by the Government of Israel on behalf of the State of Israel (the "Borrower") from time to time between the date hereof and September 30, 2006, not exceeding an aggregate total of \$9 billion in principal amount. The loan guarantees shall insure the Borrower's repayment of 100% of principal and interest due under such loans. The full faith and credit of the United States of America is pledged for the full payment and performance of such guarantee obligations.

This rulemaking document is not subject to rulemaking under 5 U.S.C. 553 or to regulatory review under Executive Order 12866 because it involves a foreign affairs function of the United States. The provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) do not apply.

List of Subjects in 22 CFR Part 230

Foreign aid, Foreign relations, Guaranteed loans.

Authority and Issuance

■ Accordingly, a new Part 230 is added to Title 22, Chapter II, of the Code of Federal Regulations, as follows:

PART 230—ISRAEL LOAN GUARANTEES ISSUED UNDER THE EMERGENCY WARTIME SUPPLEMENTAL APPROPRIATIONS ACT OF 2003, PUB. L. 108-11—STANDARD TERMS AND CONDITIONS

Sec.

- 230.01 Purpose.
- 230.02 Definitions.
- 230.03 The Guarantee.
- 230.04 Guarantee eligibility.
- 230.05 Non-impairment of the Guarantee.
- 230.06 Transferability of Guarantee; Note Register.
- 230.07 Fiscal Agent Obligations.
- 230.08 Event of Default; Application for Compensation; Payment.
- 230.09 No Acceleration of Eligible Notes.
- 230.10 Payment to USAID of Excess Amounts Received by a Noteholder.
- 230.11 Subrogation of USAID.
- 230.12 Prosecution of Claims.
- 230.13 Change in Agreements.
- 230.14 Arbitration.
- 230.15 Notice.
- 230.16 Governing Law.

Authority: Emergency Wartime Supplemental Appropriations Act, 2003, Pub. L. 108-11, chapter 5, title I, "Loan Guarantees to Israel."

§ 230.01 Purpose.

The purpose of this regulation is to prescribe the procedures and standard terms and conditions applicable to loan guarantees issued for the benefit of the Government of Israel on behalf of the State of Israel ("Borrower"), pursuant to the Emergency Wartime Supplemental Appropriations Act of 2003, Pub. L. 108-11. The loan guarantees will apply to sums borrowed from time to time between the date hereof and September 30, 2006, not exceeding an aggregate total of nine billion United States Dollars (\$9,000,000,000) in principal amount. The loan guarantees shall insure the Borrower's repayment of 100% of principal and interest due under such loans. The full faith and credit of the United States of America is pledged for the full payment and performance of such guarantee obligations. The loan guarantees will be issued pursuant to a Loan Guarantee Commitment Agreement between the Borrower and the United States Government dated August 18, 2003.

§ 230.02 Definitions.

Wherever used in these standard terms and conditions:

- (a) *USAID* means the United States Agency for International Development or its successor.
- (b) *Eligible Note(s)* means [a] Note[s] meeting the eligibility criteria set out in § 230.04 hereof.
- (c) *Noteholder* means the owner of an Eligible Note who is registered as such

on the Note Register of Eligible Notes required to be maintained by the Fiscal Agent.

(d) *Borrower* means the Government of Israel, on behalf of the State of Israel.

(e) *Defaulted Payment* means, as of any date and in respect of any Eligible Note, any Interest Amount and/or Principal Amount not paid when due.

(f) *Further Guaranteed Payments* means the amount of any loss suffered by a Noteholder by reason of the Borrower's failure to comply on a timely basis with any obligation it may have under an Eligible Note to indemnify and hold harmless a Noteholder from taxes or governmental charges or any expense arising out of taxes or any other governmental charges relating to the Eligible Note in the country of the Borrower.

(g) *Interest Amount* means for any Eligible Note the amount of interest accrued on the Principal Amount of such Eligible Note at the applicable Interest Rate.

(h) *Principal Amount* means the principal amount of any Eligible Notes issued by the Borrower. For purposes of determining the principal amount of any Eligible Notes issued by the Borrower, the principal amount of each Eligible Note shall be:

(1) In the case of any Eligible Note issued having a notional amount, but no principal balance, the original issue price (excluding any transaction costs) thereof; and

(2) In the case of any Eligible Note issued with a principal balance, the stated principal amount thereof.

(i) *Interest Rate* means the interest rate borne by an Eligible Note.

(j) *Loss of Investment respecting any Eligible Note* means an amount in Dollars equal to the total of the:

(1) Defaulted Payment unpaid as of the Date of Application,

(2) Further Guaranteed Payments unpaid as of the Date of Application, and

(3) Interest accrued and unpaid at the Interest Rate(s) specified in the Eligible Note(s) on the Defaulted Payment and Further Guaranteed Payments, in each case from the date of default with respect to such payment to and including the date on which full payment thereof is made to the Noteholder.

(k) *Application for Compensation* means an executed application in the form of Appendix A to this part which a Noteholder, or the Fiscal Agent on behalf of a Noteholder, files with USAID pursuant to § 230.08 of this part.

(l) *Applicant* means a Noteholder who files an Application for Compensation with USAID, either directly or through

the Fiscal Agent acting on behalf of a Noteholder.

(m) *Date of Application* means the date on which an Application for Compensation is actually received by USAID pursuant to § 230.15 of this part.

(n) *Business Day* means any day other than a day on which banks in New York, NY are closed or authorized to be closed or a day which is observed as a federal holiday in Washington, DC, by the United States Government.

(o) *Guarantee* means the guarantee of USAID pursuant to this part 230 and the Emergency Wartime Supplemental Appropriations Act of 2003, Public Law 108-11.

(p) *Guarantee Payment Date* means a Business Day not more than three (3) Business Days after the related Date of Application.

(q) *Person* means any legal person, including any individual, corporation, partnership, joint venture, association, joint stock company, trust, unincorporated organization, or government or any agency or political subdivision thereof.

(r) *Note[s]* means any debt securities issued by the Borrower.

(s) *Fiscal Agency Agreement* means the agreement among USAID, the Borrower and the Fiscal Agent pursuant to which the Fiscal Agent agrees to provide fiscal agency services in respect of the Note[s], a copy of which Fiscal Agency Agreement shall be made available to Noteholders upon request to the Fiscal Agent.

(t) *Fiscal Agent* means the bank or trust company or its duly appointed successor under the Fiscal Agency Agreement which has been appointed by the Borrower with the consent of USAID to perform certain fiscal agency services for specified Eligible Note[s] pursuant to the terms of the Fiscal Agency Agreement.

§ 230.03 The Guarantee.

Subject to these terms and conditions, the United States of America, acting through USAID, guarantees to Noteholders the Borrower's repayment of 100 percent of principal and interest due on Eligible Notes. Under this Guarantee, USAID agrees to pay to any Noteholder compensation in Dollars equal to such Noteholder's Loss of Investment under its Eligible Note; provided, however, that no such payment shall be made to any Noteholder for any such loss arising out of fraud or misrepresentation for which such Noteholder is responsible or of which it had knowledge at the time it became such Noteholder. This Guarantee shall apply to each Eligible Note registered on the Note Register

required to be maintained by the Fiscal Agent.

§ 230.04 Guarantee Eligibility.

(a) Eligible Notes only are guaranteed hereunder. Notes in order to achieve Eligible Note status:

(1) Must be signed on behalf of the Borrower, manually or in facsimile, by a duly authorized representative of the Borrower;

(2) Must contain a certificate of authentication manually executed by a Fiscal Agent whose appointment by the Borrower is consented to by USAID in the Fiscal Agency Agreement; and

(3) Shall be approved and authenticated by USAID by either:

(i) The affixing by USAID on the Notes of a guarantee legend incorporating these Standard Terms and Conditions signed on behalf of USAID by either a manual signature or a facsimile signature of an authorized representative of USAID or

(ii) the delivery by USAID to the Fiscal Agent of a guarantee certificate incorporating these Standard Terms and Conditions signed on behalf of USAID by either a manual signature or a facsimile signature of an authorized representative of USAID.

(b) The authorized USAID representatives for purposes of this regulation whose signature(s) shall be binding on USAID shall include the USAID Chief and Deputy Chief Financial Officer, Assistant Administrator and Deputy, Bureau for Economic Growth, Agriculture and Trade, Director and Deputy Director, Office of Development Credit, and such other individual(s) designated in a certificate executed by an authorized USAID Representative and delivered to the Fiscal Agent. The certificate of authentication of the Fiscal Agent issued pursuant to the Fiscal Agency Agreement shall, when manually executed by the Fiscal Agent, be conclusive evidence binding on USAID that an Eligible Note has been duly executed on behalf of the Borrower and delivered.

§ 230.05 Non-impairment of the Guarantee.

The full faith and credit of the United States of America is pledged to the performance of this Guarantee. The Guarantee shall be unconditional, and shall not be affected or impaired by:

(a) Any defect in the authorization, execution, delivery or enforceability of any agreement or other document executed by a Noteholder, USAID, the Fiscal Agent or the Borrower in connection with the transactions contemplated by this Guarantee or

(b) The suspension or termination of the program pursuant to which USAID is authorized to guarantee the Eligible Notes. This non-impairment of the guarantee provision shall not, however, be operative with respect to any loss arising out of fraud or misrepresentation for which the claiming Noteholder is responsible or of which it had knowledge at the time it became a Noteholder.

§ 230.06 Transferability of Guarantee; Note Register.

A Noteholder may assign, transfer or pledge an Eligible Note to any Person. Any such assignment, transfer or pledge shall be effective on the date that the name of the new Noteholder is entered on the Note Register required to be maintained by the Fiscal Agent pursuant to the Fiscal Agency Agreement. USAID shall be entitled to treat the Persons in whose names the Eligible Notes are registered as the owners thereof for all purposes of this Guarantee and USAID shall not be affected by notice to the contrary.

§ 230.07 Fiscal Agent Obligations.

Failure of the Fiscal Agent to perform any of its obligations pursuant to the Fiscal Agency Agreement shall not impair any Noteholder's rights under this Guarantee, but may be the subject of action for damages against the Fiscal Agent by USAID as a result of such failure or neglect. A Noteholder may appoint the Fiscal Agent to make demand for payment on its behalf under this Guarantee.

§ 230.08 Event of Default; Application for Compensation; Payment.

At any time after an Event of Default, as this term is defined in an Eligible Note, any Noteholder hereunder, or the Fiscal Agent on behalf of a Noteholder hereunder, may file with USAID an Application for Compensation in the form provided in Appendix A to this part. USAID shall pay or cause to be paid to any such Applicant any compensation specified in such Application for Compensation that is due to the Applicant pursuant to the Guarantee as a Loss of Investment not later than three (3) Business Days after the Date of Application. In the event that USAID receives any other notice of an Event of Default, USAID may pay any compensation that is due to any Noteholder pursuant to a Guarantee, whether or not such Noteholder has filed with USAID an Application for Compensation in respect of such amount.

§ 230.09 No Acceleration of Eligible Notes.

Eligible Notes shall not be subject to acceleration, in whole or in part, by USAID, the Noteholder or any other party. USAID shall not have the right to pay any amounts in respect of the Eligible Notes other than in accordance with the original payment terms of such Eligible Notes.

§ 230.10 Payment to USAID of Excess Amounts Received by a Noteholder.

If a Noteholder shall, as a result of USAID paying compensation under this Guarantee, receive an excess payment, it shall refund the excess to USAID.

§ 230.11 Subrogation of USAID.

In the event of payment by USAID to a Noteholder under this Guarantee, USAID shall be subrogated to the extent of such payment to all of the rights of such Noteholder against the Borrower under the related Note.

§ 230.12 Prosecution of Claims.

After payment by USAID to an Applicant hereunder, USAID shall have exclusive power to prosecute all claims related to rights to receive payments under the Eligible Notes to which it is thereby subrogated. If a Noteholder continues to have an interest in the outstanding Eligible Notes, such a Noteholder and USAID shall consult with each other with respect to their respective interests in such Eligible Notes and the manner of and responsibility for prosecuting claims.

§ 230.13 Change in Agreements.

No Noteholder will consent to any change or waiver of any provision of any document contemplated by this Guarantee without the prior written consent of USAID.

§ 230.14 Arbitration.

Any controversy or claim between USAID and any noteholder arising out of this Guarantee shall be settled by arbitration to be held in Washington, DC in accordance with the then prevailing rules of the American Arbitration Association, and judgment on the award rendered by the arbitrators may be entered in any court of competent jurisdiction.

§ 230.15 Notice.

Any communication to USAID pursuant to this Guarantee shall be in writing in the English language, shall refer to the Israel Loan Guarantee Number inscribed on the Eligible Note and shall be complete on the day it shall be actually received by USAID at the Office of Development Credit, Bureau for Economic Growth, Agriculture and Trade, United States Agency for

International Development, Washington, DC 20523-0030. Other addresses may be substituted for the above upon the giving of notice of such substitution to each Noteholder by first class mail at the address set forth in the Note Register.

§ 230.16 Governing Law.

This Guarantee shall be governed by and construed in accordance with the laws of the United States of America governing contracts and commercial transactions of the United States Government.

Appendix A to Part 230—Application for Compensation

United States Agency for International Development

Washington, DC 20523

Ref: Guarantee dated as of ____, 19 __: Gentlemen:

You are hereby advised that payment of \$ ____ (consisting of \$ ____ of principal, \$ ____ of interest and \$ ____ in Further Guaranteed Payments, as defined in § 230.02(f) of the Standard Terms and Conditions of the above-mentioned Guarantee) was due on ____, 20 __, on \$ ____ principal amount of Notes held by the undersigned of the Government of Israel, on behalf of the State of Israel (the "Borrower"). Of such amount \$ ____ was not received on such date and has not been received by the undersigned at the date hereof. In accordance with the terms and provisions of the above-mentioned Guarantee, the undersigned hereby applies, under § 230.08 of said Guarantee, for payment of \$ _____, representing \$ _____, the Principal Amount of the presently outstanding Note(s) of the Borrower held by the undersigned that was due and payable on ____ and that remains unpaid, and \$ _____, the Interest Amount on such Note(s) that was due and payable by the Borrower on ____ and that remains unpaid, and \$ ____ in Further Guaranteed Payments,¹ plus accrued and unpaid interest thereon from the date of default with respect to such payments to and including the date payment in full is made by you pursuant to said Guarantee, at the rate of ____% per annum, being the rate for such interest accrual specified in such Note. Such payment is to be made at [state payment instructions of Noteholder].

All capitalized terms herein that are not otherwise defined shall have the meanings assigned to such terms in the Standard Terms and Conditions of the above-mentioned Guarantee.

[Name of Applicant]

By: _____
 Name:
 Title:
 Dated:

¹ In the event the Application for Compensation relates to Further Guaranteed Payments, such Application must also contain a statement of the nature and circumstances of the related loss.

Dated: September 11, 2003.

Christopher F.D. Ryder,
Acting Assistant General Counsel.

[FR Doc. 03-23570 Filed 9-12-03; 8:45 am]

BILLING CODE 6116-01-P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4022 and 4044

Benefits Payable in Terminated Single-Employer Plans; Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing and Paying Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The Pension Benefit Guaranty Corporation's regulations on Benefits Payable in Terminated Single-Employer Plans and Allocation of Assets in Single-Employer Plans prescribe interest assumptions for valuing and paying benefits under terminating single-employer plans. This final rule amends the regulations to adopt interest assumptions for plans with valuation dates in October 2003. Interest assumptions are also published on the PBGC's Web site (<http://www.pbgc.gov>).

EFFECTIVE DATE: October 1, 2003.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202-326-4024. (TTY/TDD users may call the Federal relay service toll-free at 1-800-877-8339 and ask to be connected to 202-326-4024.)

SUPPLEMENTARY INFORMATION: The PBGC's regulations prescribe actuarial assumptions—including interest assumptions—for valuing and paying plan benefits of terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974. The interest assumptions are intended to reflect current conditions in the financial and annuity markets.

Three sets of interest assumptions are prescribed: (1) A set for the valuation of benefits for allocation purposes under section 4044 (found in appendix B to part 4044), (2) a set for the PBGC to use to determine whether a benefit is payable as a lump sum and to determine lump-sum amounts to be paid by the PBGC (found in appendix B to part 4022), and (3) a set for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates

determined using the PBGC's historical methodology (found in appendix C to part 4022).

Accordingly, this amendment (1) adds to appendix B to part 4044 the interest assumptions for valuing benefits for allocation purposes in plans with valuation dates during October 2003, (2) adds to appendix B to part 4022 the interest assumptions for the PBGC to use for its own lump-sum payments in plans with valuation dates during October 2003, and (3) adds to appendix C to part 4022 the interest assumptions for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology for valuation dates during October 2003.

For valuation of benefits for allocation purposes, the interest assumptions that the PBGC will use (set forth in appendix B to part 4044) will be 4.90 percent for the first 20 years following the valuation date and 5.25 percent thereafter. These interest assumptions are unchanged from those in effect for September 2003.

The interest assumptions that the PBGC will use for its own lump-sum payments (set forth in appendix B to part 4022) will be 3.50 percent for the period during which a benefit is in pay status and 4.00 percent during any years preceding the benefit's placement in pay

status. These interest assumptions are unchanged from those in effect for September 2003.

For private-sector payments, the interest assumptions (set forth in appendix C to part 4022) will be the same as those used by the PBGC for determining and paying lump sums (set forth in appendix B to part 4022).

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation and payment of benefits in plans with valuation dates during October 2003, the PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility

Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects

29 CFR Part 4022

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 4044

Employee benefit plans, Pension insurance, Pensions.

■ In consideration of the foregoing, 29 CFR parts 4022 and 4044 are amended as follows:

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

■ 1. The authority citation for part 4022 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

■ 2. In appendix B to part 4022, Rate Set 120, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix B to Part 4022—Lump Sum Interest Rates for PBGC Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
* * * * *	*	*	*	*	*	*	*	*
120	10-1-03	11-1-03	3.50	4.00	4.00	4.00	7	8

■ 3. In appendix C to part 4022, Rate Set 120, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix C to Part 4022—Lump Sum Interest Rates For Private-Sector Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
* * * * *	*	*	*	*	*	*	*	*
120	10-1-03	11-1-03	3.50	4.00	4.00	4.00	7	8

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

■ 4. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

■ 5. In appendix B to part 4044, a new entry, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix B to Part 4044—Interest Rates Used to Value Benefits

* * * * *

For valuation dates occurring in the month—	The values of i_t are:					
	i_t	for $t=$	i_t	for $t=$	i_t	for $t=$
October 2003	.0490	1–20	.0525	>20	N/A	N/A

Issued in Washington, DC, on this 8th day of September, 2003.

Joseph H. Grant,

Deputy Executive Director and Chief Operating Officer, Pension Benefit Guaranty Corporation.

[FR Doc. 03–23365 Filed 9–12–03; 8:45 am]

BILLING CODE 7708–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1280

RIN 3095–AB17

NARA Facilities; Public Use

AGENCY: National Archives and Records Administration (NARA).

ACTION: Final rule.

SUMMARY: NARA is modifying its regulations for using NARA facilities. Our existing regulations specify conduct rules on NARA property, which is defined as property under the control of the Archivist. We are adding threats as a prohibited behavior because of the risk to persons and property potentially posed by threats, and because of the increased number of email and telephone threats received in NARA facilities. We are also specifying the types of corrective action NARA imposes for prohibited behavior. This final rule specifies the formal procedures that we follow when banning individuals from our facilities and adds appeal procedures for individuals who want to request a reconsideration of the determination. Last, we are applying these changes to NARA property and to NARA-occupied space in facilities that are under the control of other agencies.

EFFECTIVE DATE: October 15, 2003.

FOR FURTHER INFORMATION CONTACT: Kim Richardson at telephone number 301–837–2902.

SUPPLEMENTARY INFORMATION: The proposed rule was published in the April 18, 2003, *Federal Register* (67 FR 19168) for a 60-day comment period. NARA did not receive any comments. This rule is a significant regulatory action for the purposes of Executive Order 12866 and has been reviewed by the Office of Management and Budget. This rule is not a major rule as defined

in 5 U.S.C. Chapter 8, Congressional Review of Agency Rulemaking. As required by the Regulatory Flexibility Act, I certify that this rule will not have a significant impact on a substantial number of small entities. This regulation does not have any federalism implications.

List of Subjects in 36 CFR Part 1280

Federal buildings and facilities.

■ For the reasons set forth in the preamble, NARA amends part 1280 of title 36, Code of Federal Regulations, chapter XII, as follows:

PART 1280—PUBLIC USE OF NARA FACILITIES

■ 1. The authority citation for part 1280 is revised to read as follows:

Authority: 44 U.S.C. 2102 notes, 2104(a), 2112(a)(1)(A)(iii), 2903

■ 2. Amend § 1280.1 by revising paragraphs (b) and (c) and adding paragraph (d) as follows:

§ 1280.1 What is the purpose of this part?

(b) When you are using other NARA facilities, the General Services Administration (GSA) regulations, Conduct on Federal Property, at 41 CFR part 102–74, Subpart C, apply to you. These facilities are the NARA regional records services facilities, the Washington National Records Center in Suitland, MD, the National Personnel Records Center in St. Louis, MO, and the Office of the Federal Register in Washington, DC. The rules in §§ 1280.32(l), 1280.34 (a)(1) and (a)(2), and 1280.36 also apply to you. The rules in Subpart B of this part also apply to you if you wish to film, take photographs, or make videotapes. The rules in Subpart F of this part also apply to you if you wish to use the NARA-assigned conference rooms in those facilities.

(c) If you are using records in a NARA research room in a NARA facility, you must also follow the rules in 36 CFR part 1254. If you violate a rule or regulation in 36 CFR part 1254, you are subject to the types of corrective action set forth in that part, including revocation of research privileges.

(d) If you violate a rule or regulation in this part you are subject to, among

other types of corrective action, removal and banning from the facility.

■ 3. Amend § 1280.32 by adding paragraph (l) to read as follows:

§ 1280.32 What other behavior is not permitted?

* * * * *

(l) Threatening directly (e.g., in-person communications or physical gestures) or indirectly (e.g., via regular mail, electronic mail, or phone) any NARA employee, visitor, volunteer, contractor, other building occupants, or property.

■ 4. Add § 1280.34 and § 1280.36 to subpart A to read as follows:

§ 1280.34 What are the types of corrective action NARA imposes for prohibited behavior?

(a) Individuals who violate the provisions of this part are subject to:

(1) Removal from the premises (removal for up to seven calendar days) and possible law enforcement notification;

(2) Banning from property owned or operated by NARA;

(3) Arrest for trespass; and

(4) Any additional types of corrective action prescribed by law.

(b) The regional administrator of the facility (or the director if so designated) has the authority to have the individual immediately removed and denied further access to the premises for up to seven calendar days. During this removal period, the Assistant Archivist for Administrative Services renders a decision on whether the individual should be banned from specific or all NARA facilities permanently or temporarily (in up to one-year increments). Long-term banning under this part includes automatic revocation of research privileges, notwithstanding the time periods set forth in 36 CFR 1254.20. Research privileges remain revoked until the ban is lifted, at which time an application for new privileges may be submitted.

(c) Upon written notification by the Assistant Archivist for Administrative Services, individuals may be banned from all NARA facilities. All NARA facilities will be notified of the banning of individuals.

§ 1280.36 May I file an appeal if I am banned from NARA facilities?

Yes, within 30 calendar days of receiving such notification, an individual may appeal the decision in writing. In the request, the individual must state the reasons for the appeal and mail it to the Deputy Archivist of the United States for reconsideration (address: National Archives and Records Administration (ND), 8601 Adelphi Road, College Park, MD 20740-6001). The Deputy Archivist has 30 calendar days from receipt of an appeal to make a decision to rescind, modify, or uphold the ban. If the ban is upheld, further requests by the affected individual will not be acted upon if received prior to the expiration of a period of one year from the date of the last request for reconsideration. After one year has passed, a further request for reconsideration will be considered, and the Deputy Archivist will decide, within 30 calendar days of receiving the request, whether the ban remains in place or is rescinded. Notice of the decision will be provided in writing to the affected individual.

■ 5. Revise § 1280.100 to read as follows:**§ 1280.100 What are the rules of conduct at NARA regional records services facilities?**

While at any NARA regional records services facility, you are subject to all of the following:

(a) The GSA regulations, Conduct on Federal Property (41 CFR Part 102-74, Subpart C);

(b) The rules in Subparts B and F of this part;

(c) Section 1280.1(b through d);

(d) Section 1280.32(l);

(e) Section 1280.34 (a)(1) and (a)(2); and

(f) Section 1280.36.

Dated: August 14, 2003.

John W. Carlin,

Archivist of the United States.

[FR Doc. 03-23337 Filed 9-12-03; 8:45 am]

BILLING CODE 7515-01-P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[NC-107-200338(a); FRL-7557-9]

Approval and Promulgation of Implementation Plans; North Carolina: Mecklenburg-Union Transportation Conformity Interagency Memorandum of Agreement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a revision to the North Carolina State Implementation Plan (SIP) that contains the transportation conformity memorandum of agreement with the Mecklenburg-Union Metropolitan Planning Organization and others. The memorandum of agreement establishes procedures for consultation as part of the transportation conformity provisions. This EPA approval action allows direct consultation among agencies at the local level. This final approval action is limited to Transportation Conformity.

DATES: This direct final rule is effective on November 14, 2003, without further notice, unless EPA receives adverse comment by October 15, 2003. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: All comments should be addressed to Kelly Sheckler at the Air Planning Branch, EPA, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. Comments may also be submitted electronically, or through hand delivery/courier. Please follow the detailed instructions described in sections I.B.1.i. through iii. of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Kelly Sheckler, Air Quality Modeling and Transportation Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. The telephone number is (404) 562-9042. Ms. Sheckler can also be reached via electronic mail at sheckler.kelly@epa.gov.

SUPPLEMENTARY INFORMATION: Outlined below are the contents of this document:

- I. General Information
- II. Background
 - A. What is a SIP?
 - B. What is the Federal Approval Process for a SIP?
 - C. What is Transportation Conformity?
 - D. Why Must the State Submit a Transportation Conformity SIP?
 - E. How Does Transportation Conformity Work?
- III. Approval of the State Transportation Conformity Rule
 - A. What Did the State Submit?
 - B. What is EPA Approving Today and Why?
 - C. How Did the State Satisfy the Interagency Consultation Process (40 CFR 93.105)?
- IV. Final Action

V. Statutory and Executive Order Reviews

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

1. The Regional Office has established an official public rulemaking file available for inspection at the Regional Office. EPA has established an official public rulemaking file for this action under NC 107. The official public file consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public rulemaking file does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public rulemaking file is the collection of materials that is available for public viewing at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 9 to 3:30, excluding federal holidays.

2. Copies of the State submittal and EPA's technical support document are also available for public inspection during normal business hours, by appointment at the State Air Agency, North Carolina Department of Environmental and Natural Resources, 2728 Capital Boulevard, Raleigh, North Carolina 27604.

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

For public commentors, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at the EPA Regional Office, as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing

copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection.

B. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number by including the text "Public comment on proposed rulemaking NC 107" in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

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

i. *E-mail.* Comments may be sent by electronic mail (e-mail) to sheckler.kelly@epa.gov, please include the text "Public comment on proposed rulemaking NC 107" in the subject line. EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly without going through [Regulation.gov](http://www.regulations.gov), EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket.

ii. *Regulation.gov.* Your use of [Regulation.gov](http://www.Regulation.gov) is an alternative method

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

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

2. *By Mail.* Send your comments to: Kelly Sheckler, Air Quality Modeling and Transportation, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. Please include the text "Public comment on proposed rulemaking NC 107" in the subject line on the first page of your comment.

3. *By Hand Delivery or Courier.* Deliver your comments to: Kelly Sheckler, Air Quality Modeling and Transportation Section, Air Planning Branch, Air, Pesticides and Toxics Management Division 12th floor, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 9 to 3:30, excluding federal holidays.

C. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically to EPA. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the

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

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

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

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

II. Background

A. What Is a SIP?

The states, under section 110 of the Clean Air Act (herein referred to as the Act), must develop air pollution regulations and control strategies to ensure that state air quality meets the National Ambient Air Quality Standards (NAAQS) established by EPA. The Act, under section 109, established these NAAQS which currently address six criteria pollutants. These pollutants are: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each state must send these regulations and control strategies to EPA for approval and incorporation into the Federally enforceable SIP, which protects air quality and contains emission control plans for NAAQS nonattainment areas. These SIPs can be extensive, containing state regulations

or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

B. What Is the Federal Approval Process for a SIP?

The states must formally adopt the regulations and control strategies consistent with state and Federal laws for incorporating the state regulations into the Federally enforceable SIP. This process generally includes a public notice, public comment period, public hearing, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state will send these provisions to EPA for inclusion in the Federally enforceable SIP. EPA must then determine the appropriate Federal action, provide public notice, and request additional public comment on the action. The possible Federal actions include: Approval, disapproval, conditional approval and limited approval/disapproval. If adverse comments are received, EPA must consider and address the comments before taking final action. EPA incorporates state regulations and supporting information (sent under section 110 of the Act) into the Federally approved SIP through the approval action. EPA maintains records of all such SIP actions in the CFR at Title 40, part 52, entitled "Approval and Promulgation of Implementation Plans." The EPA does not reproduce the text of the Federally approved state regulations in the CFR. They are "incorporated by reference," which means that the specific state regulation is cited in the CFR and is considered a part of the CFR the same as if the text were fully printed in the CFR.

C. What Is Transportation Conformity?

Conformity first appeared as a requirement in the Act's 1977 amendments (Public Law 95-95). Although the Act did not define conformity, it stated that no Federal department could engage in, support in any way or provide financial assistance for, license or permit, or approve any activity which did not conform to a SIP which has been approved or promulgated. The 1990 Amendments to the Act expanded the scope and content of the conformity concept by defining conformity to a SIP. Section 176(c) of the Act defines conformity as conformity to the SIP's purpose of eliminating or reducing the severity and number of violations of the NAAQS and achieving expeditious attainment of such standards. Also, the Act states that

no Federal activity will: (1) Cause or contribute to any new violation of any standard in any area, (2) increase the frequency or severity of any existing violation of any standard in any area, or (3) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area. The requirements of section 176(c) of the Clean Air Act apply to all departments, agencies and instrumentalities of the Federal government. Transportation conformity refers only to the conformity of transportation plans, programs and projects that are funded or approved under title 23 U.S.C. of the Federal Transit Act (49 U.S.C. chapter 53).

D. Why Must the State Submit a Transportation Conformity SIP?

A transportation conformity SIP is a plan which contains criteria and procedures for the Department of Transportation (DOT), Metropolitan Planning Organizations (MPOs), and other state or local agencies to assess the conformity of transportation plans, programs and projects to ensure that they do not cause or contribute to new violations of a NAAQS in the area substantially affected by the project, increase the frequency or severity of existing violations of a standard in such area or delay timely attainment. 40 CFR 51.390, subpart T requires states to submit a SIP that establishes criteria for conformity to EPA. 40 CFR part 93, subpart A, provides the criteria the SIP must meet to satisfy 40 CFR 51.390. EPA was required to issue criteria and procedures for determining conformity of transportation plans, programs, and projects to a SIP by section 176(c) of the Act. The Act also required the procedure to include a requirement that each state submit a revision to its SIP including conformity criteria and procedures.

EPA published the first transportation conformity rule in the November 24, 1993, **Federal Register** (FR), and it was codified at 40 CFR part 51, subpart T and 40 CFR part 93, subpart A. EPA required the states to adopt and submit a transportation conformity SIP revision to the appropriate EPA Regional Office. EPA revised the transportation conformity rule on August 7, 1995 (60 FR 40098), November 14, 1995 (60 FR 57179), and August 15, 1997 (62 FR 43780), and codified the revisions under 40 CFR part 51, subpart T and 40 CFR part 93, subpart A—Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. of the Federal Transit Laws (62 FR 43780).

EPA's action of August 15, 1997, required the states to change their rules and submit a SIP revision to EPA by August 15, 1998. States may choose to develop in place of regulations, a memorandum of agreement (MOA) which establishes the roles and procedures for transportation conformity. The MOA includes the detailed consultation procedures developed for that particular area. The MOA's are enforceable through the signature of all the transportation and air quality agencies, including the Federal Highway Administration, Federal Transit Administration and the Environmental Protection Agency.

E. How Does Transportation Conformity Work?

The Federal or state transportation conformity rule applies to all NAAQS nonattainment and maintenance areas in the state. The Metropolitan Planning Organization (MPO), the State Department of Transportation (DOT) (in absence of a MPO), and U.S. Department of Transportation (USDOT) make conformity determinations. These agencies make conformity determinations on programs and plans such as transportation improvement programs (TIP), transportation plans, and projects. The MPOs calculate the projected emissions that will result from implementation of the transportation plans and programs and compare those calculated emissions to the motor vehicle emissions budget established in the SIP. The calculated emissions must be equal to or smaller than the Federally approved motor vehicle emissions ceiling in order for USDOT to make a positive conformity determination with respect to the SIP.

III. Approval of the State Transportation Conformity Rule

A. What Did the State Submit?

The State of North Carolina chose to address the transportation conformity SIP requirement through the statewide rules for all portions of the conformity rule with the exception of 93.105, which was done through the development of individual nonattainment/maintenance area MOAs. EPA approved the North Carolina transportation conformity rules on December 27, 2002 (67 FR 78983). In addition, the MOA's establishing consultation procedures for six areas was approved in the December 27, 2002, rulemaking that approved the state rules for transportation conformity. The Mecklenburg-Union Metropolitan Planning Organization (MUMPO) Area was not submitted for approval with the other MOA's. On August 1, 2003, the

Director of the North Carolina Department of Environment and Natural Resources (DENR) submitted the MUMPO nonattainment/maintenance area consultation interagency MOA, to EPA as a revision to the SIP.

B. What Is EPA Approving Today and Why?

EPA is approving the MUMPO interagency consultation MOA submitted to the EPA Region office on August 1, 2003 by the Director of the North Carolina DENR. EPA has evaluated this SIP revision and has determined that the State has met the requirements of Federal transportation conformity rule as described in 40 CFR part 51, subpart T and 40 CFR part 93, subpart A. The North Carolina DENR has satisfied the public participation and comprehensive interagency consultation requirement during development and adoption of the MOA at the local level. Therefore, EPA is approving the MOA as a revision to the North Carolina SIP.

C. How Did the State Satisfy the Interagency Consultation Process (40 CFR 93.105)?

EPA's rule requires the states to develop their own processes and procedures for interagency consultation among the Federal, state, and local agencies and resolution of conflicts meeting the criteria in 40 CFR 93.105. The SIP revision must include processes and procedures to be followed by the MPO, state DOT, and USDOT in consulting with the state and local air quality agencies and EPA before making conformity determinations. The transportation conformity SIP revision must also include processes and procedures for the state and local air quality agencies and EPA to coordinate the development of applicable SIPs with MPOs, state DOTs, and USDOT.

The State of North Carolina developed the MUMPO interagency consultation MOA based on the elements contained in 40 CFR 93.105. As a first step, the State worked with the existing transportation planning organization's interagency committee that included representatives from the State and local air quality agencies, State Department of Transportation, MUMPO, Federal Highway Administration-North Carolina, Federal Transit Administration, Transit Authority and EPA. The interagency committee met regularly and drafted the consultation rules considering elements in 40 CFR 93.105 and 23 CFR part 450, and integrated the local procedures and processes into the consultation MOA. The consultation process developed in

this MOA is unique to the Mecklenburg-Union Area. The MOA is enforceable against the parties by their signed consent in the MOA. EPA has determined that the State adequately included all elements of 40 CFR 93.105 and that the MOA meets the EPA SIP requirements.

IV. Final Action

EPA is approving the aforementioned changes to the SIP. The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective November 14, 2003 without further notice unless the Agency receives adverse comments by October 15, 2003.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on November 14, 2003 and no further action will be taken on the proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

V. Statutory and Executive Order Reviews

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 (Pub. L. 104-4).

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

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

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the

agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 14, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 28, 2003.

A. Stanley Meiburg,
Acting Regional Administrator, Region 4.

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

PART 52—[AMENDED]

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

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

Subpart II—North Carolina

■ 2. Section 52.1770(e) is amended by adding a new entry at the end of the table for "Mecklenburg-Union Interagency Transportation Conformity Memorandum of Agreement" to read as follows:

§ 52.1770 Identification of plan.

* * * * *

(e) * * *

EPA APPROVED NORTH CAROLINA NON-REGULATORY PROVISIONS

Provision	State effective date	EPA approval date	Federal Register citation
* * * * * Mecklenburg-Union Interagency Transportation Conformity Memorandum of Agreement.	* * * * * 08/07/03	* * * * * 09/15/03	* * * * * [Insert FR page citation]

[FR Doc. 03-23266 Filed 9-12-03; 8:45 am]
BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IL 200-3a; FRL-7558-3]

Approval and Promulgation of Implementation Plans; Illinois; Revised Motor Vehicle Emissions Inventories and Motor Vehicle Emissions Budgets Using MOBILE6

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a revision dated April 11, 2003, to the Illinois State Implementation Plan (SIP) for the attainment of the 1-hour national ambient air quality standard (NAAQS) for ozone. Specifically, EPA is approving Illinois' revised 2005 and 2007 motor vehicle emission inventories and 2005 and 2007 Motor Vehicle Emissions Budgets (MVEB) recalculated using MOBILE6 for the Chicago severe 1-hour ozone nonattainment area.

DATES: This rule is effective on November 14, 2003, unless EPA receives

relevant adverse written comments by October 15, 2003. If adverse comment is received, EPA will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: You should send written comments to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Comments may also be submitted electronically, or through hand delivery/courier, please follow the detailed instructions described in Part (I)(B) of the Supplementary Information section.

You may inspect copies of the State submittal and EPA's analysis of it at: Regulation Development Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. (Please telephone Patricia Morris at (312) 353-8656 before visiting the Region 5 Office.)

FOR FURTHER INFORMATION CONTACT: Patricia Morris, Environmental Scientist, Regulation Development Section (AR-18J), Air Programs Branch,

Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-8656, *morris.patricia@epa.gov*.

SUPPLEMENTARY INFORMATION:

Throughout this document whenever "we", "our" or "us" are used we mean the EPA.

This Supplementary Information section is organized as follows:

- I. General Information
- II. Background
- III. What is MOBILE6?
- IV. What is the purpose and content of Illinois' submittal?
- V. What are the revised MOBILE6 inventories?
- VI. Are the revised MOBILE6 inventories consistent with Illinois' One-Hour Ozone Attainment Demonstration?
- VII. Are Illinois' Motor Vehicle Emissions Budgets Approvable?
- VIII. EPA Action
- IX. Statutory and Executive Order Reviews

I. General Information

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

1. The Regional Office has established an official public rulemaking file available for inspection at the Regional

Office. EPA has established an official public rulemaking file for this action under Region 5 Air Docket Number IL 200-3. The official public file consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public rulemaking file does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public rulemaking file is the collection of materials that is available for public viewing at the Air Programs Branch, Air and Radiation Division, EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. EPA requests that if at all possible, you contact the contact listed in the For Further Information Contact section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal holidays.

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

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

B. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number by including the text "Public comment on proposed rulemaking Region 5 Air Docket IL 200-3" in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment

period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

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

i. *E-mail.* Comments may be sent by electronic mail (e-mail) to bortzer.jay@epa.gov. Please include the text "Public comment on proposed rulemaking Air Docket number IL 200-3" in the subject line. EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly without going through [regulations.gov](http://www.regulations.gov), EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket.

ii. *Regulations.gov.* Your use of [regulations.gov](http://www.regulations.gov) is an alternative method of submitting electronic comments to EPA. Go directly to [regulations.gov](http://www.regulations.gov) at <http://www.regulations.gov>, then click on the button "TO SEARCH FOR REGULATIONS CLICK HERE", and select Environmental Protection Agency as the Agency name to search on. The list of current EPA actions available for comment will be listed. Please follow the online instructions for submitting comments. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Section 2, directly below. These electronic submissions will be accepted in WordPerfect, Word or ASCII

file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send your comments to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch, (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. Please include the text "Public comment on proposed rulemaking Regional Air Docket IL200-3" in the subject line on the first page of your comment.

3. *By Hand Delivery or Courier.* Deliver your comments to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch, (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, 18th floor, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal holidays.

C. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically to EPA. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2.

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

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

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

1. Explain your views as clearly as possible.

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

II. Background

In November of 1999, EPA issued two memoranda¹ to articulate its policy regarding states that incorporated MOBILE5-based interim Tier 2 standard² benefits into their SIPs and MVEBs. Although these memoranda primarily targeted certain serious and severe ozone nonattainment areas, EPA has implemented this policy in all other areas that have made use of federal Tier 2 benefits in air quality plans from EPA's April 2000 MOBILE5 guidance, "MOBILE5 Information Sheet #8: Tier 2 Benefits Using MOBILE5." All states whose attainment demonstrations or maintenance plans include interim MOBILE5-based estimates of the Tier 2 standards were required to make a commitment to revise and resubmit their MVEBs within either one or two years of the final release of MOBILE6 in order to gain SIP approval.

II. Background

On December 26, 2000, Illinois submitted a revision to the One-Hour Ozone Attainment Demonstration SIP for the Chicago severe ozone area. This SIP revision included, among other things, revised MVEBs using interim MOBILE5-based estimates of the Tier 2 standards and an enforceable commitment to revise the attainment demonstration using the MOBILE6 model, including MVEBs, within two years of the release of the model.

Additional information on EPA's final approval of Illinois' December 26, 2000 submittal is in the November 13, 2001 **Federal Register** (66 FR 56931). EPA officially released the MOBILE6 motor vehicle emissions factor model on January 29, 2002 (67 FR 4254). Thus, the effective date of that **Federal Register** notice constituted the start of the two year time period in which Illinois was required to revise its One-Hour Ozone Attainment Demonstration SIP using the MOBILE6 model. Illinois was required to submit this SIP revision to EPA by January 29, 2004.

III. What Is MOBILE6?

MOBILE is an EPA emissions factor model for estimating pollution from on-road motor vehicles in states outside of California. MOBILE calculates emissions of volatile organic compounds (VOCs), oxides of nitrogen (NO_x) and carbon monoxide (CO) from passenger cars, motorcycles, buses, and light-duty and heavy-duty trucks. The model accounts for the emission impacts of factors such as changes in vehicle emission standards, changes in vehicle populations and activity, and variation in local conditions such as temperature, humidity, fuel quality, and air quality programs.

MOBILE is used to calculate current and future inventories of motor vehicle emissions at the national and local level. These inventories are used to make decisions about air pollution policies and programs at the local, state and national level. Inventories based on MOBILE are also used to meet the federal Clean Air Act's SIP and transportation conformity requirements.

III. What Is MOBILE6?

MOBILE6 is the first major update of the MOBILE model since 1993. The MOBILE model was first developed in 1978. It has been updated many times to reflect changes in the vehicle fleet and fuels, to incorporate EPA's growing understanding of vehicle emissions, and to cover new emissions regulations and modeling needs. Although some minor updates were made in 1996 with the release of MOBILE5b, MOBILE6 is the first major revision to MOBILE since MOBILE5a was released in 1993.

IV. What Is the Purpose and Content of Illinois' Submittal?

To address its enforceable commitment made in the December 26, 2000, Attainment Demonstration SIP revision, the State submitted a requested SIP revision on April 11, 2003, which revises the 2005 and 2007 motor vehicle emissions inventories and the 2005 and 2007 MVEBs using the MOBILE6 model. The April 11, 2003, submittal demonstrates that the new levels of

motor vehicle emissions calculated using MOBILE6 continue to support achievement of the projected attainment of the one-hour ozone NAAQS for the Chicago area.

V. What Are the Revised MOBILE6 Inventories?

Table 1 below summarizes the revised motor vehicle emissions inventories in tons per summer day (tpd). The State developed these revised inventories using the latest planning assumptions, including updated vehicle registration data, vehicle miles traveled (VMT), speeds, fleet mix, and SIP control measures. EPA is approving these revised 2005 and 2007 motor vehicle emissions inventories.

TABLE 1.—CHICAGO'S REVISED MOTOR VEHICLE EMISSIONS INVENTORIES

	2005 VOC	2007	
		VOC	NO _x
Chicago Severe Area	151.11	127.42	280.40

VI. Are the Revised MOBILE6 Inventories Consistent With Illinois' One-Hour Ozone Attainment Demonstration?

Illinois' attainment demonstration used photochemical grid modeling. For one-hour ozone, the daily peak one-hour concentration predicted in every grid cell by the model was compared to the ozone standard concentration of 124 parts per billion (ppb). This is best represented by the deterministic approach described in the 1996 Guidance on Use of Modeled Results to Demonstrate Attainment of the Ozone NAAQS, EPA, June 1996. That guidance also describes a statistical approach which allows a specific number of exceedances of the standard. However, final attainment is still determined in an absolute sense by comparing a predicted concentration with the one-hour standard value of 124 ppb. EPA has articulated its policy regarding the use of MOBILE6 in SIP development in its "Policy Guidance on the Use of MOBILE6 for SIP Development and Transportation Conformity"³ and "Clarification of Policy Guidance for MOBILE6 in Mid-course Review

¹ Memoranda, "Guidance on Motor Vehicle Emissions Budgets in 1-Hour Ozone Attainment Demonstrations," issued November 3, 1999, and "1-Hour Ozone Attainment Demonstrations and Tier 2/ Sulfur Rulemaking," issued November 8, 1999. Copies of these memoranda are on EPA's Web site at <http://www.epa.gov/otaq/transp/traqconf.htm>.

² The final rule on Tier 2 Motor Vehicle Emissions Standards and Gasoline Sulfur Control Requirements ("Tier 2 standards") for passenger cars, light trucks, and larger passenger vehicles was published on February 10, 2000 (65 FR 6698).

³ Memorandum, "Policy Guidance on the Use of MOBILE6 for SIP Development and Transportation Conformity," issued January 18, 2002. A copy of this memorandum can be found on EPA's Web site at <http://www.epa.gov/otaq/transp/traqconf.htm>.

Areas.”⁴ This policy requires that new MOBILE6 MVEBs in areas that demonstrated attainment with absolute modeling meet two conditions. First, the new MOBILE6 based mobile source inventories are compared to the MOBILE5 based inventories for the attainment year. If the MOBILE6 mobile emissions are less than or equal to the MOBILE5 emissions, then the SIP continues to demonstrate attainment. Second, EPA’s policy guidance requires the State to consider whether growth and control strategy assumptions for non-motor vehicle sources (*i.e.*, point, area, and non-road mobile sources) are still accurate at the time the State developed the submittal.

Consistent with this policy guidance, Illinois’ updated MOBILE6 inventories were less than the MOBILE5 attainment demonstration inventories for the Chicago area. It should be noted that Illinois used the latest planning assumptions in development of the updated inventories. Illinois reviewed the growth and control strategy assumptions for non-motor vehicle sources, and concluded that these assumptions continue to be valid and support the one-hour Ozone Attainment Demonstration.

In summary, Illinois’ April 11, 2003, submittal satisfies the conditions outlined in EPA’s MOBILE6 Policy guidance, and demonstrates that the new levels of motor vehicle emissions calculated using MOBILE6 continue to support achievement of the projected attainment of the one-Hour Ozone NAAQS by the attainment date of 2007.

VII. Are Illinois’ Motor Vehicle Emissions Budgets Approvable?

Table 2 below summarizes Illinois’ revised 2005, and 2007 MVEBs contained in the April 11, 2003, submittal. The State developed MVEBs using the latest planning assumptions, including updated vehicle registration data, vehicle miles of travel (VMT), speeds, fleet mix, and SIP control measures. The Illinois submittal met all applicable requirements and EPA is approving these budgets.

TABLE 2.—MOTOR VEHICLE EMISSIONS BUDGETS
[Tons per day]

	2005 VOC	2007	
		VOC	NO _x
Chicago Severe Area	151.11	127.42	280.40

VIII. EPA Action

EPA is approving the Illinois SIP revision submitted on April 11, 2003. This submittal revises Illinois’ 2005, and 2007 motor vehicle emission inventories and 2005, and 2007 MVEBs using MOBILE6 for the Chicago severe 1-hour ozone nonattainment area.

EPA is publishing this action without prior proposal, because EPA views this as a noncontroversial revision and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to approve the SIP revision should adverse written comments be filed. This action will be effective without further notice unless EPA receives relevant adverse written comments by October 15, 2003. Should the Agency receive such comment, we will publish a final rule informing the public that this action will not take effect. Any parties interested in commenting on this action should do so at this time. If we do not receive comments, this action will be effective on November 14, 2003.

IX. Statutory and Executive Order Reviews

Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a “significant regulatory action” and therefore is not subject to review by the Office of Management and Budget.

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

For this reason, this action is also not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001).

Regulatory Flexibility Act

This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant

economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Unfunded Mandates Reform Act

Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

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

Executive Order 13132: Federalism

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

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

This rule also is not subject to Executive Order 13045 “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997), because it is not economically significant.

National Technology Transfer Advancement Act

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

⁴Memorandum, “Clarification of Policy Guidance for MOBILE6 SIPs in Mid-course Review Areas,” issued February 12, 2003. A copy of this memorandum can be found on EPA’s Web site at <http://www.epa.gov/otaq/transp/traqconf.htm>.

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.

Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Congressional Review Act

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 14, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Oxides of nitrogen, Ozone, Transportation conformity, Volatile organic compound.

Dated: August 28, 2003.

William E. Munro,

Acting Regional Administrator, Region 5.

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

PART 52—[AMENDED]

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

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

Subpart O—Illinois

2. Section 52.726 is amended by adding paragraph (ff) to read as follows:

§ 52.726 Control strategy: Ozone.

* * * * *

(ff) Approval—On April 11, 2003, Illinois submitted a revision to the ozone attainment plan for the Chicago severe 1-hour ozone nonattainment area. This plan revised the 2005 and 2007 Motor Vehicle Emissions Budgets (MVEB) recalculated using the emissions factor model MOBILE6. The approved motor vehicle emissions budgets are 151.11 tons per day VOC for 2005 and 127.42 tons per day VOC and 280.4 tons per day NO_x for 2007.

[FR Doc. 03-23268 Filed 9-12-03; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX-164-1-7621; FRL-7558-2]

Approval and Promulgation of Implementation Plans; Texas; Control of Emission of Oxides of Nitrogen From Cement Kilns

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; withdrawal.

SUMMARY: On July 30, 2003, EPA published a direct final rule (68 FR 44631) approving revisions to the Texas State Implementation Plan (SIP) concerning Control of Air Pollution from Nitrogen Compounds, Cement Kilns. The revision was based on a request from the State of Texas submitted to EPA on April 2, 2003. In the proposed rules section of the July 30, 2003, **Federal Register** (68 FR 44714), we stated that written comment must be received by August 29, 2003. On August 28, 2003, we received written adverse comments on our July 30, 2003, rulemaking action. The EPA is withdrawing this final rule due to the adverse comments received on this rulemaking action. In a subsequent final rule, we will summarize and respond to written comments received and take final rulemaking action on this requested Texas SIP revision.

DATES: The direct final rule published at 68 FR 44631 is withdrawn on September 15, 2003.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the following location: Environmental Protection Agency, Region 6, Air Planning Section (6PD-L), 1445 Ross Avenue, Dallas, Texas 75202-2733.

FOR FURTHER INFORMATION CONTACT: Mr. Alan Shar, Air Planning Section (6PD-L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, telephone (214) 665-6691, and *shar.alan@epa.gov*.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Cement kiln, Intergovernmental relations, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: September 5, 2003.

Richard E. Greene,

Regional Administrator, Region 6.

■ Accordingly, under the authority of 42 U.S.C 7401-7671q, the direct final rule published on July 30, 2003 (68 FR 44631), with the effective date of September 29, 2003, is withdrawn.

[FR Doc. 03-23270 Filed 9-12-03; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[WT Docket No. 98-100; FCC 03-203]

Forbearance From Applying Provisions of TOCSIA to CMRS Carriers

AGENCY: Federal Communications Commission.

ACTION: Final rule; clarification.

SUMMARY: In this document we decline, with two limited exceptions, to forbear any further from applying provisions of the Telephone Operator Consumer Services Improvement Act (TOCSIA) to commercial mobile radio services (CMRS) aggregators and operator service providers (OSPs). In this Second Report and Order, we decide to forbear from applying two additional TOCSIA provisions: the requirement that CMRS OSPs regularly publish changes in their operator services, and the requirement that CMRS OSPs and aggregators route emergency calls. We conclude, based on the record in this proceeding, that the remaining TOCSIA provisions and its implementing regulations that apply to CMRS carriers continue to be in the public interest.

DATES: Effective November 14, 2003.

FOR FURTHER INFORMATION CONTACT:

Wilbert E. Nixon, Jr., Policy and Rules Branch, Commercial Wireless Division, Wireless Telecommunications Bureau, at (202) 418-7240.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Second Report and Order, in WT Docket No. 98-100, FCC 03-203, adopted August 7, 2003, and released August 20, 2003. The full text of the Second Report and Order is available for public inspection and copying during regular business hours at the FCC Reference Information Center, 445 12th St., SW., Room CY-A257, Washington, DC 20554. The complete text may be purchased from the Commission's duplicating contractor: Qualex International, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone (202) 863-2893, facsimile (202) 863-2898, or via e-mail at qualexint@aol.com.

Summary of Second Report and Order*I. Background.***A. PCIA Forbearance Order and Notice**

1. In the *PCIA Forbearance Order and Notice*, 13 FCC Rcd 16857 (1998), *recon. denied*, 64 FR 61022 (Nov. 9, 1999), the Commission addressed a forbearance request by the Broadband Personal Communications Services Alliance of the Personal Communications Industry Association (PCIA) and decided, *inter alia*, to forbear from two provisions of TOCSIA for all CMRS OSPs. One of the TOCSIA-related provisions from which the Commission decided to forbear was the "unblocked access" provision, which allows consumers access to the OSP of their choice. The Commission also forbore from requiring CMRS OSPs to file informational tariffs. However, the Commission concluded that the record was insufficient to support forbearance from the other requirements of TOCSIA. Moreover, with respect to TOCSIA's disclosure requirements, the Commission declined to forbear because of the "vital information that disclosure provides to consumers" and "because there is no record evidence that these requirements impose an undue burden * * *". Also in the *PCIA Forbearance Order and Notice*, the Commission affirmed on reconsideration the GTE Declaratory Ruling. Concurrently with the release of the *PCIA Forbearance Order*, the Commission issued the *Notice*, in which the Commission, *inter alia*, sought specific information relevant to determining whether, and in what respects, the Commission should forbear from applying or modifying additional TOCSIA requirements in the CMRS context. Although the *PCIA*

Forbearance Order and the *Notice* are in the same document, we may refer to the *PCIA Forbearance Order* and the *Notice* as if they were separate documents.

II. Discussion

2. The Commission declines, with two limited exceptions, to forbear from applying TOCSIA provisions to CMRS aggregators and OSPs. The Commission generally concludes that TOCSIA and its implementing regulations continue to be in the public interest in that its provisions ensure that transient users of mobile telephones designed for public use enjoy the same benefits they would have if they were using their own private mobile telephones.

3. The Commission forbears, however, from applying two TOCSIA provisions to CMRS aggregators and OSPs where the risks of conflicting mandates compels forbearance and to ensure clarity for public safety. Specifically, the Commission forbears from requiring CMRS OSPs to regularly publish and make available at no cost to inquiring consumers written materials that describe any recent changes in the operator's services and in the choices available to consumers. Also, the Commission forbears from applying emergency call routing provisions of TOCSIA to CMRS aggregators and OSPs.

A. Aggregator Disclosure

4. *Background.* Under Commission rules, CMRS aggregators are required to post the following information on or near the telephone instrument, in plain view of consumers: (a) The name, address, and toll-free telephone number of the OSP presubscribed to the telephone; (b) in the case of a pay telephone, the local coin rate for the pay telephone location; and (c) the name and address of the Commission.

5. *Discussion.* The Commission declines to adopt its tentative conclusion to forbear from requiring aggregators to "post" disclosure information "on or near the telephone instrument," in the CMRS context. The Commission recognizes that, due to the diminutive size of many mobile phones today, the requisite legible disclosure language may not practically fit "on" the mobile phone. The Commission finds that forbearance in this case is unnecessary, however, because it is entirely practicable to post disclosure information "near" the mobile phone. In the mobile phone context, aggregators will be in compliance with TOCSIA if they post the necessary information "near" the mobile phone so that it is received by and can be kept by end-user customers.

B. OSP Oversight of Aggregators

6. *Background.* Responsibility for enforcement of the aggregator disclosure requirements is, in addition to being placed on the aggregator as described above, placed upon the OSP used by the aggregator. Under TOCSIA and our implementing regulations, an OSP is obligated to ensure, by contract or tariff, that each aggregator for which such provider is the presubscribed provider of operator services is in compliance with the aggregator disclosure requirements.

7. *Discussion.* Consistent with its tentative conclusion, the Commission finds that the OSP oversight requirement is a necessary business tool to ensure that aggregators comply with their TOCSIA obligations. In situations where, for example, the CMRS carrier agrees to a contractual arrangement with an aggregator whereby it directly imposes charges upon members of the public, the Commission finds no basis for justifying forbearance from TOCSIA. Although the potential for abuse has been claimed to come from the aggregator because it is the aggregator that may most effectively take advantage of the consumer, in this particular context involving the existence of a contractual arrangement, the CMRS OSP may wield an important business influence over the aggregator. Similar to the wireline context, the Commission cannot forbear under the first prong of section 10 of the Communications Act of 1934 when this rule requiring such a business influence may serve to prevent potential abuses before they occur. In addition, the Commission does not believe this business function to be insignificant to protecting the consumer under the second prong of the section 10 forbearance standard.

8. In the absence of a contract or tariff with an aggregator to provide OSP services or knowledge of the aggregator's activities, the OSP is not responsible for ensuring aggregator compliance. Section 226(b)(1)(D) of the Communications Act of 1934 requires that each provider of operator services shall "ensure, by contract or tariff, that each aggregator for which such provider is a presubscribed provider of operator services is in compliance" with the aggregator service provisions of TOCSIA. This provision presupposes the existence of a sufficient nexus between aggregator and OSP such that a contract or tariff would be the appropriate mechanism on which to base the oversight requirement. To the extent that a CMRS OSP has a contractual relationship with an aggregator of its service, the CMRS OSP

must have a provision in the relevant contract requiring aggregator compliance with TOCSIA and the Commission's related rules. If a CMRS OSP lacks a contractual relationship with an aggregator or has no knowledge of the aggregator, the statutory text does not require such oversight by the CMRS OSP. Accordingly, PCIA's and AT&T Wireless' concerns that it would be impossible for a CMRS provider serving a mobile public phone roamer to enforce compliance by the owner aggregator of the mobile public phone because the CMRS provider will have no contractual or tariff relationship with the aggregator, are moot.

C. OSP Identification and Rate Disclosure

9. *Background.* TOCSIA and Commission regulations also impose a number of requirements upon CMRS OSPs. OSPs must identify themselves, audibly and distinctly, to the consumer at the beginning of each telephone call and before the consumer incurs any charge for the call, a practice referred to as "call branding." OSPs must also permit the consumer to terminate a telephone call at no charge before the call is connected. They must also disclose immediately to the consumer, upon request and at no charge to the consumer, a quotation of their rates or charges for the call, the methods by which such rates or charges will be collected, and the method by which complaints concerning such rates, charges, or collection practices will be resolved. Finally, the Commission recently added a requirement that OSPs must audibly disclose to consumers how to obtain the price of a call before it is connected.

10. *Discussion.* The Commission declines to forbear from applying these TOCSIA provisions against CMRS aggregators and OSPs. In the *Notice*, the Commission asked questions designed to elicit specific information relevant to determining whether and in what respects the Commission could forbear from applying these provisions to CMRS providers. The Commission finds that the record does not justify deviating from the Commission's ruling in the *PCIA Forbearance Order* that these TOCSIA provisions should apply to the actions of CMRS providers.

11. The Commission also finds that the record does not support the contention that requiring CMRS carriers to brand calls would cause customer confusion or impose unacceptably high costs on carriers. PCIA contends that branding can cause customer confusion because CMRS providers cannot always distinguish between calls from mobile

phones designed for public use and other calls. GTE similarly contends that, absent an ability to identify a call as originating from an aggregator, CMRS carriers would have to brand every wireless call in order to comply with TOCSIA requirements. The Commission is not persuaded by these arguments. First, while the OSP branding requirement of TOCSIA applies to calls initiated from aggregator locations that involve automatic or live assistance to the consumer to arrange for billing or call completion, it does not apply to calls that are automatically completed with billing to the telephone from which the call originated, or to calls that are completed through an access code used by the consumer, with billing to an account previously established with the carrier by the consumer. Accordingly, TOCSIA's branding requirement does not apply to the vast majority of wireless calls that consumers make within their home calling areas, which are typically automatically completed and billed to the caller's telephone.

12. Second, the Commission is not persuaded by PCIA's argument that the branding requirement will cause confusion or be unduly burdensome in the roaming context. In most cases, roaming is accomplished through automatic roaming arrangements that provide for automated completion and direct billing of calls. Thus, as in the case of automatically placed and billed calls within the caller's home area, automatic roaming calls are not subject to TOCSIA. On the other hand, the branding requirement does potentially apply to manual roaming calls made from aggregator phones, because such calls are not automatically billed to the originating number but are typically paid for by credit card. PCIA asserts that, in order to comply with this requirement, CMRS OSPs would have to brand all roaming calls that are not billed to the originating number, without knowing whether the caller is using an aggregator phone. The Commission does not believe this to be a significant burden for several reasons. First, because manual roaming calls make up a small percentage of all wireless calls, the number of calls that will actually require branding is quite small. Further, the commenters fail to explain how branding all manual roaming calls would result in significant costs to carriers or customer confusion. Because manual roaming calls require preliminary communication between the OSP and the caller to arrange for credit card billing, CMRS OSPs are likely to identify themselves and explain their billing requirements to

end-user customers in any event, and the Commission believes that such identifications and disclosures can, with minimal modifications, be made to comply with TOCSIA. In any case, the Commission believes that the benefits associated with requiring compliance with TOCSIA when manual roaming calls are made from aggregator phones outweigh the potential costs that commenters have suggested would be associated with ensuring such compliance. Moreover, if carriers seek to avoid unnecessary branding of manual roaming calls from non-aggregator phones, they are free to devise and implement methods to distinguish aggregator from non-aggregator calls.

13. Finally, GTE argues that the rate disclosure requirement is of little use because the rates charged for wireless public phones are typically set by aggregators and that the OSP rates disclosed by the OSP would be only a portion of the overall rate for the call. GTE is mistaken about the rate disclosure requirement. The OSP's obligation is merely to inform the consumer of the rates it bills for and how to obtain the total cost of the call, including any aggregator surcharge. The OSP is not obliged to guess the aggregator's rate if not billed for by the OSP. With this important rate information from the aggregator and the OSP, the consumer can make an informed decision as to whether to place the call.

D. Call Splashing

14. *Background.* TOCSIA and the implementing regulations prohibit OSPs from engaging in "call splashing" or billing for a call that does not reflect the originating location of the call without the consumer's informed consent. In the *Notice*, the Commission sought detailed information on the costs to CMRS OSPs of complying with the call splashing prohibition for calls made through aggregators and, to the extent that CMRS providers cannot distinguish between customers of aggregators and other users, the costs of complying with this prohibition on other calls as well.

15. *Discussion.* The Commission declines to forbear from applying the call splashing provisions of TOCSIA against OSPs. The Commission finds that the record does not justify deviating from the Commission's ruling in the *PCIA Forbearance Order* that these TOCSIA provisions apply to the actions of CMRS providers. In response to the Commission's request for comment, PCIA and AT&T Wireless submitted no cost estimates, and simply argued that because of flat toll pricing, call splashing, even if it occurred, would not

adversely affect charges to consumers and that there is no evidence of complaints that such a practice has been a problem in the CMRS context. The Commission rejects PCIA's and AT&T's contention that flat toll pricing has eliminated all possible adverse effects of call splashing. Even today, there are many wireless calling plans that do not include free long distance service and therefore providers will charge distance sensitive rates in some instances. Moreover, the Commission believes that any costs of CMRS OSPs meeting these requirements are minimal.

E. OSP Publication of Changes in Services

16. *Background.* Pursuant to the relevant provision of TOCSIA, the Commission has required OSPs to regularly publish and make available at no cost to inquiring consumers written materials that describe any recent changes in operator services and in the choices available to consumers in that market.

17. *Discussion.* The Commission forbears from applying the OSP publication provision of TOCSIA against CMRS OSPs. In this instance, the Commission finds that enforcement of these TOCSIA requirements is not necessary to ensure that charges and practices are just and reasonable or to protect consumers. The Commission also finds that forbearance from applying these requirements is in the public interest.

18. As service providers not bound by rate regulation or publication requirements, CMRS carriers are generally not required to publish their rates and contract terms even though many of them do in order to remain competitive. Singling out particular CMRS services—such as CMRS OSPs—for disparate treatment does not serve the public interest. Fluid and rapid price competition has long typified wireless services. This is especially true when the call branding and rate disclosure requirements of TOCSIA ensure that consumers of CMRS OSP services are given the CMRS OSP identification, terms and rate information they need to make an informed decision on whether to place a call on a CMRS aggregator phone. The Commission concludes that these call branding and rate disclosure requirements, which require CMRS OSPs to provide their identity, and rate or charge information, is sufficient to ensure just and reasonable charges and practices from CMRS OSPs. In that regard, the Commission also finds that enforcement of the OSP publication provision is not necessary for the

protection of consumers precisely because of the unique incentives CMRS OSPs have to advertise their services and make information important to consumers available as a matter of sound business practice. In addition, the Commission finds that there are important public interest benefits associated with reducing regulatory compliance costs (*i.e.*, those costs associated with the creation of the required reports, databases, personnel training, mailing, *etc.*), in light of the fact that those cost reductions can be translated into lower prices to consumers. Finally, however, the Commission encourages CMRS OSPs to provide voluntarily to inquiring consumers information that describes recent changes in operator services and in the choices available to consumers in the CMRS OSP market. The Commission notes that CMRS OSPs may make this information available to consumers by, for example, updating information on their websites.

F. Routing of Emergency Calls

19. *Background.* TOCSIA requires that the Commission “establish minimum standards for providers of operator services and aggregators to use in the routing and handling of emergency telephone calls.” Under our rules implementing this provision, OSPs and aggregators are required to ensure immediate connection of emergency telephone calls to the appropriate emergency service of the reported location of the emergency, if known, and if not known, of the originating location of the call.

20. Under the Commission's rules, certain mobile wireless licensees are required to implement basic 911 and enhanced 911 (E911) services. Cellular licensees, broadband Personal Communications Service (PCS) licensees, and certain Specialized Mobile Radio (SMR) licensees, collectively “covered carriers,” are required to meet basic and enhanced 911 service requirements for completing emergency calls, including forwarding all 911 calls without delay and relaying a caller's Automatic Number Identification (ANI) and Automatic Location Information (ALI) to the appropriate Public Safety Answering Point (PSAP).

21. *Discussion.* The Commission forbears from applying the emergency call routing provision of TOCSIA to CMRS aggregators and OSPs because the current E911 regulatory regime, which applies to the vast majority of CMRS OSPs, is clearer and more comprehensive than the TOCSIA requirements to protect consumers. The

E911 rules make more comprehensive emergency service requirements applicable to “covered CMRS” carriers and the Commission sees no reason to also apply the duplicative and potentially confusing and conflicting emergency call routing requirements that are a part of TOCSIA. In applying the forbearance standard, the Commission first finds that enforcement of the emergency call routing provision is not necessary to ensure just and reasonable charges and practices. Due to the potential for conflicting requirements and confusion, the Commission believes its current E911 rules better define a standard for reasonable practices as they relate to call routing. Second, the Commission finds that enforcement of the TOCSIA emergency call routing provision is not necessary for the protection of consumers, because the more stringent E911 requirements will continue to be applicable to “covered CMRS” carriers. Finally, the Commission finds that forbearance from applying TOCSIA's emergency call routing provision is consistent with the public interest because the Commission is eliminating redundant obligations.

G. Other Issues

22. Finally, in the *Notice*, the Commission sought comment on TOCSIA's provision prohibiting OSPs from billing for unanswered telephone calls. *See PCIA Forbearance Order and Notice*, 13 FCC Rcd at 16907–8, ¶ 105. The Commission finds, pursuant to 47 U.S.C. 226(b)(1)(F–G) and 47 U.S.C. 332(c)(8), that the billing for unanswered calls provision of TOCSIA does not apply to CMRS carriers, and this issue is, therefore, moot in the CMRS context.

23. Also, the Commission notes that GTE has requested, as in earlier proceedings, that its Airfone and Railfone services be treated differently than other CMRS providers and that the Commission take action that reflects “the unique character” of its services. The Commission finds no compelling reason to reverse its decision in *PCIA Forbearance Order* where it affirmed the decisions in the GTE Declaratory Ruling, 8 FCCR 6171 (Comm. Carr. Bur. 1993) (*GTE Declaratory Ruling*), in which TOCSIA applies to the actions of certain GTE affiliates. Consequently, the Commission concludes that GTE's Airfone and Railfone services must comply with TOCSIA provisions fully.

24. Omnipoint argues that TOCSIA should not apply to customer notification processes associated with a CMRS calling party pays (CPP) service or, in the alternative, the Commission

should forbear from such regulation of CPP. There is no indication in this record or in the Commission's experience that CPP services are being provided by any CMRS carriers. Further, on April 9, 2001, the Commission terminated the calling party pays proceeding. In its *Termination Order*, 66 FR 22445 (May 4, 2001), the Commission stated that regulations were not necessary to govern calling party pays services and that lower prices and new pricing plans offered many of the same benefits that calling party pays services would. In light of this, the Commission finds no reason to resolve Omnipoint's arguments in this proceeding.

III. Ordering Clause

25. Accordingly, pursuant to sections 4(i), 4(j), 10 and 11 of the Communications Act of 1934, as amended, 47 U.S.C. sections 154(i), 154(j), 160 and 161, this Second Report and Order is adopted.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03-23198 Filed 9-12-03; 8:45 am]

BILLING CODE 6712-01-P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 192

[Docket No. RSPA-02-13208; Amdt. 192-93]

RIN 2137-AD01

Pipeline Safety: Further Regulatory Review; Gas 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 some of its safety standards for gas pipelines. The changes are based on recommendations by the National Association of Pipeline Safety Representatives (NAPSR) and a review of the recommendations by the State Industry Regulatory Review Committee (SIRRC). RSPA/OPS believes the changes will improve the clarity and effectiveness of the present standards.

DATES: This Final Rule takes effect October 15, 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 nonprofit 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 gas pipeline safety standards in 49 CFR part 192 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 "Report on Recommendations for Revision of 49 CFR part 192," dated November 20, 1992. The report recommends changes to 40 different sections in part 192.

By the time NAPSR completed its report, RSPA/OPS had published a notice of proposed rulemaking to change many part 192 standards that we considered unclear or too burdensome (Docket PS-124; 57 FR 39572; Aug. 31, 1992). Because a few of NAPSR's recommendations related to standards we had proposed to change, we published the report for comment in the PS-124 proceeding (58 FR 59431; Nov. 9, 1993). The PS-124 Final Rule (61 FR 28770; June 6, 1996) included four of NAPSR's recommended rule changes, and we scheduled the remaining recommendations for future consideration.

Because industry and State views were so divergent on NAPSR's recommendations, in October 1997, the American Gas Association (AGA), the American Public Gas Association (APGA), and NAPSR formed SIRRC to iron out their differences. In a report titled "Summary Report," dated April 26, 1999, SIRRC agreed on all but eight of NAPSR's recommendations that we had scheduled for future consideration. SIRRC also agreed on a NAPSR resolution concerning definitions of "service line" and "service regulator" that was not among the recommendations in its 1992 report.

Based on our review of NAPSR's recommendations and SIRRC's Summary Report, on November 13, 2002, we published a notice of proposed rulemaking (NPRM) (67 FR 68815). The NPRM invited the public to comment by January 13, 2003, on proposed changes to 21 sections in Part 192. The NPRM also explained why we were not proposing to adopt some of NAPSR's recommendations.

Disposition of Comments

In response to the NPRM, we received written comments from American Gas Association (AGA), Arkansas Public Service Commission (ARPSC), Con Edison (ConEd), Dominion Resources (Dominion), Gas Piping Technology Committee (GPTC), Iowa Utilities Board (Iowa), Metropolitan Utilities District, Michigan Consolidated Gas Company (MichCon), NiSource, Inc. (NiSource), Oleksa and Associates (Oleksa), Peoples Energy (Peoples), Public Service Electric & Gas Company (PSE&G), Southwest Gas Corporation (Southwest), UGI Utilities, Inc. (UGI), and Yankee Gas Services Co. (Yankee). Commenters generally supported the proposed rule changes. However, some commenters opposed particular proposals or suggested alternatives.

This section of the preamble summarizes those latter comments and discusses how RSPA/OPS treated them in developing this Final Rule. This section of the preamble does not address comments that disagree with RSPA's/OPS's decision not to adopt particular NAPSR recommendations or that suggest additional changes to Part 192. If RSPA/OPS has not mentioned a proposed change to Part 192, RSPA/OPS did not receive significant comments on that proposal, and RSPA/OPS are adopting it as final.

Section 192.3, Definitions. RSPA/OPS proposed three changes to § 192.3. First, RSPA/OPS proposed moving the present definition of "customer meter" from within the "service line" definition to a stand-alone position. Next, RSPA/OPS proposed expanding the "service line" definition to include distribution lines that transport gas from a common supply source to adjacent or multiple residential or small commercial customers. Finally, RSPA/OPS proposed a definition of "service regulator" that would distinguish customer regulators from regulating stations.

Oleksa suggested the definition of "customer meter" would be clearer if RSPA/OPS added the words "or master meter operator" after the word "consumer." RSPA/OPS did not consider this comment in finalizing the "customer meter" definition because RSPA/OPS did not propose to change the text of the present definition.

AGA, PSE&G, and Peoples commented that the proposed "service line" and "service regulator" definitions used different terms—"meter manifold" and "meter header or manifold"—to refer to piping assemblies between a single line and a group of meters. AGA and Peoples preferred the latter term

because operators may call these assemblies either meter headers or meter manifolds. RSPA/OPS agrees that a single term is appropriate and, because of this comment, used "meter header or manifold" in the final definition of "service line."

ConEd opposed the proposed definition of "service line" because, like the present definition, it includes interior piping that leads to meters in individual apartments or to meters in basements. Primarily because of the difficulty of checking such piping for leaks, ConEd suggested that RSPA/OPS exclude interior piping from the final definition. This comment, however, addresses an issue the NPRM did not cover. RSPA/OPS proposed to broaden the present service line definition, not limit it to outside piping. Therefore, RSPA/OPS has not considered the comment in developing the final definition.

ARPSC commented that, in its experience, lines serving multiple customers are the lines most frequently damaged by third parties, with most damage occurring at burial depths between four and 18 inches. Consequently, ARPSC suggested the burial depth of service lines supplying gas to multiple customers be at least 24 inches. RSPA/OPS did not adopt this comment because increasing burial depth is not generally recognized as one of the best ways to reduce excavation damage to buried utilities. According to a report RSPA/OPS prepared for Congress, *Common Ground: Study of One-Call Systems and Damage Prevention Best Practices*, the key elements in prevention of excavation damage involve the use of one-call systems, accurate utility mapping, advance notice of excavation, accurate temporary surface marking before excavation, and safe excavation practices.

Regarding the proposed "service line" definition, RSPA/OPS asked how it might define the term "small commercial customers." In response, ARPSC said volume should be limited to 10 percent above the volume used by a normal residential customer. Iowa recommended the definitions that operators include in tariffs established under utility regulations. MichCon proposed meter capacity or type or regulator size or type as possible bases for a definition. Finally, NiSource suggested that volume be limited to no more than twice the volume used by the operator's largest residential customer.

Upon further consideration, RSPA/OPS decided not to define "small commercial customers." As the Iowa comment suggests, distribution

operators commonly use this term to refer to a class of service offered for sale under state or municipal rate regulations. Because different definitions of the term may be in use, a separate part 192 definition could lead to confusion in identifying a pipeline as a service line. So, without a part 192 definition, the term will apply in part 192 as it does in the industry, to those customers each operator defines as "small commercial customers" for tariff purposes.

Section 192.123, Design Limitations for Plastic Pipe. RSPA/OPS proposed to delete the second sentence of § 192.123(b)(2)(i) as obsolete. This sentence allows operators to use plastic pipe manufactured before May 18, 1978, and strength rated at 73 °F at temperatures up to 100 °F. RSPA/OPS also invited operators to tell us whether they still have any stockpiles of this pipe that they plan to use at temperatures above 73 °F. Only one operator responded. NiSource stated that it does not have stockpiles of plastic pipe intended for use at temperatures greater than 73 °F. Since RSPA/OPS received no adverse comment on the proposed rule change, RSPA/OPS adopted it as final.

Section 192.321, Installation of Plastic Pipe; Section 192.361, Service Lines: Installation. Section 192.321(e) requires that in transmission lines and mains, buried plastic pipe that is not encased must have an electrically conductive wire or other means of finding the pipe. Because of reported lightning damage to buried plastic pipe, RSPA/OPS proposed to add the following new requirements to this rule, and to establish similar requirements in § 192.361(g) for plastic service lines:

Tracer wire may not be wrapped around the pipe and contact with the pipe must be minimized. Tracer wire or other metallic elements installed for pipe locating purposes must be resistant to corrosion damage, either by use of coated copper wire or by other means.

Regarding proposed § 192.321(e), AGA, NiSource, Oleksa, Southwest, and Yankee were concerned that government inspectors might interpret "contact with the pipe must be minimized" too stringently. AGA and NiSource thought inspectors might interpret the term to prohibit contact with the pipe. These commenters also speculated inspectors might interpret the term to preclude trenchless installation of plastic pipe. Oleksa was concerned the proposed wording would require separation of wire from pipe even where total separation is not practicable, as in trenchless installations. Yankee wanted the final

rule to state specifically that incidental contact between tracer wire and plastic pipe is all right.

RSPA/OPS thinks these proffered interpretations may be unrealistic because minimized contact implies some contact is permissible. Still, in view of the commenters' concerns, RSPA/OPS has used the following wording in the final rule: "contact with the pipe must be minimized but is not prohibited." RSPA/OPS wants to ensure the rule does not deter the common practice in trenchless installations of randomly taping tracer wire to the pipe to control separation during installation.

AGA, GPTC, Peoples, PSE&G, and Dominion Resources thought proposed § 192.361(g) would require that steel service lines have tracer wire, because the wording was not limited to plastic pipe. To remove this potentiality, RSPA/OPS added the word "nonmetallic" to final § 192.361(g).

City Utilities and Southwest were concerned that trying to reduce the risk of lightning damage by separating tracer wire from pipe could lead to inaccurate pipe location and excavation damage. The purpose of tracer wire, as § 192.321(e) states, is to provide a means of locating buried plastic pipe. Neither present nor proposed § 192.321(e) would permit installation of tracer wire so far away from the pipe that it hampers attempts to accurately find the pipe.

MichCon suggested removing "copper" from "coated copper wire" so the rule would not preclude the installation of other types of corrosion resistant wire. RSPA/OPS did not adopt this comment because the proposed rule would allow operators to use "other means" to provide corrosion resistant wire.

Section 192.353, Customer Meters and Regulators: Location. RSPA/OPS proposed to amend § 192.353(a) to emphasize that operators must protect meters and service regulators from vehicular damage. Under the present rule, protection from vehicular damage falls under the general requirement to protect meters and service regulators from "corrosion and other damage."

AGA, GPTC, Dominion Resources, Oleksa, Peoples, PSE&G, MichCon, and Yankee were concerned the proposed rule would apply to meters or service regulators installed indoors or other places where there is only a remote chance of vehicular damage. As stated below under the "Advisory Committee" heading, the Technical Pipeline Safety Standards Committee had a similar concern about the proposal. The committee recommended RSPA/OPS limit the requirement to outdoor

installations that are clearly vulnerable to minor impact.

RSPA/OPS said in the NPRM that it expected operators would consider the location of meters and regulators in deciding whether to provide protection from vehicular damage. To insure the final rule reflects this allowance, RSPA/OPS is amending § 192.353(a) to require operators to protect outdoor installations from vehicular damage that may be anticipated. If meters or regulators are installed indoors or installed outdoors in places where anticipating damage from vehicles is not reasonable, no protection is required.

Southwest was concerned that emphasizing vehicular damage would lead to disagreements between government and operators over whether protection is adequate. Nevertheless, such disputes can arise under the present rule, because it requires protection from vehicular damage but does not specify the type or degree of protection. In this situation, operators have discretion to provide whatever type and degree of protection is reasonable under the circumstances. The final rule does not change this discretion. It merely highlights the risk of vehicular damage.

Section 192.457, External Corrosion Control: Buried or Submerged Pipelines Installed Before August 1, 1971;

192.465, External Corrosion Control: Monitoring. RSPA/OPS proposed to amend § 192.457 by removing from paragraph (b) the requirement to use electrical surveys in determining areas of active corrosion, and by removing paragraph (c). Under § 192.465(e), RSPA/OPS proposed to establish more detailed criteria for alternatives to electrical surveys, and to allow operators to use alternatives on distribution lines without first finding that electrical surveys are impractical. In addition, RSPA/OPS proposed to add definitions of “active corrosion” (the definition now in § 192.457 (c)), “electrical survey,” and “pipeline environment.”

AGA, Peoples, and GPTC commented that moving the definition of “active corrosion” from § 192.457(c) to § 192.465(e) would make § 192.457(b) harder to understand because the term would remain in § 192.457(b). As a remedy, AGA and Peoples suggested adding to § 192.457(b) a cross-reference to the new location of the definition. Peoples also advised making the relocated definition applicable throughout Subpart I rather than just § 192.465(e). GPTC and PSE&G suggested moving the definition to § 192.451, Scope.

Removing § 192.457(c) should not affect § 192.457(b). Under § 192.457(b), the time allowed for initially determining and cathodically protecting areas of active corrosion expired August 1, 1976. And § 192.465(e) regulates all subsequent determinations and protections of areas of active corrosion. So moving the present definition of “active corrosion” from § 192.457(c) to § 192.465(e) simply places the definition where it is currently used. With such limited usage, making the definition applicable throughout Subpart I is not necessary.

As previously stated, RSPA/OPS proposed moving the definition of “active corrosion” from § 192.457(c) to § 192.465(e). However, RSPA/OPS inadvertently included in proposed § 192.465(e) a similar definition of “active corrosion” found in 49 CFR 195.553, which applies to hazardous liquid pipelines. Final § 192.465(e) includes the definition now in § 192.457(c).

The proposed definition of “electrical survey,” which SIRRC recommended, is the same definition that applies to hazardous liquid pipelines under 49 CFR 195.553. The definition is based on pipe-to-soil electrical readings over a pipeline. AGA and NiSource recommended changing “pipe-to-soil” to “potential gradient” to allow the use of “cell-to-cell” surveys, which, AGA said, are typically used on bare pipe to identify corrosion activity. MichCon was similarly concerned that other types of electrical corrosion surveys may not qualify under the proposed definition.

RSPA/OPS agrees that cell-to-cell potential testing would not meet the proposed definition of “electrical survey.” Nevertheless, proposed § 192.465(e) would not preclude operators from using cell-to-cell testing or any other useful method to find active corrosion areas. To find active corrosion without using an electrical survey, operators could use any means that includes review and analysis of certain maintenance records and the pipeline environment. If augmented by this review and analysis, cell-to-cell testing would qualify for use under proposed § 192.465(e). Therefore, RSPA/OPS did not include the commenters’ suggested change in final § 192.465(e).

Southwest thought the term “closely spaced pipe-to-soil readings” was unclear, and suggested deleting “closely spaced.” However, RSPA/OPS believes the term is consistent with usual industry practices. No other commenter suggested the term would be difficult to apply. In addition, the term is part of the “electrical survey” definition in 49 CFR 195.553, which RSPA/OPS adopted

without any objection from industry commenters.

Iowa commented erroneously that proposed § 192.465(e) ignores SIRRC’s central theme that operators should not have to show that electrical surveys are impractical before using alternative review methods. In fact, proposed § 192.465(e) is faithful to SIRRC’s theme. On distribution lines, the proposed rule would allow alternative methods regardless of the practicality of electrical surveys. Only on transmission lines would operators still have to show that electrical surveys are impractical before using alternative methods.

Section 192.479, Atmospheric Corrosion Control: General. RSPA/OPS proposed to revise § 192.479 to require the same level of protection from atmospheric corrosion on new and existing pipelines. However, in certain circumstances, operators would not have to protect pipelines from light surface oxide or from atmospheric corrosion that would not affect safe operation before the next scheduled inspection. A similar regulation is now in effect for hazardous liquid pipelines (49 CFR 195.581). In addition, RSPA/OPS proposed to amend the atmospheric corrosion monitoring requirements of § 192.481 to comport with a similar hazardous liquid pipeline regulation (49 CFR 195.583).

GPTC and PSE&G thought proposed § 192.479 would be clearer if the only exception from the protection requirement were pipe without active corrosion. This comment is similar to SIRRC’s suggested change to § 192.479. Our primary reason for not adopting SIRRC’s approach was the advantage to industry and government if similar corrosion control regulations governed gas and hazardous liquid pipelines. Another reason was that the proposed exceptions were consistent with SIRRC’s approach, since the excepted pipelines would not have active corrosion. So, in keeping with the similar-regulations goal, RSPA/OPS has included the proposed exceptions in final § 192.479.

MichCon opposed the proposed exceptions, arguing that operators should stop further corrosion from even a light surface oxide. MichCon also suggested that cleaning and coating are more effective than assessing whether corrosion would affect safety before the next inspection. In contrast, RSPA/OPS continues to agree with SIRRC that a light surface oxide is a non-damaging form of corrosion that does not need remedial action. The absence of any other negative comment on the proposed oxide exception bolsters this position. Also, even if cleaning and

coating may be a more effective long-term approach, RSPA/OPS believes operators should have the option of assigning resources to problems that pose a higher near-term risk.

MichCon was concerned that inspecting thermally insulated pipe could destroy the insulation system. It suggested making inspections "wherever practical" and sampling pipe through windows cut into the jacketing. MichCon further suggested that the final rule use the term "electrolyte-to-air interface" instead of "soil-to-air interface" to include other pipeline environments. RSPA/OPS believes MichCon has suggested a reasonable way to meet the proposed requirement to inspect thermally insulated pipe for atmospheric corrosion. The rule is designed to allow operators to choose a satisfactory compliance method. RSPA/OPS left "soil-to-air interface" in the final rule because it is one of several specifically-named environments that justify special attention during inspections.

UGI argued that because customer meter sets found inside buildings are generally in non-corrosive environments, the sets do not need inspection for atmospheric corrosion more often than every 5 years. Present § 192.481 calls for inspection at least every 3 years, and RSPA/OPS did not propose to change this interval. Thus, RSPA/OPS did not consider UGI's comment in developing final § 192.481.

AGA suggested RSPA/OPS postpone final action on the proposed revision of § 192.479 until RSPA/OPS addresses issues concerning meters inside buildings and propose other changes to the corrosion control regulations in Part 192. RSPA/OPS has not postponed final action on proposed § 192.479. It is in the interest of pipeline safety overall for RSPA to have similar atmospheric corrosion regulations for gas and hazardous liquid pipelines. Moreover, RSPA/OPS currently has no plans to further revise the Part 192 corrosion control regulations, for RSPA/OPS has closed the previously scheduled revision project (67 FR 74986; Dec. 9, 2002).

Section 192.517, Records. RSPA/OPS proposed to amend § 192.517 to require that operators keep records of required leak tests for at least 5 years. The leak tests are those that § 192.509 requires on pipelines designed to operate below 100 psig, that § 192.511 requires on service lines, and that § 192.513 requires on plastic pipelines.

AGA, Iowa, and Peoples asked us to defer final action on proposed § 192.517 until after RSPA/OPS acts on other changes to Part 192 that SIRRC

suggested in a petition for rulemaking dated November 26, 2002. RSPA/OPS has not postponed final action, because RSPA/OPS believes government inspectors need the proposed records now to aid enforcement efforts. More than 10 years ago, NAPSR recognized this need in its "Report on Recommendations for Revision of 49 CFR part 192." If RSPA/OPS decides to make additional changes to § 192.517 because of our consideration of SIRRC's petition, RSPA/OPS will include those changes in a future notice of proposed rulemaking.

MichCon and Southwest objected to the proposed rule. It was unclear to MichCon what information operators would have to record, and Southwest mistakenly assumed the information would be the same as § 192.517 requires for strength tests. As RSPA/OPS stated in the NPRM, the purpose of the proposed records is merely to show that required leak tests have been done, not to retain specific information about the tests. The content of the records would be discretionary. A mere notation showing that required tests were carried out would suffice. Section 192.709 requires records of this type for each patrol, survey, inspection, and test done on transmission lines under Subparts L and M of part 192.

Dominion commented that proposed § 192.517 would be very burdensome, pointing to the large number of leak tests done by customers' contractors on customer-owned service lines. It thought that records of these tests would be difficult for operators to obtain. RSPA/OPS thinks Dominion may have mistaken the type of record needed to comply with proposed § 192.517. Proposed § 192.517 would not require operators to obtain copies of records kept by their customers' contractors. No matter who does the testing, its own workers or its customers' contractors, operators would only have to verify that correct leak tests have been done and then record that fact. Under part 192, distribution operators are already responsible for the correct installation and leak testing of customer-owned service lines. Operators who do not install and test customer-owned service lines themselves must still verify that work done by their customers' contractors meets part 192 requirements. So the burden of keeping a record of leak tests done by customers' contractors should be no greater than for leak tests done by operators themselves.

Section 192.553, General Requirements. Section 192.553(d) requires that a new maximum allowable operating pressure (MAOP) may not exceed the maximum that part 192

allows on a new segment of pipeline constructed of the same materials in the same location. Based on a SIRRC recommendation, RSPA/OPS proposed to replace the reference to part 192 with a reference to "§§ 192.619 and 192.621," the sections in part 192 that limit the MAOP of new pipelines.

AGA, Iowa, PSE&G, Peoples, and Southwest asked us to defer final action on the proposed change to § 192.553. They suggested RSPA/OPS wait until after RSPA/OPS acts on SIRRC's suggested change to subpart K, Uprating, included in its November 26, 2002, rulemaking petition. That change would allow operators to increase the MAOP of certain existing low stress pipelines without prior pressure testing.

RSPA/OPS has not postponed final action on proposed § 192.553(d) since the proposal involves only a simple editorial change. However, by taking this action RSPA/OPS is not foreclosing the opportunity for future rulemaking based on SIRRC's suggested change to the uprating requirements. If RSPA/OPS decides to make additional changes to § 192.553(d) because of our consideration of SIRRC's recent petition, RSPA/OPS will include those changes in a future notice of proposed rulemaking.

Section 192.743, Pressure Limiting and Regulating Stations: Testing of Relief Devices. RSPA/OPS proposed to change § 192.743(a) and (b) to allow operators to use calculations to decide if the capacity of relief devices is adequate without first having to conclude that testing the devices is not feasible. RSPA/OPS also proposed editorial changes to § 192.743(c), which requires installation of new or additional devices if the relief capacity of existing devices is inadequate.

Iowa said RSPA/OPS should change § 192.743(c) to allow operators the option of modifying existing devices or associated facilities to provide the required relief capacity. Although this comment concerns an issue RSPA/OPS did not address in the NPRM, RSPA/OPS did not interpret § 192.743(c) to require the installation of unnecessary relief devices. If operators provide adequate relief capacity by modifying existing relief devices or associated facilities, new or additional devices are not necessary.

Section 192.745, Valve Maintenance: Transmission Lines. Section 192.745 requires annual inspection of transmission line valves that operators might need during an emergency. RSPA/OPS proposed to amend this section to require that operators take prompt remedial action to correct any valve found inoperable. Although

NAPSR had recommended "immediate" remedial action, RSPA/OPS proposed prompt action to allow operators some latitude in scheduling maintenance.

AGA, Gulf South, and Southwest were concerned that disagreements would arise between government inspectors and operators over the meaning of "prompt." In this regard, City Utilities suggested RSPA/OPS define "prompt remedial action" as not to exceed 6 months. In addition, AGA, GPTC, Gulf South, Peoples, PSE&G, and Yankee suggested that instead of promptly repairing an inoperable valve, operators should have latitude to designate another valve as an emergency valve if the other valve accomplishes the same function as the inoperable valve.

Occasional disagreements over whether remedial action is done promptly may be unavoidable. However, operators can reduce opportunities for disagreements if they assign priority to inoperable emergency valves in their repair schedules. Operators can also look to their experience in promptly correcting corrosion control deficiencies under § 192.465(d). RSPA/OPS decided not to establish a time limit for "prompt remedial action" because it could promote unnecessary delay and erode the latitude operators need in scheduling repairs.

Section 192.605(b)(1) requires operators to have procedures for carrying out the valve maintenance requirements of § 192.745. In their procedures, operators identify which valves they must inspect annually because they may need them during an anticipated emergency. If different valves are available for the same function, they only have to identify and inspect one of them to meet § 192.745. So the present rule allows operators latitude to designate an equivalent alternative valve rather than repair an inoperable valve. The proposed rule would not affect this latitude. It would only affect the time to correct an inoperable valve if the operator does not designate an alternative valve. Nevertheless, to assure no one misunderstands the alternative-valve option, RSPA/OPS has included it in final § 192.745. A similar option is in proposed § 192.747 concerning the maintenance of distribution valves.

Section 192.747 Valve Maintenance: Distribution Systems. Section 192.747 requires annual inspection and servicing of each valve that operators may need for safe operation of a distribution system. RSPA/OPS proposed to amend this section to require prompt remedial action to

correct any valve found inoperable, unless the operator designates an alternative valve.

AGA and Southwest were concerned that disagreements would arise between government inspectors and operators over the meaning of prompt. City Utilities suggested RSPA/OPS define "prompt remedial action" as not to exceed 6 months. As RSPA/OPS stated previously regarding similar comments on proposed § 192.745, some disagreement may be inevitable, but operators can reduce the chance of disagreement by prioritizing the repair of inoperable valves. They can also consider their compliance practices in promptly correcting corrosion control deficiencies. As with final § 192.745, RSPA/OPS decided not to set a time limit on "prompt remedial action" because it could promote unnecessary delay and erode the latitude operators need in scheduling repairs.

Iowa suggested RSPA/OPS also require prompt remedial action for inaccessible valves. RSPA/OPS addressed the issue of inaccessible safety valves in the NPRM. RSPA/OPS reasoned that if a designated safety valve becomes inaccessible, usually because of paving, the operator should discover the problem no later than the next inspection. Then the operator would have to either correct the problem to enable inspection within the permitted interval or designate an alternative safety valve. Given these circumstances, RSPA/OPS did not propose an additional regulation to insure that operators promptly correct inaccessible safety valves.

Advisory Committee

The Technical Pipeline Safety Standards Committee considered the NPRM and the associated evaluation of costs and benefits at a meeting in Washington, DC on March 27, 2003. This committee is a statutory, advisory committee that advises us on proposed safety standards and other policies for gas pipelines. It has an authorized membership of 15 persons, five each representing government, industry, and the public. Each member has qualifications to consider the technical feasibility, reasonableness, cost-effectiveness, and practicability of proposed pipeline safety standards. A transcript of the meeting is available in Docket No. RSPA-98-4470.

In discussing the NPRM, the committee focused on the proposed change to § 192.353, which emphasizes that operators must protect meters and regulators from vehicular damage. One member was concerned the proposed rule would apply to installations where

vehicular damage is unlikely to occur, such as inside buildings or far away from traffic. This member wanted to limit the proposed rule to installations where the potential for vehicular damage is significant. All but one committee member agreed, and the committee suggested changing the proposal to read as follows:

Each meter and service regulator installed inside a building must be installed in a readily accessible location and be protected from corrosion and other damage. Meters installed outside of buildings must also be protected from vehicular damage where they are clearly vulnerable to minor impact.

Subsequently, by unanimous vote, the committee found all the proposed rules and the associated Draft Regulatory Evaluation to be technically feasible, reasonable, cost-effective, and practicable if proposed § 192.353 were changed as the committee suggested. RSPA/OPS considered the committee's advice as set forth above under the heading "Section 192.353, Customer Meters and Regulators: Location."

Regulatory Analyses and Notices

Executive Order 12866 and DOT Policies and Procedures. RSPA does not consider this Final Rule 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 also does not consider this Final Rule to be significant under DOT regulatory policies and procedures (44 FR 11034; February 26, 1979).

RSPA/OPS prepared a Regulatory Evaluation of the Final Rule, and a copy is in the docket. This regulatory evaluation concludes that because of compliance options, the changes to existing rules may actually reduce operators' costs to comply with those rules.

Regulatory Flexibility Act. This Final Rule is consistent with customary practices in the gas pipeline industry. Therefore, based on the facts available about the anticipated impacts of the Final Rule, I certify, pursuant to Section 605 of the Regulatory Flexibility Act (5 U.S.C. 605), that this rulemaking would not have a significant impact on a substantial number of small entities.

Executive Order 13175. RSPA/OPS has analyzed this Final Rule according to the principles and criteria contained in Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments." Because the Final Rule 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 13175 do not apply.

Paperwork Reduction Act. Final §§ 192.517(b) and 192.605(b)(11) contain minor additional information collection requirements. Section 192.517(b) requires operators to maintain records of certain leak tests for 5 years, and § 192.605(b)(11) requires operators to have procedures for responding promptly to a report of a gas odor inside or near a building. However, RSPA/OPS believes most operators already maintain records of leak tests and have procedures for responding to reports of gas odors inside or near buildings. Also, RSPA/OPS believes the burden of retaining these records is minimal because they largely computerize them. Maintaining these records on a computer disk represents very minimal costs. So, because the additional paperwork burdens of this proposed 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.

RSPA/OPS did not receive any comments on the burden of proposed § 192.605(b)(11). Comments on the burden of proposed 192.517(b) are discussed above under the heading "Section 192.517, Records."

Unfunded Mandates Reform Act of 1995. This Final Rule will not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It would 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 would be the least burdensome alternative that achieves the objective of the rule.

National Environmental Policy Act. RSPA/OPS has analyzed this 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 Final Rule will not significantly affect the quality of the human environment. None of the commenters disputed this conclusion.

Executive Order 13132. RSPA/OPS has analyzed this Final Rule according to the principles and criteria contained in Executive Order 13132 ("Federalism"). The Final 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 192

Natural gas, Pipeline safety, Reporting and recordkeeping requirements.

■ For the reasons discussed in this preamble, RSPA amends 49 CFR Part 192 as follows:

PART 192—TRANSPORTATION OF NATURAL AND OTHER GAS BY PIPELINE: MINIMUM FEDERAL SAFETY STANDARDS

■ 1. The authority citation for part 192 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60110, 60113, and 60118; and 49 CFR 1.53.

■ 2. Amend § 192.3 by adding in alphabetical order definitions of "customer meter" and "service regulator" and by revising the definition of "service line" as follows:

§ 192.3 Definitions.

* * * * *

Customer meter means the meter that measures the transfer of gas from an operator to a consumer.

* * * * *

Service line means a distribution line that transports gas from a common source of supply to an individual customer, to two adjacent or adjoining residential or small commercial customers, or to multiple residential or small commercial customers served through a meter header or manifold. A service line ends at the outlet of the customer meter or at the connection to a customer's piping, whichever is further downstream, or at the connection to customer piping if there is no meter.

Service regulator means the device on a service line that controls the pressure of gas delivered from a higher pressure to the pressure provided to the customer. A service regulator may serve one customer or multiple customers through a meter header or manifold.

* * * * *

§ 192.123 [Amended]

■ 3. Remove the second sentence in § 192.123(b)(2)(i).

§ 192.197 [Amended]

■ 4. In § 192.197(a), remove the term "under 60 p.s.i. (414 kPa) gage" and add the term "60 psi (414 kPa) gage, or less," in its place.

§ 192.285 [Amended]

■ 5. In § 192.285(d), remove the term "his" and add the term "the operator's" in its place.

■ 6. Revise § 192.311 to read as follows:

§ 192.311 Repair of plastic pipe.

Each imperfection or damage that would impair the serviceability of plastic pipe must be repaired or removed.

■ 7. Revise § 192.321(e) to read as follows:

§ 192.321 Installation of plastic pipe.

* * * * *

(e) Plastic pipe that is not encased must have an electrically conducting wire or other means of locating the pipe while it is underground. Tracer wire may not be wrapped around the pipe and contact with the pipe must be minimized but is not prohibited. Tracer wire or other metallic elements installed for pipe locating purposes must be resistant to corrosion damage, either by use of coated copper wire or by other means.

* * * * *

■ 8. Revise the first sentence of § 192.353(a) to read as follows:

§ 192.353 Customer meters and regulators: Location.

(a) Each meter and service regulator, whether inside or outside a building, must be installed in a readily accessible location and be protected from corrosion and other damage, including, if installed outside a building, vehicular damage that may be anticipated. * * *

* * * * *

■ 9. Add § 192.361(g) to read as follows:

§ 192.361 Service lines: Installation.

* * * * *

(g) *Locating underground service lines.* Each underground nonmetallic service line that is not encased must have a means of locating the pipe that complies with § 192.321(e).

§ 192.457 [Amended]

■ 10. Amend § 192.457 as follows:

■ a. In paragraph (b)(3), remove the second sentence; and

■ b. Remove paragraph (c).

■ 11. Revise § 192.465(e) to read as follows:

§ 192.465 External corrosion control: Monitoring.

* * * * *

(e) After the initial evaluation required by §§ 192.455(b) and (c) and 192.457(b), each operator must, not less than every 3 years at intervals not exceeding 39 months, reevaluate its

unprotected pipelines and cathodically protect them in accordance with this subpart in areas in which active corrosion is found. The operator must determine the areas of active corrosion by electrical survey. However, on distribution lines and where an electrical survey is impractical on transmission lines, areas of active corrosion may be determined by other means that include review and analysis of leak repair and inspection records, corrosion monitoring records, exposed pipe inspection records, and the pipeline environment. In this section:

(1) *Active corrosion* means continuing corrosion which, unless controlled, could result in a condition that is detrimental to public safety.

(2) *Electrical survey* means a series of closely spaced pipe-to-soil readings over a pipeline that are subsequently analyzed to identify locations where a corrosive current is leaving the pipeline.

(3) *Pipeline environment* includes soil resistivity (high or low), soil moisture (wet or dry), soil contaminants that may promote corrosive activity, and other known conditions that could affect the probability of active corrosion.

■ 12. Revise § 192.479 to read as follows:

§ 192.479 Atmospheric corrosion control: General.

(a) Each operator must clean and coat each pipeline or portion of pipeline that is exposed to the atmosphere, except pipelines under paragraph (c) of this section.

(b) Coating material must be suitable for the prevention of atmospheric corrosion.

(c) Except portions of pipelines in offshore splash zones or soil-to-air interfaces, the operator need not protect from atmospheric corrosion any pipeline for which the operator demonstrates by test, investigation, or experience appropriate to the environment of the pipeline that corrosion will—

- (1) Only be a light surface oxide; or
- (2) Not affect the safe operation of the pipeline before the next scheduled inspection.

■ 13. Revise § 192.481 to read as follows:

§ 192.481 Atmospheric corrosion control: Monitoring.

(a) Each operator must inspect each pipeline or portion of pipeline that is exposed to the atmosphere for evidence of atmospheric corrosion, as follows:

If the pipeline is located:	Then the frequency of inspection is:
Onshore	At least once every 3 calendar years, but with intervals not exceeding 39 months
Offshore	At least once each calendar year, but with intervals not exceeding 15 months

(b) During inspections the operator must give particular attention to pipe at soil-to-air interfaces, under thermal insulation, under disbanded coatings, at pipe supports, in splash zones, at deck penetrations, and in spans over water.

(c) If atmospheric corrosion is found during an inspection, the operator must provide protection against the corrosion as required by § 192.479.

■ 14. Amend § 192.517 as follows:

- a. Redesignate the introductory text as paragraph (a);
- b. Redesignate existing paragraphs (a), (b), (c), (d), (e), (f), and (g) as (a)(1), (2), (3), (4), (5), (6), and (7), respectively; and
- c. Add a new paragraph (b) to read as follows:

§ 192.517 Records.

* * * * *

(b) Each operator must maintain a record of each test required by §§ 192.509, 192.511, and 192.513 for at least 5 years.

§ 192.553 [Amended]

■ 15. In the first sentence in § 192.553(d), remove the term “this part” and add the term “§§ 192.619 and 192.621” in its place.

■ 16. Add § 192.605(b)(11) to read as follows:

§ 192.605 Procedural manual for operations, maintenance, and emergencies.

* * * * *

(b) * * *

(11) Responding promptly to a report of a gas odor inside or near a building, unless the operator’s emergency procedures under § 192.615(a)(3) specifically apply to these reports.

* * * * *

■ 17. Revise the first sentence of § 192.625(f) introductory text to read as follows:

§ 192.625 Odorization of gas.

* * * * *

(f) To assure the proper concentration of odorant in accordance with this section, each operator must conduct periodic sampling of combustible gases using an instrument capable of determining the percentage of gas in air at which the odor becomes readily detectable.* * *

* * * * *

■ 18. Revise § 192.739(c) to read as follows:

§ 192.739 Pressure limiting and regulating stations: Inspection and testing.

* * * * *

(c) Set to control or relieve at the correct pressures consistent with the pressure limits of § 192.201(a); and

* * * * *

■ 19. Revise § 192.743 to read as follows:

§ 192.743 Pressure limiting and regulating stations: Capacity of relief devices.

(a) Pressure relief devices at pressure limiting stations and pressure regulating stations must have sufficient capacity to protect the facilities to which they are connected consistent with the pressure limits of § 192.201(a). This capacity must be determined at intervals not exceeding 15 months, but at least once each calendar year, by testing the devices in place or by review and calculations.

(b) If review and calculations are used to determine if a device has sufficient capacity, the calculated capacity must be compared with the rated or experimentally determined relieving capacity of the device for the conditions under which it operates. After the initial calculations, subsequent calculations need not be made if the annual review documents that parameters have not changed to cause the rated or experimentally determined relieving capacity to be insufficient.

(c) If a relief device is of insufficient capacity, a new or additional device must be installed to provide the capacity required by paragraph (a) of this section.

■ 20. Amend § 192.745 as follows:

■ a. Designate the existing text as paragraph (a); and

■ b. Add paragraph (b) to read as follows:

§ 192.745 Valve maintenance: Transmission lines.

* * * * *

(b) Each operator must take prompt remedial action to correct any valve found inoperable, unless the operator designates an alternative valve.

■ 21. Amend § 192.747 as follows:

■ a. Designate the existing text as paragraph (a); and

■ b. Add paragraph (b) to read as follows:

§ 192.747 Valve maintenance: Distribution systems.

* * * * *

(b) Each operator must take prompt remedial action to correct any valve found inoperable, unless the operator designates an alternative valve.

■ 22. In § 192.753, revise the introductory text of paragraph (a) and revise paragraph (b) to read as follows:

§ 192.753 Caulked bell and spigot joints.

(a) Each cast iron caulked bell and spigot joint that is subject to pressures of more than 25 psi (172kPa) gage must be sealed with:

* * * * *

(b) Each cast iron caulked bell and spigot joint that is subject to pressures of 25 psi (172kPa) gage or less and is exposed for any reason must be sealed by a means other than caulking.

Issued in Washington, DC, on September 3, 2003.

Samuel G. Bonasso,

Acting Administrator.

[FR Doc. 03-23179 Filed 9-12-03; 8:45 am]

BILLING CODE 4910-60-P

Proposed Rules

Federal Register

Vol. 68, No. 178

Monday, September 15, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 246

RIN 0584-AD39

Special Supplemental Nutrition Program for Women, Infants and Children (WIC): Revisions to the WIC Food Packages

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Advanced notice of proposed rulemaking.

SUMMARY: The WIC Program provides supplemental food packages designed to provide specific nutrients critical to growth and development. WIC food packages and nutrition education are the chief means by which WIC affects the dietary quality and habits of participants. WIC food packages were designed to supplement participants' diets with nutritionally dense foods that prevent iron-deficiency anemia; complement the eating patterns of preschool children; and address the special nutrition requirements of pregnant and breastfeeding women. The WIC food packages were last revised in 1980. While WIC has been successful in many areas, obesity and inappropriate dietary patterns have become significant concerns for many in WIC's target population. In this Notice, the Department is soliciting public comments on redesigning the food packages offered through the WIC Program to determine if the WIC food packages should be revised to better improve the nutritional intake, health and development of participants; and, if so, what specific changes should be made to the food packages. The Department plans to enlist independent technical experts via the Institute of Medicine's Food and Nutrition Board to review available science and comments submitted in response to this Notice and to develop recommendations on revising the WIC food packages for the

Department's consideration. The Department will use comments received through the Notice and the Food and Nutrition Board recommendations to develop a proposed rule.

DATES: To be assured of consideration, comments must be postmarked on or before December 15, 2003.

ADDRESSES: Comments should be sent to Patricia Daniels, Director, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 520, Alexandria, Virginia 22302. Comments on this Notice should be clearly labeled "Revisions to the WIC Food Packages." Comments which are not within the scope of this Notice should not be included. All written comments will be available for public inspection during regular business hours (8:30 a.m. to 5 p.m., Monday through Friday) at the above address.

FOR FURTHER INFORMATION CONTACT: Debra Whitford, Branch Chief, Policy and Program Development Branch, Supplemental Food Programs Division, at the address indicated in the **ADDRESS** section or at (703) 305-2746 during regular business hours (8:30 a.m. to 5 p.m.), Monday through Friday.

SUPPLEMENTARY INFORMATION:

I. Procedural Matters

Executive Order 12866

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

Paperwork Reduction Act of 1995

This action does not contain reporting or record keeping requirements subject to approval by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Executive Order 12372

This program is listed in the Catalog of Federal Domestic Assistance Programs under No. 10.570, and is 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 notices published at 48 FR 29114, June 24, 1983, and 49 FR 22676, May 31, 1984).

Civil Rights Impact Analysis

FNS has reviewed this action in accordance with the Department Regulation 4300-4, "Civil Rights Impact Analysis," to identify and address any major civil rights impact this Notice might have on minorities, women, and persons with disabilities. FNS has determined that this action presents no civil rights impact on minorities and other protected classes, nor does it present any barrier to program access or participation. With this action the Department is soliciting comments from the public on redesigning the WIC food packages to better meet the needs of WIC's diverse participants.

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 describing the agency's considerations called for under section (6)(b)(2)(B) of Executive Order 13132.

Prior Consultation With State Officials

Over the years the Department has received numerous requests from WIC State agencies and participants to modify the current food packages to permit greater substitution of foods or introduction of additional foods. These requests have come from formal and informal discussions and with State and local officials on an ongoing basis regarding program implementation and food package policy issues, and from written proposals submitted to FNS by WIC State agencies to allow modifications and/or substitutions to the WIC food packages.

Need To Issue This Notice

Through this Notice, the Department is soliciting public comments on redesigning the food packages offered through the WIC Program to determine if the WIC food packages should be revised to better meet the nutritional needs of participants and, if so, what specific changes should be made to the food packages. The Department believes that public comment is necessary to inform decisions and to bolster the scientific and programmatic integrity of any rule that is proposed as a result of this process.

Executive Order 12998

This action has been reviewed under Executive Order 12998, Civil Justice Reform. This action is not intended to have preemptive effect with respect to any State or local laws, regulations or policies that conflict with its provisions or that would otherwise impede its full implementation.

II. References

(1) Study of WIC Participant and Program Characteristics, 2000. Available at Internet site:

<http://www.fns.usda.gov/oane/MENU/Published/WIC/WIC.HTM>.

(2) Review of the Nutritional Status of WIC Participants (CNPP), December 1999. Available at Internet site: <http://www.usda.gov/cnpp/Pubs/Wic/>

(3) *Nutrition and Your Health: Dietary Guidelines for Americans, Fifth Edition, USDA and U.S. Department of Health and Human Services, Washington, DC, 2000*. Available at Internet site: <http://www.usda.gov/cnpp/Pubs/DG2000/>

(4) WIC and the Nutrient Intake of Children (ERS), Food Assistance and Nutrition Research Report No. FANRR5, April 2000. Available at Internet site: <http://www.ers.usda.gov/publications/fanrr5/>

(5) Institute of Medicine. Dietary Reference Intakes. Panel on Macronutrients (Energy, Carbohydrate, Fiber, Fat, Fatty Acids, Cholesterol, Protein, and Amino Acids (September 5, 2002, 936 pp.))

(6) Institute of Medicine. Dietary Reference Intakes. Panel on Micronutrients (Vitamin A, Vitamin K, Arsenic, Boron, Chromium, Copper, Iodine, Iron, Manganese, Molybdenum, Nickel, Silicon, Vanadium, and Zinc (2002, 800 pp.))

(7) Institute of Medicine. Dietary Reference Intakes. Standing Committee on the Scientific Evaluation of Dietary Reference Intakes (Calcium, Phosphorus, Magnesium, Vitamin D, and Fluoride (1997, 448 pp.))

(8) Institute of Medicine. Dietary Reference Intakes. Dietary Antioxidants and Related Compounds (Vitamin C, Vitamin E, Selenium, and Carotenoids (2000, 529 pp.))

(9) Institute of Medicine. Dietary Reference Intakes. Panel on Folate, Other B Vitamins, and Choline (Thiamin, Riboflavin, Niacin, Vitamin B6, Folate, Vitamin B12, Pantothenic Acid, Biotin, and Choline (2000, 592 pp.))

(10) WIC Program Regulations Pertaining to Supplemental Food [7 CFR 246.10] available at Internet site: <http://www.fns.usda.gov/wic/PDFfiles/WICRegulations-7CFR246.pdf>

(11) FNS Instruction 804-1 "WIC Program—Food Package Design: Administrative Adjustments and Nutrition Tailoring."

(12) Standard reference values for nutrients in foods are available from USDA, Agricultural Research Service, Nutrient Data Bank, http://www.nal.usda.gov/fnic/cgi-bin/nut_search.pl

III. General Background

Since the creation of the WIC Program in the 1970's, and the last revision of the WIC food packages in the early 1980's, much has been learned about the nutritional needs of pregnant women, infants, and preschool aged children. In recent years the ability of the WIC Program to meet nutritional needs of WIC participants through its food packages and nutrition education has received growing attention. Significant interest in updating the food packages based on new information about the needs of low-income women, infants, and children has been voiced by WIC Program administrators, the medical and scientific communities, advocacy groups, and Congress.

Authorizing legislation requires that the supplemental foods provided by WIC contain nutrients known to be lacking in the diets of the target population [see the Child Nutrition Act, as amended (CNA), section 17(b)(14), (42 U.S.C. 1786)]. Indeed, because of the WIC Program and the larger nutrition safety net, progress has been made in filling many of these nutrient gaps. However, nutritional science and the Dietary Guidelines for Americans have evolved, and the overall nutritional needs and consumption patterns of WIC's target population have changed. The Department acknowledges the continuing advances in nutritional research since the current food packages were established in 1980. Recommended dietary practices are constantly evolving in response to new knowledge and may hold significant implications for the WIC Program. Food technology has also advanced substantially, resulting in a large number of new products.

With this Notice, the Department is seeking guidance on issues/questions concerning revisions to the WIC food packages that would address the nutritional needs of the WIC population given current scientific information and consumption patterns. The food package recommendations should not increase the cost or administrative burden to the WIC Program nor change the supplemental nature of the Program. Any modifications to the WIC food

packages should be based on scientific evidence.

IV. Program Background

The authorizing legislation for the WIC Program, section 17 of the CNA established the WIC Program to provide supplemental foods and nutrition education to low income pregnant, breastfeeding, and postpartum women, infants, and children up to age 5 who are at nutritional risk. Nutritional risk is determined by a competent professional authority and includes conditions such as inadequate weight gain during pregnancy; history of inappropriate growth patterns in infants and children; anemia; and inadequate dietary patterns.

Sections 17(a) and (b)(14) of the CNA (42 U.S.C. 1786(a) and (b)(14)) clearly established the WIC Program as "supplemental" in nature; that is, the WIC supplemental foods are not intended to provide a complete diet but are designed to provide specific nutrients determined by nutritional research to be lacking in the diets of the WIC population. WIC was never intended to be a primary source of food, nor of general food assistance. Rather, WIC benefits are intended to meet the special nutritional needs of a very specific population. In addition to WIC, the Department administers a variety of other complementary nutrition assistance programs that work together to provide a more complete diet to low-income persons. Low-income families can, and frequently do, receive benefits from more than one of these programs. The largest of these programs, the Food Stamp Program, provides general food assistance intended to increase the food buying power of low-income households.

In addition to food assistance, WIC provides nutrition education, including breastfeeding promotion and support, and information about the dangers of alcohol, tobacco and other drug use to participants. The nutrition education provided by WIC enables participants to make informed decisions in choosing foods that, together with the supplemental foods contained in the WIC food packages, can meet their total dietary needs. The intent is to help participants to continue healthful dietary practices after leaving the Program.

WIC is a unique nutrition assistance program in that it also serves as an adjunct to good health care during critical times of growth and development to prevent the occurrence of health problems and to improve the health status of Program participants. Numerous studies have shown that WIC

is cost effective and successful in improving the health and nutritional status of its clients.

For example, WIC has played an important role in improving birth outcomes and containing health care costs.^{1,2} A series of reports published by USDA based on linked 1988 WIC and Medicaid data on over 100,000 births found that Medicaid eligible pregnant women in 5 States who participated in WIC during their pregnancies had:

- Longer pregnancies;
- Fewer premature births;
- Lower incidence of moderately low and very low birth weight infants;³
- Fewer infant deaths;
- A greater likelihood of receiving prenatal care; and
- Savings in health care costs from \$1.77 to \$3.13 for each dollar spent on WIC.^{4,5,6}

Studies have also found WIC to have a positive effect on children's diet and diet-related outcomes such as:

- Higher mean intakes of iron, vitamin C, thiamin, niacin and vitamin B6, without an increase in food energy intake, indicating an increase in the nutrient density of the diet;⁷
- Positive effects on the intakes of ten nutrients without an adverse effect on fat or cholesterol;⁸
- More effective than other cash income or food stamps at improving preschoolers' intake of key nutrients;⁸ and
- Decline in the rate of iron deficiency anemia from 7.8 percent in 1975 to 2.9 percent in 1985 which the Centers for Disease Control and Prevention attributed to both a general improvement in iron nutrition and participation in WIC and other public nutrition programs.^{2,9}

However, a comprehensive evaluation of the WIC program has not been completed in over 15 years.

References

1. Gordon, Anne, and Lyle Nelson. *Characteristics and Outcomes of WIC Participants and Nonparticipants: Analysis of the 1988 National Maternal and Infant Health Survey*. Alexandria, Virginia: U.S. Department of Agriculture, March 1995.
2. 7. U.S. General Accounting Office, "Early Intervention: Federal Investments Like WIC Can Produce Savings," Document HRD 92-18, Washington, DC, April 1992.
3. Kowaleski-Jones, L. and GJ Duncan. *Effects of Participation in the WIC Program on Birth Weight: Evidence from the National Longitudinal Survey of Youth*. American Journal of Public Health Vol 92: 799-804. May 2002.
4. Devaney, Barbara, Linda T. Bilheimer, and Jennifer Schore. *The Savings in Medicaid Costs for Newborns and Their Mothers from Prenatal Participation in the WIC Program*. Alexandria, Virginia: U.S. Department of Agriculture, October 1990.

5. Devaney, Barbara. *Very Low Birthweight Among Medicaid Newborns in Five States: The Effects of Prenatal WIC Participation*. Alexandria, Virginia: U.S. Department of Agriculture, September 1992

6. Devaney, Barbara, and Allen Schirm. *Infant Mortality Among Medicaid Newborns in Five States: The Effects of Prenatal WIC Participation*. Alexandria, Virginia: U.S. Department of Agriculture, May 1993.

7. U.S. Department of Agriculture Food and Nutrition Service. *The National WIC Evaluation: An Evaluation of the Special Supplemental Food Program for Women, Infants, and Children. Vol. 1: Summary*. Alexandria, Virginia: U.S. Department of Agriculture, 1987.

8. Rose, D., Habicht, J-P., and Devaney, B.: "Household Participation in the Food Stamp and WIC Programs Increases the Nutrient Intakes of Preschool Children," *Journal of Nutrition*, 128:548-555, March 1998.

9. Oliveira, Victor, Elizabeth Racine, Jennifer Olmsted and Linda M. Ghelfi. *The WIC Program: Background, Trends, and Issues*. Alexandria, Virginia: U.S. Department of Agriculture, September 2000.

V. History and Development of WIC Food Packages

Early legislation for the WIC Program, Public Law 92-433 (1972) through Public Law 94-105 (1975), specifically identified protein, iron, calcium and Vitamins A and C as nutrients of particular concern for WIC participants. However, Public Law 95-627, enacted in November 1976, deleted the reference to these nutrients. Instead, it defined supplemental foods as those foods containing nutrients determined by nutritional research to be lacking in the diets of pregnant, breastfeeding and postpartum women, infants, and children, as prescribed by the Secretary of Agriculture. The Program direction announced by that law remains in effect today (section 17(b)(14) of the CNA, 42 U.S.C. 1786(b)(14)). The law also directs the Secretary in section 17(f)(11) of the CNA (42 U.S.C. 1786(f)(11)) to assure that, to the degree possible, the fat, sugar, and salt content of WIC foods is appropriate.

The law provides substantial latitude to the Department in designing WIC food to supply nutrients lacking in the diets of the WIC eligible population. Historically, the Department has based its prescriptions of WIC foods on sound nutritional research and input from State and local agencies, the health and scientific communities, industry and the general public.

In anticipation of the passage of Public Law 95-627, the Department, in October 1978, assembled a WIC Food Package Advisory Panel composed of State health officials, representatives of the nutrition community and advocacy groups, to review the original food

packages and recommend changes. Panel recommendations included retaining high-quality protein, iron, calcium, and vitamins A and C as the targeted nutrients in the WIC Program and expanding the number of available packages. Based on the Panel's recommendations and an evaluation by the Department of the available nutrition research on the nutrient, fat, sugar and salt content of the WIC foods, the Department proposed retaining high-quality protein, iron, calcium, and vitamins A and C as the targeted nutrients in the WIC Program and expanding the number of available packages in 1979 (44 FR 69254-69270, November 30, 1979). Based on public response to proposed rules in 1979, new WIC food package regulations were published in 1980 (45 FR 74854, November 12, 1980) that are consistent with Public Law 95-627.

These food package requirements appear in 7 CFR 246.10 of the WIC Program regulations. The 1980 rule established six different monthly packages: Food Package I for infants 0-3 months; Food Package II for infants 4-12 months; Food Package III for children and women with special dietary needs; Food Package IV for children 1-5 years of age; Food Package V for pregnant and breastfeeding women; and Food Package VI for nonbreastfeeding postpartum women. The Department created an additional food package in 1992 (57 FR 56231, November 27, 1992). This enhanced food package, Food Package VII, is designed for breastfeeding women who elect not to receive infant formula through WIC for their infants.

Authorized WIC foods include iron-fortified infant formula, iron-fortified cereals, vitamin C-rich 100 percent fruit and/or vegetable juice, calcium/protein-rich milk and cheese, protein/iron-rich eggs, protein-rich peanut butter or dried beans/peas, and physician-prescribed formula/medical foods for participants with certain special dietary needs. The enhanced package for breastfeeding women increases allowable amounts of juice, cheese, peanut butter and dry beans/peas, and also allows protein-rich tuna fish and carrots that provide beta-carotene (precursor to vitamin A) and dietary fiber. All WIC foods are nutrient dense, economical, administratively manageable for WIC State agencies; readily available in retail stores; offer variety and versatility; have broad appeal; and generally can be apportioned into daily servings.

VI. Recent Science and National Dietary Guidance

During the last decade, science has provided new information on the

nutritional needs of Americans, including WIC's target population. As discussed previously, the WIC Program has focused historically on supplying participants with protein and four important micronutrients: Vitamins A and C, calcium, and iron. More recently nutrition research has identified other micronutrients of potential concern, such as folic acid, zinc, vitamin B6 and magnesium. In addition, dietary causes of chronic disease have been more clearly identified. The 2000 *Dietary Guidelines for Americans* provide advice, based on current scientific and medical knowledge, for healthy Americans ages 2 years and over about food choices that promote health and prevent disease. New Dietary Reference Intakes (DRI's) have recently been established by the Institute of Medicine, Food and Nutrition Board as guidelines for nutrient intake in the U.S. population. The next update of the *Dietary Guidelines for Americans*, to be completed in 2005, will reflect the new DRI's.

VII. Nutrition Risk and Demographic Changes in WIC's Population

WIC applicants must be determined to be at nutritional risk to meet eligibility requirements for the WIC Program. Nutrition risk means nutritionally-related medical conditions (*e.g.*, anemia, inappropriate growth or weight gain pattern) or dietary deficiencies (*e.g.*, inadequate or inappropriate nutrient intake) that impair or endanger health. According to the WIC Participant and Program Characteristics 2000 report, 56.3% of WIC participants are identified as having a dietary deficiency.

Obesity has become one of the most serious health problems in the United States, with direct implications for the health of WIC program participants. The National Center for Health Statistics revised growth charts, when used with WIC data from 1992 to 1998, show that overweight prevalence among children enrolled in WIC increased 20 percent over this 6-year period. Data from the early 1990s indicated that the prevalence of overweight in WIC children is similar to that of non-WIC children. WIC program data show that a majority of overweight WIC children have nutritional risks in addition to being overweight, *i.e.*, inadequate or inappropriate nutrient intake, anemia. A challenge facing the WIC program is to determine how it can most successfully improve the eating habits of low-income children.

The ethnic composition of the WIC Program has been changing steadily since 1992; the percentage of Hispanic enrollees has risen, while percentages of

black and white (non-Hispanic) enrollees have decreased. The current racial/ethnic enrollment is: 37.4 percent White, 35.3 percent Hispanic, 21.9 percent Black, 3.3 percent Asian or Pacific Islanders, and 1.4 percent American Indian or Alaskan Natives. Low-income populations, including WIC participants, are faced with numerous barriers to good nutrition and to nutrition assistance. For populations of different cultures, especially those who have recently arrived in the United States and who lack orientation to service delivery here, the barriers to assistance can be of such magnitude as to adversely affect their health and well-being. To achieve the best overall outcomes the WIC community must give special consideration to its approach in delivering culturally appropriate, quality benefits to these growing subpopulations.

VIII. Requests for Revisions to the WIC Food Packages

Over the years the Department has received numerous requests from WIC State agencies and participants to modify the current food packages to permit greater substitution of foods or introduction of additional foods. Requests for revisions to the WIC food packages have also been received from Congress and other organizations with interests in the welfare of WIC participants. The focus of suggested changes is on improving outcomes for WIC recipients. For example:

- Congress has requested a WIC food package rule that includes fruits and vegetables and that allows for cultural food accommodations.
- The National Advisory Council on Maternal, Infant, and Fetal Nutrition, in its 1992, 1996 and 2002 Reports to Congress, recommended better accommodation of the nutritional and cultural needs of WIC participants.
- In 1999, the National WIC Association (then the National Association of WIC Directors (NAWD)) published a position paper entitled "NAWD WIC Food Prescription Recommendations." NAWD made three recommendations designed to reframe the WIC food packages and one recommendation on research and policy analysis in support of the WIC food packages. Consistency with the Dietary Guidelines for Americans and allowing flexibility to provide culturally appropriate foods were among the recommendations.
- In an April 30, 2002, statement entitled "Reauthorization of USDA Child Nutrition and WIC Programs," the American Dietetic Association recommended that WIC food packages

be flexible to address cultural food practices and choices and participants' nutrition needs, consistent with national guidelines.

The Department wishes to consider these and other requests and in this notice solicits affordable, scientifically-based recommendations as well as other suggestions from the public for revisions to the WIC food packages that will improve the nutritional intake, health and development of participants.

IX. Design of the WIC Food Packages

The seven current WIC food packages were designed to help accomplish the following: Supplement participants' diets with nutritionally dense foods that follow current medical and nutritional guidance; complement the eating patterns of preschool children; and address the special requirements of pregnant and breastfeeding women. The WIC food packages were initially designed and adopted with regard to a set of fundamental considerations. These considerations should be taken into account when commenting on the issues presented in this Notice. The factors to be considered are discussed below.

1. Nutritional Risk

The provision of supplemental foods containing nutrients determined by research to be lacking in the diets of the WIC population is the cornerstone of the Program. Nutrient requirements are particularly high during times of rapid growth, development and replenishment. Therefore, the WIC population, composed of pregnant, breastfeeding and postpartum women, infants and children, represents individuals whose nutritional needs are among the highest and most critical for optimal growth and development. Ensuring optimal nutrient intakes during these vulnerable periods of life is paramount to prevent both immediate and long-term adverse health outcomes. Consequently, recommendations should reflect current nutritional science and assure that the various packages supplement the nutrition needs of WIC's at-risk population with nutrient-dense economical foods the recipients should be encouraged to acquire and/or continue to acquire with their own resources.

WIC foods should make a significant nutritional contribution to the diets and health of Program participants. Current nutritional science may reveal changing nutritional needs, and evolving needs in the population suggesting changes to the food packages. Addressing the nutritional needs is imperative if WIC is to remain an effective health-related

program. Congressional intent as evidenced both in statutory and legislative report language has continually emphasized that the WIC should provide foods and nutrients that current research demonstrates are lacking in the diets of WIC participants [Senate Report 106–288, Senate Report 107–41, Section 17(b)(14) of the CNA, 42 U.S.C. 1786(b)(14)]. However, WIC's success in providing important nutrients should not lead to the conclusion that WIC should no longer provide them. Accordingly, changes to the food package should weigh the risk and consequences of dietary inadequacy and make changes expected to maximize the positive outcomes on WIC recipient nutritional status, health and development.

2. Fat, Sugar, and Salt Content

As discussed previously, consideration of the fat, sugar and salt content of foods in the WIC food packages is required by section 17(f)(11) of the CNA. Several changes made to the WIC food packages in the 1980 rulemaking responded specifically to this mandate. For example, the Department established a limit on the amount of sugar allowable in WIC approved cereals. By regulation, WIC cereals per dry ounce must contain no more than 6 grams of sugar. This specification applies to added sugars and to those naturally occurring in ingredients such as dried fruits used in the cereal.

FNS policy guidance permits WIC State agencies to issue low-fat, low-cholesterol and low-sodium forms of WIC cheeses, as well as low-fat, nonfat and lactose-free milks. The Department encourages local program administrators to tailor the WIC food packages to meet the individual nutritional needs of participants and, when appropriate, to adjust the types of WIC foods prescribed to help reduce the amount of fat, cholesterol, sodium and sugar the WIC food packages contribute to the diet. Through WIC nutrition education, participants also receive advice on how to further moderate their intakes of fat, cholesterol, sodium and sugar and how to include adequate amounts of vegetables, fruits and whole grain products in their diets.

3. Cost

In addition to the criteria specified in legislation, a prime consideration in the design of the WIC food packages is cost. Efficiency in providing supplemental foods is important because increases in the total cost of the food packages reduce the number of participants served by the program. The packages are

designed to encourage further cost control by permitting State and local agencies the flexibility to specify lower cost food brands, forms of foods, types and container sizes within regulatory parameters.

4. Practicality and Administrative Feasibility

In addition to meeting nutritional objectives, all WIC food packages are designed to address a number of practical considerations that reflect participant and Program needs. For example, the WIC foods are readily available in retail food stores, offer variety and versatility to participants in the ways these foods can be used in an overall diet, are nutrient-dense, can be easily divisible into servings on a daily basis, and have broad appeal. Additionally, all WIC food packages are individual food prescriptions which, in order to have the full effect in improving a participant's nutritional status, are intended to be consumed only by the participant and not by other family members.

The packages should be administratively manageable for State and local agencies and vendors. That is, they should be clearly describable and easily understood by both participants and vendors. WIC food packages are designed to strike a balance between acceptable, nutrient dense, readily available, low-cost food items, and administrative feasibility. This means that although there are certainly some foods that would be particularly beneficial for and appealing to WIC participants, the WIC Program is not always capable, within the limitations of its current structure, of easily delivering such foods. Also, WIC is limited in its ability to offer a wide range of food options since, from a management standpoint, each food option added to the food package magnifies the difficulties and increases the cost of program management and accountability. These practical considerations are necessarily a key consideration in the design of WIC food packages.

5. Food Package Flexibility and Meeting Participants' Special Needs

Food package flexibility regarding the quantities of foods provided by WIC food packages and participants' cultural eating patterns and nutritional needs are considerations in the design of the food packages. State and local agencies can tailor the quantities of foods provided by the food packages to better meet participants' special nutritional needs. Additionally, they are permitted flexibility in designing their food

packages within the parameters of Program regulations. Commenters should be aware that the quantities in all WIC food packages are expressed as maximum levels. However, State and local agencies have the authority to tailor quantities according to the needs of individual participants or categories of participants when based on a sound nutritional rationale. These tailoring provisions established in Program regulations (7 CFR 246.10) and supplemented by FNS Instruction 804–1 “WIC Program—Food Package Design: Administrative Adjustments and Nutrition Tailoring,” are designed to permit State and local agencies to implement their own nutrition policies and philosophies within the parameters of food package requirements.

X. Review Considerations/Parameters

The principles outlined above (and discussed elsewhere in this Notice) constitute a framework upon which WIC food packages have been developed. The Department encourages commenters to present their recommendations in the context of their potential effects on the recipients that receive the affected food package(s) and their responsiveness to these principles or to alternate principles which the commenter believes should be considered. Further, comments ideally should include justification in terms of current nutritional research.

Responses to this notice should be developed with serious regard to the dietary needs of the WIC-eligible population, the supplemental nature of the program, the critical impact of the cost of program services, and the need to maximize the overall effect of the Program for WIC recipients. In addition, the Department encourages commenters to submit suggestions with the following considerations in mind: (1) Cultural and ethnic food preferences; (2) commercial availability, variety and appeal of foods; (3) versatility in food preparation; (4) feasibility of apportionment into daily servings for an individual over a month's time; (5) State and local agency flexibility to design the food prescription; (6) administrative feasibility and manageability by the State and local agencies and vendors; and (7) burden and incentive for participants, potential participants, and their families.

The following charts provide an overview of the foods currently offered in the food packages, including allowable substitutions, minimum Federal requirements and data on key nutrients in a selection of WIC-type foods. The charts may be helpful when commenting on issues such as the

amount of food provided by, or the allowable substitutions for, the current

foods or nutrients provided in the WIC food packages.

CHART 1.—WIC FOOD PACKAGES
[Maximum monthly allowance]

Foods	Infants 0–3 mo. (I)	Infants 4–12 mos. (II)	Children/ women with special dietary needs (III)	Children 1–5 yrs. (IV)	Pregnant & breastfeeding women (up to 1 yr. postpartum) (V)	Nonbreastfeeding postpartum women (up to 6 mos. postpartum) (VI)	Breastfeeding women enhanced package ¹ (VII)
Infant Formula (concentrated liquid) ² .	403 fl. oz.	403 fl. oz.	403 fl. oz. ³				
Juice (reconstituted frozen) ⁴ .		96 fl. oz. ⁵	144 fl. oz.	288 fl. oz.	288 fl. oz.	192 fl. oz.	336 fl. oz.
Infant Cereal		24 oz.					
Cereal (hot or cold)			36 oz.	36 oz.	36 oz.	36 oz.	36 oz.
Milk ⁶ (whole, low-or fat free; or lactose free).				24 qt.	28 qt.	24 qt.	28 qt.
Cheese ⁷							1 lb.
Eggs ⁸				2½ doz.	2½ doz.	2½ doz.	2½ doz.
Dried Beans/Peas and/or Peanut butter.				1 lb. or 18 oz.	1 lb. or 18 oz.		1 lb. and 18 oz.
Tuna (canned)							26 oz.
Carrots (fresh) ⁹							2 lbs.

¹ Available to breastfeeding women whose infants do not receive infant formula from WIC.
² 8 pounds powdered per 403 fluid ounces concentrate; or 26 fluid ounces ready-to-feed per 13 ounces concentrate may be substituted.
³ Additional formula available up to 52 fluid ounces concentrate, 1 pound powder, or 104 fluid ounces ready-to-feed.
⁴ 92 fluid ounces single strength juice may be substituted per 96 fluid ounces reconstituted frozen.
⁵ Infant juice may be substituted at the rate of 63 fluid ounces per 92 fluid ounces of single strength juice.
⁶ Fat free, low-fat, and full fat milk are allowed, as are lactose free and low-lactose milks. Goat's milk is also allowed.
⁷ Cheese may be substituted at a rate of 1 pound per 3 quarts of fluid milk with a 4 pound maximum.
⁸ Dried egg mix can be substituted at a rate of 1.5 pounds per 2 dozen fresh eggs, or 2 pounds per 2½ dozen fresh eggs.
⁹ Frozen carrots may be substituted pound for pound; canned maybe substituted at a rate of 16–20 ounces per 1 pound fresh.

CHART 2.—WIC FOOD PACKAGES
[Minimum requirements and allowable foods]

General Foods	Nutrients	Minimum requirements and allowable foods
Milk	Calcium	Cow's milk, must conform to 21 CFR part 131 FDA standard of identity or Goat's milk: pasteurized fluid whole milk, lowfat, reduced fat, skim, fat free or nonfat milk, that contains 400 International Units of vitamin D per quart (or reconstituted fluid quart for evaporated and dry/powdered milks); and 2000 International Units of vitamin A per quart (or reconstituted quart for evaporated and dry/powdered milks) if the milk is lowfat, reduced fat, skim, fat free or nonfat milk.
Cheese	Calcium	Domestic cheese (pasteurized processed American, Monterey Jack, Colby, Cheddar, Swiss, Brick, Muenster, Provolone, Mozzarella part-skim or whole; or a cheese that is a blend of any of these cheeses). These same types of cheeses labeled low, free, reduced, less, or light in the nutrients of sodium, or fat, or cholesterol are also authorized.
Eggs	Protein	Fresh shell domestic hens' eggs or dried egg mix made from shell, liquid, whole eggs that have been pasteurized and dried.
Beans	Protein	Mature dry beans or peas, including but not limited to: lentils; black, navy, kidney, garbanzo, soy, pinto, and mung beans; and Crowder, cow, split and black-eye peas.
Peanut Butter	Protein	Creamy or chunky, regular or reduced fat and conforms to FDA, Standard of Identity for peanut butter as defined by 21 CFR § 164.150.
Cereal	Iron	Includes ready-to-eat and instant and regular hot cereals as defined by FDA (21 CFR Part 170.3(n)(4)) that also contain a minimum of 28 milligrams of iron per 100 grams of dry cereal and not more than 21.2 grams of sucrose and other sugars per 100 grams of dry cereal (6 grams per dry ounce).
Infant Cereal	Iron	Contains a minimum of 45 milligrams of iron per 100 grams of dry cereal. Infant cereals containing infant formula, milk, fruit, or other non-cereal ingredients are not authorized.
Juice	Vitamin C	Must be pasteurized 100 percent fruit and/or vegetable juice or blends of these juices and contain a minimum of 30 milligrams of vitamin C per 100 milliliters juice. Juices fortified with other nutrients that also meet the minimum WIC requirements are allowable.
Infant Juice	Vitamin C	Must be pasteurized 100 percent fruit juice and contain a minimum of 30 milligrams of vitamin C per 100 milliliters juice.
Carrots	Vitamin A	Raw, canned or frozen. Mature raw; canned and frozen carrots containing only the mature root of the carrot plant packed in water.
Tuna	Protein	Canned white, light, dark or blended tuna packed in water or oil, including solid and solid pack; chunk, chunks and chunk style; flake and flakes; and grated.

CHART 2.—WIC FOOD PACKAGES—Continued
[Minimum requirements and allowable foods]

General Foods	Nutrients	Minimum requirements and allowable foods
Infant Formula	Iron	All authorized infant formulas must meet the definition and requirements for an infant formula established by FDA, DHHS; citations section 201(z) Federal Food Drug and Cosmetic Act (21 U.S.C. 321(z)) and requirements under section 412 of 21 U.S.C. 350a and regulations at 21 CFR parts 106 and 107. Designed for enteral digestion via an oral or tube feeding. Iron fortification level must be 10 milligrams per liter.
Exempt Infant Formula .....	.....	Infant formulas must meet the requirements for an exempt infant formula under section 412(h) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 350 a(h)) and the regulations at 21 CFR parts 106 and 107.
Medical Foods .....	.....	Certain enteral products that are specifically formulated to provide nutritional support for individuals with a diagnosed medical condition, when the use of conventional foods is precluded, restricted or inadequate.

CHART 3.—NUTRITIONAL CONTENT OF CURRENT FOOD PACKAGES—NUTRIENTS PROVIDED PER DAY

[Nutrient yields for entire package, assuming selection of whole milk and legumes. A number of dairy and other options are typically available.]

Current WIC food packages	En-ergy Kcal	Pro-tein g	Fiber g	Fat g	Sat Fat g	Chol. mg	E AE	A RE	B6 mg	Folate µg	B12 µg	C mg	Ca mg	Mag mg	Iron mg	Zinc mg
Children—Package IV ..	853	42.5	5.4	32.3	18.0	319	1.9	840	1.3	264	5.1	106	1,058	217	13.4	6.0
Pregnant and Breastfeeding Women—Package V	933	46.8	5.4	36.7	20.7	336	2.0	880	1.3	270	5.6	107	1,214	234	13.5	6.5
Postpartum Women—Package VI	763	38.4	2.9	32.1	17.9	319	1.7	822	1.2	217	5.1	73	1,018	184	11.7	5.5
Breastfeeding Women—Package VII	1,119	61.3	8.6	43.2	23.8	353	2.7	1,782	1.5	315	6.2	126	1,356	279	15.6	7.8

Notes.—Nutrients analyzed, in order of appearance: Energy, Protein, Dietary Fiber, Total Fat, Saturated Fat, Cholesterol, Vitamin E, Vitamin A, Vitamin B6, Folate, Vitamin B12, Vitamin C, Calcium, Magnesium, Iron and Zinc. All packages assume single strength orange juice for juice, Post Oat Flakes for cereal, Great Northern Beans for legumes, American cheese for cheese, and whole milk. Daily nutritional values are derived through dividing monthly WIC allotments by 30 days.

CHART 4.—SOME KEY NUTRIENTS IN A SELECTION OF WIC-TYPE FOODS

[Data from USDA, Agricultural Research Service, Nutrient Data Bank, http://www.nal.usda.gov/fnic/cgi-bin/nut_search.pl]

Food item	Serving size	En-ergy kcal	Pro-tein mg	Fiber mg	Fat mg	Sat fat mg	Chol mg	E AE	A RE	B6 mg	Folate mg	B12 mg	C mg	Ca mg	Mag mg	Iron mg	Zinc mg
Dairy:																	
Milk, 3.5 to 3.8% fat	1 cup	150	8.0	0.0	8.1	5.1	33	0.2	76	0.1	12	0.9	2	291	33	0.1	0.9
Milk, 3.5 to 3.8% fat, calcium fort.	1 cup	151	8.1	0.0	8.2	5.1	33	0.2	76	0.1	12	0.9	2	1,033	33	0.1	0.9
Milk, low-fat or skim >1% fat	1 cup	85	8.3	0.0	0.4	0.3	4	0.1	149	0.1	13	0.9	2	301	28	0.1	1.0
Milk, calcium fortified, > 1 % fat	1 cup	103	8.1	0.0	2.6	1.6	10	0.1	146	0.1	13	0.9	2	550	34	0.1	1.0
Milk, skim or nonfat	1 cup	86	8.4	0.0	0.4	0.3	4	0.1	149	0.1	13	0.9	2	302	28	0.1	1.0
Cheese, American	1.5 oz.	152	9.2	0.0	11.9	7.5	34	0.2	104	0.0	5	0.4	0	267	12	0.3	1.3
Cheese, Brick	1.5 oz.	158	9.9	0.0	12.6	8.0	40	0.2	128	0.0	9	0.5	0	286	10	0.2	1.1
Cheese, Natural Cheddar	1.5 oz.	171	10.6	0.0	14.1	9.0	45	0.2	118	0.0	8	0.4	0	307	12	0.3	1.3
Cheese, Cheddar/Colby, low-fat	1.5 oz.	74	10.4	0.0	3.0	1.8	9	0.0	27	0.0	5	0.2	0	176	7	0.2	0.8
Cheese, Colby	1.5 oz.	167	10.1	0.0	13.7	8.6	40	0.1	117	0.0	8	0.4	0	291	11	0.3	1.3
Cheese, Monterey Jack	1.5 oz.	159	10.4	0.0	12.9	8.1	38	0.1	108	0.0	8	0.4	0	317	11	0.3	1.3
Mozzarella, whole	1.5 oz.	120	8.3	0.0	9.2	5.6	33	0.1	102	0.0	3	0.3	0	220	8	0.1	0.9
Mozzarella, part-skim	1.5 oz.	119	11.7	0.0	7.3	4.6	23	0.2	81	0.0	4	0.4	0	311	11	0.1	1.3
Mozzarella, non-fat	1.5 oz.	63	13.5	0.8	0.0	0.0	8	0.1	86	0.0	4	0.4	0	375	14	0.1	1.7
Juice:																	
Orange juice, unsweetened ¹	3/4 cup	78	1.1	0.4	0.3	0.0	0	0.2	34	0.2	34	0.0	64	15	21	0.8	0.1
OJ, sweetened	3/4 cup	98	1.1	0.4	0.3	0.0	0	0.2	33	0.2	33	0.0	62	15	20	0.8	0.1
OJ, frozen, unsweetened, reconstituted—09215.	3/4 cup	84	1.3	0.4	0.1	0.0	0	0.4	7	0.1	82	0.0	73	17	19	0.2	0.1
OJ, frozen, sweetened, reconstituted	3/4 cup	85	1.3	0.4	0.1	0.0	0	0.2	15	0.1	83	0.0	73	20	19	0.2	0.1
OJ, canned, unsweetened—09207	3/4 cup	78	1.1	0.4	0.3	0.0	0	0.2	17	0.2	34	0	64	15	21	0.8	0.1
Grape juice, frozen, sweetened, reconstituted, C added—09137.	3/4 cup	44	0.4	0.2	0.2	0.1	0	0.1	0	0.1	2	0	45	8	8	0.2	0.1
Cereal:																	
Total Corn Flakes—08246	1 oz	106	1.7	0.7	0.5	0.1	0	19.0	121	1.9	378	5.7	57	945	7	17.0	14.2
Oatmeal Squares—08214	1 oz	107	3.1	2.0	1.2	0.3	0	0.8	84	2.8	223	0	3	57	33	8.6	2.1
Grape-Nuts—08329	1 oz.	102	3.1	2.5	0.5	0.1	0	na	109	0.2	49	0.7	0	10	28	7.9	0.6
Oat Bran Flakes—08258	1 oz.	99	3.1	3.7	1.0	0.2	0	0.3	222	2.0	381	5.7	5.7	15	43	7.9	3.5
Cheerios—08013	1 oz.	105	3.1	2.6	1.7	0.3	0	0.2	142	0.5	189	1.4	5.7	94	38	7.7	3.5
Oatmeal, reg. & instant, dry—08120	1 oz.	109	4.5	3.0	1.8	0.3	0	0.2	0	0.0	9	0	0	15	42	1.2	0.9
Oatmeal, reg. & inst., cooked—08180	3/4 cup	109	4.6	0.5	1.8	0.3	0	na	0.0	0	7	0	0	14	42	1.2	0.9
Cream of Wheat, cooked—08169	3/4 cup	100	2.8	1.3	0.4	0.1	0	na	0	0.0	45	0	0	38	8	7.7	0.2

CHART 4.—SOME KEY NUTRIENTS IN A SELECTION OF WIC-TYPE FOODS—Continued
 [Data from USDA, Agricultural Research Service, Nutrient Data Bank, http://www.nal.usda.gov/fnic/cgi-bin/nut_search.pl]

Food item	Serving size	Energy kcal	Protein mg	Fiber mg	Fat mg	Sat fat mg	Chol mg	E AE	A RE	B6 mg	Folate mg	B12 mg	C mg	Ca mg	Mag mg	Iron mg	Zinc mg
Cream of Wheat, dry—08102	1 oz.	105	3.0	1.1	0.4	0.1	0	0.0	0	0.0	34	0	0	40	8	8.1	0.2
Tuna:																	
Tuna, canned, oil pack	2 oz.	112	16.5	0.0	4.7	0.9	10	0.7	13	0.1	3	1.2	0	7	18	0.8	0.5
Tuna, canned, water pack	2 oz.	66	14.5	0.0	0.5	0.1	17	0.3	10	0.2	2	1.7	0	6	15	0.9	0.4
Legumes:																	
Lentils, cooked from dry	1/2 cup	92	7.2	6.3	0.3	0.0	0	0.1	1	0.1	144	0.0	1	15	29	2.7	1.0
Beans, Great Northern, navy from dried	1/2 cup	121	8.5	5.5	0.3	0.1	0	0.2	0	0.1	70	0.0	0	78	55	3.2	1.2
Peas, crowder, field, black eyed from dried	1/2 cup	97	6.5	5.5	0.4	0.1	0	0.2	2	0.1	175	0.0	0	20	45	2.1	1.1
Eggs:																	
Egg, whole, large	1 egg	75	6.2	0.0	5.0	1.6	213	0.5	96	0.1	24	0.5	0	25	5	0.7	0.6
Egg, scrambled from dried	1/2 cup	229	10.0	0.0	20.4	4.9	356	2.7	174	0.1	27	0.7	0	54	10	1.4	1.1
Peanut Butter: Peanut butter	2 TBS	190	8.1	1.9	16.3	3.3	0	3.2	0	0.1	24	0.0	0	12	51	0.6	0.9
Vegetables: Carrots, raw	1 cup	47	1.1	3.3	0.2	0.0	0	0.5	3094	0.2	15	0.0	10	30	17	0.6	0.2

XI. Review Issues

The Department carefully considered how best to present the issues in this Notice. The following questions address the types of issues the Department is interested in receiving comments on; however, commenters may address additional issues that are within the scope of this review. Some of the questions below are focused on ideas for regulatory or policy redirection; others simply are seeking information on better ways to meet needs within current requirements.

The Department believes that this review will benefit from the broadest possible scope of public input with minimal Departmental direction. Therefore, the following issues proposed for consideration are broadly stated without Departmental comment. Within the context of these broad issues, commenters are encouraged to state their responses as specifically as possible. Comments that are not within the scope of this Notice will not be considered and therefore should not be included. Please be sure to include the rationale and/or scientific basis underlying the suggested changes.

1. Please indicate what elements of the WIC food packages you would keep the same and why.

2. What changes, if any, are needed to the types of foods currently authorized in the WIC food packages? If you recommend additions or deletions to the types of foods currently offered, please discuss recommended quantities and cost implications.

3. Should the quantities of foods in the current WIC food packages be adjusted? If yes, by how much and why? Please discuss cost implications.

4. Recognizing that the WIC Program is designed to provide supplemental foods that contain nutrients known to be lacking in the diets of the target population, what nutrients should be established as priority nutrients for each

category of WIC participant, e.g., pregnant women, children 1–5, etc.? Please provide the scientific rationale for them.

5. Keeping in mind that foods provided by WIC are designed to be supplemental, can the WIC food packages be revised (beyond what is allowed under current regulations) to have a positive effect on addressing overweight concerns? If so, how? Please be specific.

6. Are there other concerns that affect foods issued through the WIC food packages that should be considered in designing the food packages? For example, should WIC provide options to address allergies (the American Dietetic Association notes that the most common food allergies are to milk, eggs, peanuts, soybeans, tree nuts, fish, shellfish and wheat), cultural patterns or food preferences?

7. What data and/or information (please cite sources) should the Department consider in making decisions regarding revisions to the WIC food packages, e.g., nutritional needs of the population, ethnic food consumption data, scientific studies, acculturation practices, and participant surveys, etc.?

8. Recognizing that current legislation requires WIC food packages to be prescriptive, should participants be allowed greater flexibility in choosing among authorized food items? If so, how?

9. How can WIC food packages best be designed to effectively meet nutritional needs in culturally and ethnically diverse communities?

10. Should WIC State agencies be afforded more or less flexibility in designing WIC food packages? Please explain.

11. The WIC program's overall goal is to achieve the greatest improvement in health and development outcomes for WIC participants, achieved partly by

providing food that targets nutrients determined to be lacking or consumed in excess in the diets of the WIC population. In addition to targeting these food nutrients, food selection criteria should address necessary operational concerns for the foods—for example, cost effectiveness; appeal to recipients; convenient and economical package sizes; complexity/ burden for the WIC administrative structure to manage; etc. It would be helpful if commenters would identify/recommend WIC food selection criteria, describe how the criteria interact, indicate their relative weighting or importance, and provide supporting rationale.

Authority: 42 U.S.C. 1786.

Dated: September 10, 2003.

Eric M. Bost,

Under Secretary for Food, Nutrition and Consumer Services.

[FR Doc. 03–23498 Filed 9–12–03; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 02–097–1]

Importation of Eucalyptus Logs, Lumber, and Wood Chips From South America

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations that govern the importation of logs, lumber, and other unmanufactured wood articles into the United States to require that logs and lumber of tropical species of *Eucalyptus* from South America be fumigated with methyl bromide or heat treated prior to

importation and that wood chips of tropical species of *Eucalyptus* from South America be fumigated with methyl bromide, heat treated, or heat treated with moisture reduction prior to importation. We are also proposing to allow wood chips derived from both tropical and temperate species of *Eucalyptus* from South America to be treated with a surface pesticide. These proposed changes are necessary in order to prevent the introduction of plant pests into the United States through the importation of eucalyptus logs, lumber, and wood chips from South America.

DATES: We will consider all comments that we receive on or before November 14, 2003.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 02-097-1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. 02-097-1. If you use e-mail, address your comment to regulations@aphis.usda.gov. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 02-097-1" on the subject line.

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

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

FOR FURTHER INFORMATION CONTACT: Mr. Hesham Abuelnaga, Import Specialist, Phytosanitary Issues Management Team, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737-1236; (301) 734-5334.

SUPPLEMENTARY INFORMATION:

Background

Logs, lumber, and other unmanufactured wood articles imported into the United States could pose a significant hazard of introducing plant

pests and pathogens detrimental to agriculture and to natural, cultivated, and urban forest resources. The Animal and Plant Health Inspection Service (APHIS) has implemented regulations to prohibit or restrict the importation of logs, lumber, and other unmanufactured wood articles into the United States from certain parts of the world. These regulations, which are found in "Subpart—Logs, Lumber, and Other Unmanufactured Wood Articles" (7 CFR 319.40-1 through 319.40-11, referred to below as the regulations), are designed to prevent the dissemination of plant pests that are new to or not widely distributed within the United States.

An increased interest in the importation of unmanufactured wood articles into the United States from other countries has led to an increased demand for fast-growing trees, such as those of the genus *Eucalyptus*. The fast growth rate, environmental adaptability, and high quality for pulp production of this genus make it one of the most widely propagated genera of trees in the world. South American governments, including those of Brazil, Argentina, Chile, Peru, and Uruguay, have encouraged the planting of these fast-growing trees. Brazil has the largest area of *Eucalyptus* plantations in the world, with approximately 3 million hectares planted with various species. Although allowed under the current regulations under certain conditions, logs, lumber, and wood chips of *Eucalyptus* are not being imported currently into the United States from South America. Recently, however, wood products industries in the United States have expressed interest in importing large volumes of *Eucalyptus* wood chips from South America.

Pest Risk Assessment

Since these articles would be a new commodity to the United States, APHIS believed it was necessary to determine whether the current regulations would provide an adequate level of protection against the introduction of plant pests potentially associated with *Eucalyptus* species if the wood products industries in the United States began importing logs, lumber, and wood chips of species of *Eucalyptus*.

In order to identify the plant pests potentially associated with *Eucalyptus* species and the risk of the introduction and dissemination of these plant pests into the United States from the importation of logs, lumber, and wood chips of species of *Eucalyptus* from South America, the U.S. Forest Service recently prepared a pest risk assessment entitled, "Pest Risk Assessment of the Importation into the United States of

Unprocessed *Eucalyptus* Logs and Chips from South America" (April 2001). This document can be viewed on the Internet at <http://www.fpl.fs.fed.us/documnts/General.htm>, or you can request a copy from the individual listed under **FOR FURTHER INFORMATION CONTACT**. This pest risk assessment found that the pests of greatest concern are those that are native to South America that have adapted to make introduced *Eucalyptus* a suitable host. This adaptability suggests that these pests could pose a risk to a wider host range and could adapt to new hosts in the United States. The potential effects of the introduction of these pests are difficult to predict. Many of the pests that were identified in the pest risk assessment as having a high likelihood of introduction into the United States are more tropical in nature, so their ability to colonize hosts in the United States would be limited to the warmer southern States. However, the pest risk assessment also identified potential negative consequences to Hawaii because of that State's more tropical climate. The pest risk assessment indicated visual inspection alone might not provide the appropriate level of protection against several pests of tropical species of *Eucalyptus* and that additional mitigation methods might be necessary.

Among the insects and pathogens assessed in the risk assessment of *Eucalyptus* species, eight were rated a high risk potential: Purple moth (*Sarsina violescens*), scolytid bark and ambrosia beetles (*Scolytopsis brasiliensis* and *Xyleborus* spp., including *X. retusus* and *X. biconicus*), carpenterworm (*Chilecomadia valdiviana*) on *Eucalyptus nitens*, round-headed wood borers (*Chydarteres striatus*, *Retrachyderes thoracicus*, *Trachyderes* spp., *Steirastoma breve*, *Stenodontes spinibarbis*), eucalyptus longhorned borer (*Phoracantha semipunctata*), Botryosphaeria cankers (*Botryosphaeria dothidea*, *Botryosphaeria obtusa*, *Botryosphaeria ribis*), Ceratocystis canker (*Ceratocystis fimbriata*), and pink disease (*Erythricium salmonicolor*). The Botryosphaeria cankers and Ceratocystis canker are indigenous to the United States, so they would not be classified as quarantine pests under the regulations.

Debarking, which would continue to be a requirement in addition to the proposed requirements for logs and lumber of tropical species of *Eucalyptus* from South America, eliminates, or at least facilitates the detection of, plant pests and pathogens found on the surface of logs, as well as those found immediately beneath the bark. The

debarking process destroys the pests themselves and disrupts the host material so that life stages of the pests cannot be completed. Debarking the *Eucalyptus* logs in the country of origin could effectively remove egg masses and larvae of purple moth and carpenterworm on the bark. It would also be effective against Scolytid bark beetles.¹ Debarked logs can be inspected more effectively at the port of first arrival for the presence of boring insects. Because it is impossible to completely remove all pieces of bark, and because debarked logs might be reinfested by pests if not protected after debarking, however, debarking is best used to increase the efficacy of other mitigation measures such as heat treatment, fumigation, or pesticide treatment, rather than as a stand-alone measure.

Heat treatment is effective against all pests, and has been proven to be an effective means of reducing risk.² This treatment would be effective against purple moth since this pest can be found in all of its life stages on the surface of the wood. Kiln drying or steam or hot water treatment would be effective for Scolytid bark and ambrosia beetles.³ For pests such as round-headed borers, eucalyptus longhorned borers, and carpenterworm, which are found in the wood itself, kiln drying or steam heat or hot water treatments would be effective.⁴

Fumigation with methyl bromide has been used for many years to treat logs and lumber because of the chemical's high volatility, ability to penetrate most materials, and broad toxicity against a

wide variety of pests (all stages of insects, mites, ticks, nematodes including cysts, snails, slugs, and fungi). The ability of methyl bromide to penetrate into wood has been a limitation of efficacy, but the removal of bark facilitates the penetration of the fumigant into wood.⁵ Although methyl bromide may not be effective against all organisms, particularly those found deep in the wood, Agency review of the efficacy of methyl bromide fumigations against pests and diseases in wood has been acceptable for two treatment schedules listed in the APHIS Plant Protection and Quarantine Treatment Manual (T-312 and T-404).⁶ This treatment would be effective for the purple moth, Scolytid bark and ambrosia beetles, round-headed borers, the eucalyptus longhorned borer, and carpenterworm.⁷

The evidence in the risk assessment suggests that logs, lumber, and wood chips of species of *Eucalyptus* from South America may be relatively free of most damaging organisms because the commercial *Eucalyptus* plantations are well managed for maximum production, closely monitored to detect and control damaging pests, and grow under conditions that do not generally lead to a high incidence of damage by pests. The proposed treatment requirements, which would be in addition to the current requirements that apply to debarked tropical hardwood logs and lumber, would provide additional protection against the introduction or dissemination of plant pests through the importation of logs and lumber of tropical species of *Eucalyptus* into the United States from South America.

Logs and Lumber of Eucalyptus

Although no wood products of tropical species of *Eucalyptus* from South America are currently being imported into the United States, the regulations do contain provisions under which such logs and lumber could be imported from South America. Specifically, the provisions of § 319.40-5(c) regarding the importation of tropical hardwood logs and lumber and the universal importation options for

logs and lumber in § 319.40-6(a) are applicable to the importation of logs and lumber of tropical species of *Eucalyptus* from South America.

For tropical hardwood logs and lumber, § 319.40-5(c)(1) provides that those articles may be imported if they have been debarked in accordance with § 319.40-7(b) and subject to the inspection and other requirements of § 319.40-9.

Under the universal importation options in § 319.40-6(a), logs may be imported if they are: (1) Debarked in accordance with § 319.40-7, (2) heat treated in accordance with § 319.40-7(c), and (3) stored and handled in such a way that plant pests have no access to the logs during the entire interval between treatment and export. Lumber may be imported under the universal importation options in § 319.40-6 if it is heat treated in accordance with § 319.40-7(c) or heat treated with moisture reduction in accordance with § 319.40-7(d), and meets certain other conditions.

Similarly, temperate species of *Eucalyptus* from South America can be imported pursuant to § 319.40-5(d) of the regulations, which provides that temperate hardwoods from specified locations can be imported if fumigated prior to arrival in the United States in accordance with § 319.40-7(f) and subject to the inspection and other requirements of § 319.40-9. Temperate species of *Eucalyptus* can also be imported pursuant to the universal importation options in § 319.40-6(a).

Under this proposed rule, the universal importation options in § 319.40-6, which are more restrictive than the regulations in § 319.40-5 for tropical hardwoods, would continue to apply to logs and lumber of tropical species of *Eucalyptus* from South America. However, based on the evidence in the pest risk assessment discussed previously, we are proposing to amend § 319.40-5 to provide more restrictive entry requirements for debarked logs and lumber of tropical species of *Eucalyptus* from South America, with the aim of eliminating the risk of the introduction into the United States of plant pests associated with these articles. Specifically, we are proposing to amend the regulations in § 319.40-5(c)(1) to require that logs and lumber of tropical species of *Eucalyptus* from South America be fumigated with methyl bromide or heat treated in accordance with the regulations in § 319.40-7 prior to importation.

Wood Chips

The regulations in § 319.40-6(c)(2) provide conditions under which wood

¹ U.S. Department of Agriculture (USDA), APHIS. 1991. An efficacy review of control measures for potential pests of imported Soviet timber. Misc. Pub. 1496, September 1991. Riverdale, MD.

² Dwinell, L.D. 1997. Pinewood nematode: Regulation and mitigation. Ann. Rev. Phytopath. 35:153-166.

Dwinell, L.D. 1995. Using heat to decontaminate unbarked Virginia pine logs. Proc. Ann. Meeting Forest Products Society, Portland, OR, June 1995.

Morell, J.J. 1995. Importation of unprocessed logs into North America: a review of pest mitigation procedures and their efficacy. Forest Products Journal 45:41-49.

³ Ostaff, D.P. and M.Y. Cech. 1978. Heat-sterilization of spruce-pine-fir lumber containing sawyer beetle larvae (Coleoptera: Cerambycidae). Monochamus sp. Rep. OPX200E. Canadian Forestry Service, Ottawa, ON, 9 pp.

USDA, APHIS. 1991. An efficacy review of control measures for potential pests of imported Soviet timber. Misc. Pub. 1496, September 1991. Riverdale, MD.

⁴ Ostaff, D.P. and M.Y. Cech. 1978. Heat-sterilization of spruce-pine-fir lumber containing sawyer beetle larvae (Coleoptera: Cerambycidae). Monochamus sp. Rep. OPX200E. Canadian Forestry Service, Ottawa, ON, 9 pp.

USDA, Forest Service. 1991. Dry Kiln Operator's Manual. Forest Products Laboratory, Madison, WI. Agriculture Handbook 188. Revised August 1991.

⁵ Richard, J.L., and T.E. See, and W.B. Bollen. 1968. Control of incipient decay with gases in Douglas-fir poles. Forest Prod. Journal. 18(4): 45-51.

⁶ USDA, APHIS. 1998. Plant Protection and Quarantine Treatment Manual, Interim Edition. PPQ04-98-01.

⁷ Hanula, J.L. and C.W. Berisford. 1982. Methyl bromide fumigation destroys broods of the smaller European elm bark beetle (Coleoptera: Scolytidae) in elm logs. Journal Econ. Entomol. 75(4): 688-690.

USDA, APHIS. 1991. An efficacy review of control measures for potential pests of imported Soviet timber. Misc. Pub. 1496, September 1991. Riverdale, MD.

chips may be imported. Under the current regulations, wood chips that are not derived from tropical trees and that are from any place except places in Asia that are east of 60 degrees east longitude and north of the Tropic of Cancer may be imported into the United States if, among other things, they are, in accordance with the regulations in § 319.40-7: (1) Fumigated with methyl bromide; (2) heat treated; or (3) heat treated with moisture reduction. Wood chips that are derived from live, healthy, tropical species of plantation-grown trees grown in tropical areas, which would include wood chips of tropical species of *Eucalyptus* from South America, may currently be imported into the United States without undergoing the treatments listed, but they must be consigned to a facility operating under a compliance agreement.

Based on the evidence in the pest risk assessment discussed previously, which indicated that visual inspection alone might not provide the appropriate level of protection against several pests of tropical species of *Eucalyptus*, we are proposing more restrictive entry requirements for wood chips of tropical species of *Eucalyptus* from South America. We are proposing to amend the regulations to make wood chips of tropical species of *Eucalyptus* from South America subject to the same treatment requirements that apply to wood chips that are not derived from tropical trees, *i.e.*, fumigation with methyl bromide, heat treatment, or heat treatment with moisture reduction in accordance with the regulations in § 319.40-7 prior to importation. (The surface pesticide treatment discussed in the next paragraph as an alternative treatment for *Eucalyptus* wood chips from South America would also be available for wood chips of tropical species of *Eucalyptus*). This proposed requirement that wood chips of tropical species of *Eucalyptus* be subject to the same treatment requirements that apply to wood chips that are not derived from tropical trees is necessary to ensure protection against the introduction and dissemination of plant pests through the importation of wood chips of tropical species of *Eucalyptus* from South America. As discussed in the previous section, the proposed treatments have been proven effective against the pests that were identified with a high risk potential in the risk assessment.

Surface Pesticide Treatment

APHIS has received several requests from the wood pulp industry for an alternative treatment for *Eucalyptus* wood chips, which are in demand

because they produce high quality pulp. While heating and fumigation treatments are appropriate for solid wood products, they are less useful for wood chips. Heating of wood chips is time consuming, and fumigation of wood chips in ship holds is difficult. Surface pesticide treatments, however, can be effectively applied to large shipments of wood chips. Treatment with topical fungicides and insecticides has several advantages over other mitigation measures for the treatment of wood chips: The spray can coat nearly the entire surface of the chip, the treatment solution can be easily adjusted to improve chip coating or biological efficacy, and the total amount of treatment per dry ton of chips can be monitored readily. The quality of the treatment can be monitored by removing samples of chips for chemical analysis. This option is not possible with heat treatment or fumigation since no residual evidence of the treatment is present with these measures.⁸ Based on the requests from the wood pulp industry and on the evidence in the pest risk assessment prepared by the U.S. Forest Service, we are proposing an alternative treatment for the treatment of *Eucalyptus* wood chips prior to importation.

In response to similar requests from the wood pulp industry for an alternative treatment for Monterey pine wood chips from Chile, APHIS amended the regulations in April 2000 to allow the importation of *Pinus radiata* (also known as Monterey pine) wood chips from Chile if the surfaces of the wood chips are treated with a specified pesticide mixture.

We are proposing to amend § 319.40-7(e), concerning surface pesticide treatments, to allow the same treatment used on *Pinus radiata* wood chips from Chile to be used on wood chips of species of *Eucalyptus*. This surface pesticide treatment must be a mixture of a fungicide containing 64.8 percent of the active ingredient didecyl dimethyl ammonium chloride and 7.6 percent of the active ingredient 3-iodo-2-propynyl butylcarbamate and an insecticide containing 44.9 percent of the active ingredient chlorpyrifos phosphorothioate. The wood chips would have to be sprayed with the pesticide so that all the chips are exposed to the chemical on all sides. During the entire interval between treatment and export, the wood chips would have to be stored, handled, or safeguarded in a manner that prevents

any infestation of the wood chips by plant pests.

This surface pesticide treatment has proven effective for treatment of *Pinus radiata* wood chips against mold and sapstain, including *Alternaria alternata*, *Ophiostoma piceae*, *Phialophora* spp., *Aspergillus niger*, and *Trichoderma* spp.⁹ Observations of ship holds containing *Pinus radiata* wood chips entering the United States in Washington indicate little evidence of insect activity.¹⁰ The effectiveness of the insecticide in the chip treatment, the minimal amount of bark, and the fragmentation of the wood probably all contribute to this result. Allowing the use of this surface pesticide treatment on wood chips of species of *Eucalyptus* from South America would provide another treatment alternative to persons interested in importing such wood chips while continuing to protect against the introduction of plant pests.

To help ensure that the *Pinus radiata* wood chips from Chile are free from pests, several additional requirements are included in the regulations, which are found in § 319.40-6(c)(1). Under this proposed rule, these requirements would also apply to *Eucalyptus* wood chips that had undergone surface pesticide treatment. We would require that the wood chips be treated with a surface pesticide treatment in accordance with § 319.40-7(e) within 24 hours after the log was chipped and be retreated if more than 30 days elapsed between the date of the first treatment and the date of export to the United States.

We would also require that the wood chips be accompanied by a certificate stating that the wood chips were derived from logs from live, healthy, plantation-grown trees that were apparently free of plant pests, plant pest damage, and decay organisms, and that the logs were debarked in accordance with § 319.40-7(b) before being chipped. We would require that the wood chips be from plantation-grown trees because the pest risk in a managed forest area is lower than in an unmanaged forest.

We would also require that the certificate state that no more than 45 days elapsed from the time the trees used to make the chips were felled to the time the wood chips were exported.

⁹Morell, J.J. and C.M. Freitag, and A. Silva. 1998. Protection of freshly cut radiata pine chips from fungal attack. Forest Prod. Journal 48(2): 57-59.

¹⁰Russell, K. 1996. How does Washington deal with inquiries and procedures for importing unmanufactured wood products? Proc. Importing Wood Products: Pest Risk to Domestic Industries. Oregon State University, Corvallis, OR, pp. 138-140.

⁸Morell, J.J. and C.M. Freitag, and A. Silva. 1998. Protection of freshly cut radiata pine chips from fungal attack. Forest Prod. Journal 48(2): 57-59.

This requirement would reduce the opportunities for exposure of the logs to plant pests.

Additionally, we would require that the wood chips be consigned to a facility in the United States operating under a compliance agreement with APHIS, in accordance with § 319.40–8 of the regulations. The compliance agreement would further ensure the safe importation of the treated wood chips by specifying safeguards and requirements to ensure that the processing method would effectively destroy any plant pests, and by stating that inspectors must be allowed access to the facility to monitor compliance with the requirements of the compliance agreement and the regulations.

We would require that, during shipment to the United States, no other regulated articles (other than solid wood packing materials) would be permitted in the holds or sealed containers carrying the wood chips, and that wood chips on a vessel's deck would have to be in a sealed container. These requirements would control possible movement of plant pests from other regulated articles.

We would also require that certain safeguards be applied upon arrival of the wood chips in the United States. First, the wood chips would have to be unloaded upon arrival by a conveyor that is covered, to prevent the chips from being blown by the wind and to prevent accidental spillage. The facility receiving the wood chips would have to have a procedure in place to retrieve any chips that fall during unloading. If the chips must be transported after arrival, we would require that they must

be covered or safeguarded in a manner that prevents the chips from spilling or falling off the means of conveyance, or from being blown off the means of conveyance by wind. Once at the facility, the wood chips would have to be stored on a paved surface and be kept segregated from other regulated articles from the time of discharge from the means of conveyance until the chips are processed. The storage area could not be adjacent to wooded areas. Finally, the wood chips would have to be processed, and any fines or unusable wood chips would have to be disposed of by burning within 45 days of arrival at the facility. ("Fines" are small particles or fragments of wood, slightly larger than sawdust, that result from chipping, sawing, or processing wood.) These safeguards would help remove any opportunities for movement of plant pests from the wood chips, should there be any plant pests present on the chips.

Executive Order 12866 and Regulatory Flexibility Act

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

This proposed rule would amend the regulations that govern the importation of logs, lumber, and other unmanufactured wood articles into the United States to require that logs and lumber of tropical species of *Eucalyptus* from South America be fumigated with methyl bromide or heat treated prior to importation and that wood chips of

tropical species of *Eucalyptus* from South America be fumigated with methyl bromide, heat treated, or heat treated with moisture reduction prior to importation. In addition, this proposed rule would amend the regulations to allow *Eucalyptus* wood chips from South America to be treated with a surface pesticide as an alternative to the current treatments. These proposed changes are necessary in order to prevent the introduction of plant pests into the United States through the importation of eucalyptus logs, lumber, and wood chips from South America.

Currently, no wood products of tropical or temperate species of *Eucalyptus* from South America are being imported into the United States. In response to several written and verbal requests from wood products industries in the United States wishing to begin importing these articles, the U.S. Forest Service prepared a risk assessment that indicated that more restrictive entry requirements would be necessary to prevent the introduction of pests into the United States. Since there are currently no imports of these articles, the more restrictive measures will not have any immediate economic impacts, but the proposed changes might impact future imports of wood products of tropical species of *Eucalyptus* from South America.

The cost of the treatment methods we are proposing to require for *Eucalyptus* spp. logs, lumber, and wood chips (see table 1) would be comparable to the costs of those treatments as they are currently applied to other unmanufactured wood products imported into the United States.

TABLE 1.—TREATMENT COSTS FOR EUCALYPTUS WOOD PRODUCTS

	Heat	Methyl bromide	Heat with moisture reduction	Surface pesticide
Wood chips (1 ton)	\$50 to \$100	\$0.50 to \$3	\$20 to \$30	\$1.50 to \$3.
Logs and lumber (1,000 bd. ft)	\$100 to \$200	\$1 to \$3	\$41 to \$77	\$1 to \$10.

Source: U.S. Environmental Protection Agency, Dec. 1996, "Heat Treatments to Control Pests on Imported Timber."

Note: 1,000 board feet of *Eucalyptus* weighs approximately 4,000 pounds.

Note: Heat treatment with moisture reduction is offered as a treatment only for lumber because it is not as effective for logs and damages the wood.

The additional costs of these proposed treatments would be less than 1 percent of the value of the imported *Eucalyptus* wood products and thus would not have a significant impact on future imports of wood products of *Eucalyptus* from South America.

The proposed surface pesticide treatment for *Eucalyptus* wood chips from South America would provide an alternative to the currently approved treatments, which include fumigation

with methyl bromide, heat treatment, and heat treatment with moisture reduction. The cost of the proposed surface pesticide treatment is comparable to that of the existing treatment of methyl bromide fumigation (see table 1), and is already being used to treat *Pinus radiata* wood chips from Chile, so we do not expect it would have a significant economic impact on the wood products industries. This proposed rule would benefit the U.S.

wood products industries by making available an alternative treatment that is more cost effective for treating large volumes of wood chips. The availability of this alternative treatment would benefit the U.S. wood products industry by facilitating access to these wood chips, which are readily available and produce high-quality pulp.

At this time, we do not expect that this proposed rule would have any economic effects on any entities, large

or small, in the United States because no entities currently import unmanufactured *Eucalyptus* wood products from South America into the United States.

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

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) State and local laws and regulations will not be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

National Environmental Policy Act

An environmental assessment has been prepared for this proposed rule. The assessment provides a basis for the conclusion that the importation of logs, lumber, and wood chips of tropical species of eucalyptus from South America and the alternate treatment for wood chips of species of eucalyptus from South America under the conditions specified in this proposed rule would not present a risk of introducing or disseminating plant pests and would not have a significant impact on the quality of the human environment.

The environmental assessment was prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

The environmental assessment is available for viewing on the Internet at <http://www.aphis.usda.gov/ppd/es/ppqdoc.html>. Copies of the environmental assessment are also available for public inspection in our reading room. (Information on the location and hours of the reading room is provided under the heading **ADDRESSES** at the beginning of this proposed rule). In addition, copies may be obtained by calling or writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**.

Paperwork Reduction Act

This proposed rule contains no new information collection or recordkeeping

requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Logs, Nursery Stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, 7 CFR part 319 would be amended as follows:

PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 would continue to read as follows:

Authority: 7 U.S.C. 450 and 7701–7772; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

2. In § 319.40–5, paragraph (c)(1) would be revised to read as follows:

§ 319.40–5 Importation and entry requirements for specified articles.

* * * * *

(c) * * *

(1) *Debarked*. Tropical hardwood logs and lumber that have been debarked in accordance with § 319.40–7(b) may be imported subject to the inspection and other requirements of § 319.40–9, except that debarked logs and lumber of tropical species of *Eucalyptus* from South America must also be fumigated in accordance with § 319.40–7(f) or heat treated in accordance with § 319.40–7(c) prior to importation.

* * * * *

3. In § 319.40–6, paragraph (c), the introductory text of paragraph (c)(1), and paragraph (c)(2)(i)(A) would be revised to read as follows:

§ 319.40–6 Universal importation options.

* * * * *

(c) * * *

(1) *From Chile (pine) and South America (eucalyptus)*. Wood chips from Chile that are derived from Monterey or Radiata pine (*Pinus radiata*) logs and wood chips from South America that are derived from species of *Eucalyptus* may be imported in accordance with paragraph (c)(2) of this section or in accordance with the following requirements:

* * * * *

(2) * * *

(i) * * *

(A) Derived from live, healthy, tropical species of plantation-grown trees grown in tropical areas; *Except that*: Wood chips derived from tropical species of *Eucalyptus* from South America must be treated as described in paragraph (c)(2)(i)(B) of this section; or

* * * * *

§ 319.40–7 [Amended]

4. In § 319.40–7, paragraph (e) would be amended as follows:

a. In the introductory text of the paragraph, by adding the words “and *Eucalyptus* wood chips from South America” after the word “Chile”.

b. In paragraph (e)(2), in the paragraph heading, by adding the words “and *Eucalyptus* wood chips from South America” after the word “Chile” and, in the first sentence following the paragraph heading, by adding the words “or on *Eucalyptus* wood chips from South America” after the word “Chile”.

Done in Washington, DC, this 8th day of September, 2003.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–23432 Filed 9–12–03; 8:45 am]

BILLING CODE 3410–34–P

FARM CREDIT ADMINISTRATION

12 CFR Parts 614, 620, 630

RIN 3052–AC07

Loan Policies and Operations; Disclosure to Shareholders; Disclosure to Investors in Systemwide and Consolidated Bank Debt Obligations of the Farm Credit System

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: The Farm Credit Administration (FCA or agency) proposes to amend its regulations governing the Farm Credit System's (System) mission to provide sound and constructive credit and services to young, beginning, and small farmers and ranchers, and producers or harvesters of aquatic products (YBS farmers and ranchers or YBS). Additionally, the agency proposes to amend the System's disclosure to shareholders and investors to include reporting on its service to YBS farmers and ranchers.

DATES: You may send us comments by November 14, 2003.

ADDRESSES: Send us your comments by electronic mail to “reg-comm@fca.gov” or through the Pending Regulations section of our Web site, “www.fca.gov” or through the government-wide “www.regulations.gov” portal. You may also send written comments to Robert Coleman, Director, Regulation and Policy Division, Office of Policy and Analysis, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090, or by facsimile transmission to (703) 734–5784. You

may review copies of all comments we receive at our office in McLean, Virginia.

FOR FURTHER INFORMATION CONTACT:

Robert E. Donnelly, Senior Policy Analyst, Office of Policy and Analysis, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4498, TTY (703) 883-4434,

or

Wendy R. Laguarda, Senior Counsel, Office of General Counsel, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4020, TTY (703) 883-4020.

SUPPLEMENTARY INFORMATION:

I. Objective

The objective of the FCA's proposed rule is to ensure the System provides sound and constructive credit and services¹ to YBS farmers and ranchers.² To accomplish this objective, the agency proposes to amend existing regulations to provide:

1. Clear, meaningful, and results-oriented guidelines for System YBS policies and programs; and
2. Enhanced reporting and disclosure to the public on the System's performance and compliance with its statutory YBS mission (YBS mission or mission).

Through these amendments, the public will be able to measure the System's performance in fulfilling its YBS mission.

II. Background

The FCA's mission is to ensure the System provides a dependable source of credit and related services to agriculture and rural America as authorized by Congress. The System has a special public purpose concerning YBS farmers and ranchers. Since 1980, Congress has required the System to prepare programs for furnishing sound and constructive credit and services to YBS farmers and ranchers. Specifically, section 4.19(a) of the Farm Credit Act of 1971, as amended (Act) states:

Under policies of the district Farm Credit Bank board, each Federal land bank

¹ The term "services" includes leases and related services to YBS farmers and ranchers.

² The Farm Credit Act of 1971 (1971 Act) gave the production credit associations and the banks for cooperatives the authority to finance "producers or harvesters of aquatic products" in addition to financing "farmers and ranchers." The 1980 amendments to the 1971 Act gave the Federal land banks expanded authority to finance "producers or harvesters of aquatic products" and put such producers and harvesters on the same footing as "farmers and ranchers." Thus, in accordance with the amendments to the 1971 Act, whenever we refer to "YBS farmers and ranchers" or "YBS borrowers" in this proposed rule, we are including "producers or harvesters of aquatic products."

association and production credit association shall prepare a program for furnishing sound and constructive credit and related services to young, beginning, and small farmers and ranchers. Such programs shall assure that such credit and services are available in coordination with other units of the Farm Credit System serving the territory and with other governmental and private sources of credit. Each program shall be subject to review and approval by the supervising bank.

YBS farmers and ranchers, like all those in agriculture today, face a wide range of challenges, including access to capital and credit; the impact of rising costs on profitability; urbanization and the availability of resources like land, water and labor; globalization; and competition from larger or more established farms. While all agricultural producers face these challenges, the hurdles that YBS farmers and ranchers face are often greater. The System's YBS mission is important to enable start-up farmers and ranchers to make a successful entry into agricultural production. The YBS mission is also critical to facilitate the transfer of agricultural operations from one generation to the next. For all these reasons, the agency is committed to ensuring that the System fulfills this important public purpose mission.

A. FCA's Focus on YBS Lending

In 1998, the FCA Board adopted a policy statement that called for a renewed commitment by the System to YBS lending; provided guiding principles for enhanced service to YBS farmers and ranchers; and revised definitions for "young," "beginning," and "small" farmers and ranchers.³ To implement the policy statement, the FCA also issued a booklet that included the revised YBS definitions and YBS reporting procedures.⁴ The revised reporting procedures were fully phased in by January 1, 2001. FCA requires the System to submit each year a report detailing its YBS program components.

Since 1999, YBS lending programs have been a "focus area" of agency examinations where, among other factors, the agency has looked at System institutions' YBS board policies and procedures; YBS credit enhancement programs and underwriting standards; YBS program coordination with Federal,

³ FCA-PS-75, Farm Credit System Service to Young, Beginning, and Small Farmers and Ranchers, effective December 10, 1998, available on the FCA Web site, www.fca.gov (under Legal Info., FCA Handbook).

⁴ FCA BL-040, Policy and Reporting Changes for Young, Beginning, and Small Farmers and Ranchers Programs, issued December 11, 1998, available on the FCA Web site, www.fca.gov (under Legal Info., FCA Handbook).

state, System or other credit sources; demographic studies; marketing, advertising, and other outreach programs; and the quality of YBS reporting to System institutions' boards and FCA.

In addition to this examination focus area, for the past 2 years, the FCA Board and staff have increased their focus on the System's mission to serve YBS farmers and ranchers. The agency, for example, recognized several System associations for their exemplary YBS programs.⁵

B. Report by the General Accounting Office

On March 8, 2002, the General Accounting Office (GAO) issued a report on the FCA's oversight of the System's mission to serve YBS farmers and ranchers.⁶ The GAO, after conducting a review that began in July 2001, recommended that the agency strengthen its oversight role of the System's YBS lending, promote YBS compliance, and highlight the System's efforts to provide services to YBS farmers and ranchers by:

1. Promulgating a regulation that outlines specific activities and standards that constitute an acceptable program to implement the YBS statutory requirement;
2. Ensuring that examiners follow the guidance and complete the appropriate examination procedures related to YBS and adequately document the work performed and conclusions drawn during examinations; and
3. Publicly disclosing the results of the examinations for YBS compliance for individual System associations.

In its response to Congress, the FCA noted its commitment to address the issues raised in the GAO report.

C. FCA Gathers Public Input

The FCA values public input and has therefore sought public comment early in the rulemaking process in various ways. First, the agency sought public input through an advance notice of proposed rulemaking (ANPRM) seeking suggestions on possible YBS regulatory approaches and policy initiatives.⁷ In response to the ANPRM, the agency received 65 comment letters on the

⁵ See remarks by the Honorable Michael M. Reyna before the 19th and 20th Annual Farm Credit Council meetings, January 22, 2002, and January 20, 2003, respectively, available on the FCA Web site, www.fca.gov (under About FCA, FCA Board, Testimony, Statements and Speeches).

⁶ Farm Credit Administration: Oversight of Special Mission to Serve Young, Beginning, and Small Farmers Needs to be Improved (GAO-02-3040, available on the GAO Web site, www.gao.gov/cgi-bin/getrpt?GAO-02-3040).

⁷ See 67 FR 59479, Sept. 23, 2002.

subject. Commenters included the Farm Credit Council (Council), System institutions, the American Bankers Association (ABA), the Independent Community Bankers of America (ICBA), and other associations or trade groups involved in agriculture such as the Sustainable Agriculture Coalition and the National Corn Growers Association. Second, the FCA held a public meeting on November 13, 2002, in Kansas City, Missouri, to hear about ways to enhance the System's service to YBS farmers and ranchers. The agency heard from 24 different speakers at this public meeting, including small farmers, agricultural lenders, farm advocates, representatives of the academic community, and government officials.

III. Responses to Comments Received

The comment letters and testimony reflect a multitude of opinions on the issue of whether the agency should provide more guidance to the System on YBS policies and programs. Generally speaking, the comments can be divided into two categories—those that oppose the issuance of a revised YBS regulation and those that support additional regulatory requirements.

A. Comments Advocating No Additional YBS Regulatory Requirements

Many commenters advocated that a revised regulation governing YBS lending is unnecessary because the System is already successfully fulfilling its YBS mission—a mission, they point out, that is only part of the System's overall purpose to serve all of American agriculture. These commenters noted that a revised regulation would not be based in law; would be unduly burdensome and costly; would not result in more YBS lending; and would be inconsistent with the agency's limited oversight of the YBS mission as set forth in section 4.19 of the Act.

We do not agree with the assertion by some commenters that a revised regulation would be inconsistent with section 4.19 of the Act. The agency has clear statutory authority to promulgate regulations to implement section 4.19 of the Act. The agency's general rulemaking authority under section 5.17(a)(9) of the Act authorizes FCA to "prescribe rules and regulations necessary or appropriate" for carrying out the Act. In fact, since 1980, when Congress first added section 4.19 to the Act, the agency has had regulatory and policy guidance on the System's YBS mission to supplement the Act's general YBS requirements for System banks and direct lender associations. We continue to believe a YBS regulation and other supplemental guidance is necessary and

appropriate for the System's achievement of its YBS mission and for the agency's effective oversight of the System in carrying out this mission. Moreover, a significant number of requirements in this proposed rule are similar to current agency YBS policy guidance and reporting requirements. Therefore, we do not believe the proposed rule creates significant additional burdens or costs for the System in fulfilling its YBS mission. Finally, we believe that this proposed rule will help the System achieve even greater results in fulfilling its YBS mission.

Many of these same commenters noted that each System direct lender association understands the needs of the YBS farmers and ranchers in its territory. Such commenters advocated, therefore, that it is more appropriate for each direct lender association, rather than the agency, to develop its own YBS policies and programs. For this reason, many of these commenters opposed a YBS regulation that would include specific YBS targets or other quantitative guidelines, as well as special credit treatment for loans to YBS borrowers. Some commenters claimed that such YBS targets or other quantitative guidelines would limit an association's ability to develop its own unique YBS programs. In addition, other commenters noted that, because the risk-bearing capacity of each direct lender association is different, one uniform approach for YBS lending would not be reasonable.

The proposed rule does not prescribe a "one size fits all" YBS program for all System associations. Instead, the agency gives each direct lender association the flexibility to design its own program tailored to the needs of the YBS farmers and ranchers in its territory. However, the proposed rule provides more results-oriented direction for System direct lender associations by setting forth minimum components that must be included in their YBS programs. Such minimum components will help ensure that System associations are making every effort possible to achieve their YBS mission. The proposed rule also promotes more transparency in YBS reporting, ensuring that the public is well informed of the System's commitment to, and efforts in, fulfilling its YBS mission.

Finally, the commenters noted that the agency can use its enforcement powers rather than its regulatory authority to ensure the System serves eligible YBS farmers and ranchers. Promulgating a proposed rule, which requires notice and comment procedures, will enhance the agency's

ability to use its enforcement tools to ensure that the System is fulfilling its YBS mission.

B. Comments Advocating Additional YBS Regulatory Requirements

In contrast to the foregoing comments, a significant number of commenters noted a need for more regulatory direction on YBS credit and services. These commenters suggest the System is not fulfilling its public purpose as a Government-sponsored enterprise (GSE) because it is not adequately providing credit and services to YBS farmers and ranchers. Many of these commenters noted that serving the needs of YBS farmers and ranchers is crucial for the future of American agriculture.

The agency believes the System's YBS mission is important, not only to the System in its public purpose role as a GSE, but also in its mission as a provider of sound, constructive, and dependable credit and services to all of American agriculture. In the agency's effort to ensure that the System remains focused on its important YBS mission, the proposed rule provides enhanced requirements for YBS policies and programs.

Many of these same commenters also noted that section 4.19 of the Act, which requires the System to submit YBS reports to the agency, is clear evidence that the agency has the authority to oversee and regulate the System's YBS mission. Many of these commenters recommended, therefore, that the agency issue a detailed rule to improve the System's YBS service, data collection, and disclosure. These commenters suggested that the agency adopt a "hard target" system that would require strict performance and reporting guidelines and impose penalties when such guidelines were not met.

We agree with these commenters that section 4.19 of the Act, as well as the agency's general rulemaking authority in section 5.17(a)(9), gives FCA the authority to oversee and regulate the System's YBS mission. The proposed rule sets forth minimum components for effective YBS policies and programs. Included in these components are requirements for direct lender associations to establish quantitative targets and qualitative goals within their risk-bearing capacities. The proposed rule also requires such targets and goals to be incorporated into an association's operational and strategic business plan. Incorporating these components into regulatory requirements will enhance the agency's ability to enforce each direct lender association's establishment of YBS targets and goals. The proposed rule also creates increased transparency

to the public by enhancing the System's reporting of YBS results.

Some commenters noted that the costs and risks associated with entrance into agriculture are prohibitive. These commenters also noted that the demographic data confirms that the pool of potential YBS borrowers continues to shrink. Therefore, many of these commenters recommended that a proposed rule require the System to provide special credit treatment to YBS borrowers. The agency recognizes that YBS farmers and ranchers often fall into a category of borrowers that have low equity, limited cash flow, and little, if any, managerial and business planning experience. The agency believes it is important for the System to recognize the special needs of YBS farmers and ranchers and to make every effort to provide special credit programs and services for this group. However, the agency believes that each direct lender association must decide for itself, within its risk-bearing capacity, how best to meet the needs of the YBS farmers and ranchers in its territory. This is a business judgment that should be exercised by each association rather than the regulator. In meeting the special credit needs of YBS farmers and ranchers and maintaining sound credit management practices, the proposed rule suggests that associations can make use of fee waivers, specialized loan underwriting standards, loan guarantees, or loan participation programs.

Finally, several of these commenters suggested that a proposed YBS rule include provisions that would prohibit the System from engaging in predatory pricing or financing credit needs not closely related to agriculture.⁸ Sections 1.8(b) and 2.4(c)(2) of the Act provide that "it shall be the objective" of System lenders to set interest rates and other charges "at the lowest reasonable cost⁹ on a sound business basis" taking into consideration the lender's cost of funds, necessary reserves, and the cost of providing services to its members. Through our examination process, the agency evaluates whether interest rates charged are consistent with law, regulations, sound business practices, and the institution's loan policies. In addition, the agency ensures that interest rates charged are sufficient to cover the institution's costs and

adequately capitalize the institution, while maintaining safety and soundness. With YBS farmers and ranchers facing multiple economic challenges, the agency believes it is important for this group of potential borrowers to have access to credit at competitive rates. Moreover, the System is fulfilling its public purpose under the Act when it provides interest rates at the lowest reasonable cost on a sound business basis.

C. YBS Services and Coordination

Commenters offered suggestions on how to enhance services and coordination with other System institutions and other governmental and private sources of credit for YBS farmers and ranchers. Many commenters suggested that System institutions take greater advantage of Farm Service Agency loan guarantees, aggie bonds, and other risk-pooling programs as a means of providing credit to YBS borrowers while reducing exposure to risk. Other commenters noted the System is currently doing a good job coordinating with these programs and no further guidance on this issue is needed. Many of these same commenters supported collaborative efforts among System institutions, government agencies, non-profit organizations, and other lenders as a means of reaching and serving YBS borrowers. These commenters also suggested that outreach efforts include partnerships with sustainable agriculture and alternative agriculture production programs. Several commenters emphasized the need for outreach programs designed to connect YBS farmers and ranchers with existing lending and support programs. Many commenters also noted the System could do a better job of advertising its services and credit programs to YBS farmers and ranchers. Several commenters also recommended that the System better facilitate intergenerational transfers where land or farm equipment is passed from retiring farmers or ranchers to YBS farmers or ranchers. Several of these same commenters recommended that the System establish mentoring programs to connect seasoned farmers and ranchers with young or beginning farmers and ranchers.

Section 4.19 of the Act requires System direct lender associations to develop YBS programs that assure that credit and services to YBS farmers and ranchers are available in coordination with other System institutions and other governmental and private sources of credit. In accordance with the Act, the agency believes the System should be

making every effort possible to ensure that its YBS credit and service programs are made in coordination with others. To this end, we have included in the proposed rule a YBS program component that requires each direct lender association to establish qualitative YBS goals. Such goals include offering directly, or in coordination with others, credit programs and services and undertaking outreach efforts, including educational programs and advertising campaigns.

One commenter recommended that the agency prevent System institutions from distributing patronage refunds until some of the System's profits are used to fund special low interest programs to YBS farmers and ranchers. Congress established the System as a cooperative structure in which System borrowers are also the owners. The agency believes it would be contrary to Congressional intent to prevent a System institution, operating safely and soundly, from exercising a fundamental principle of cooperatives, namely the distribution of patronage dividends.

Another commenter suggested the agency create an Affordable Farming Program modeled after the Affordable Housing Program of the Federal Home Loan Bank System. The program suggested by the commenter is required by the Federal Home Loan Bank Act. There is no authority under the Act for the agency to require the System to establish a similar program. Absent such statutory authority, the agency believes this idea is best left to the consideration of System institutions using their sound business judgment.

Another commenter noted the need for more educational programs for socially disadvantaged farmers and ranchers, particularly, women farmers and ranchers. Section 1.1(a) of the Act declares the policy of Congress that System institutions improve the income and well being of American farmers and ranchers. Although the Act does not contain explicit provisions for the System to serve socially disadvantaged or minority farmers, the System's mission is to serve all American farmers and ranchers. Moreover, service to YBS farmers and ranchers often includes service to socially disadvantaged and minority farmers and ranchers. Thus, the results-oriented direction in this proposed rule should also enhance the System's service to socially disadvantaged and minority farmers and ranchers.

Finally, some commenters noted that FCA should articulate a strong policy on the System's YBS mission and do a better job of recognizing strong YBS programs. The FCA believes that

⁸ The commenter does not define the term "predatory pricing" and this term is not used in the Act. The agency notes there is no uniform national law that defines what is meant by predatory pricing and such a term is open to widely differing interpretations.

⁹ The word "cost" is used in the singular only in section 2.4(c)(2) of the Act.

through this proposed rule and previous guidance on YBS policies and programs, the agency has articulated its strong commitment to ensuring that the System fulfills its YBS mission. In addition, the proposed rule requires each direct lender association to articulate its YBS policy by including it in a mission statement, which is now a required component of each association's YBS program. For the past two years, the agency also has recognized those System associations with exemplary YBS programs in order to highlight successful efforts and provide model programs for other System institutions to emulate.

D. Measuring the System's YBS Performance

In response to how the agency should measure the System's YBS performance, a significant number of commenters indicated that nationwide performance measures would be inappropriate, unworkable, and ineffective; that Congress did not authorize the agency to establish YBS performance measures; and that no YBS performance system is necessary because the agency already collects adequate information to measure the System's performance. Several commenters advocated that the agency establish a formal rating program for the System's YBS performance to measure not only each direct lender association's performance against the YBS demographics in its territory, but also how well each association's YBS performance compares to other System associations.

The agency believes it is important to measure the System's YBS performance. The proposed rule provides the public with a complete and accurate picture of the System's YBS performance through enhanced reporting requirements. The reporting requirements will provide the public with an understanding of each association's YBS performance as compared to the YBS demographics in its territory. The agency believes the reporting requirements will provide a sound understanding of each direct lender association's YBS performance.

In addition to the enhanced YBS reporting requirements for the System, the agency will also complete a rating for each direct lender association's overall YBS program. The YBS program performance rating will be based on a review of the direct lender association's YBS program components, as discussed in the proposed rule. The examination of an association's YBS program will be the result of an enhanced examination assessment and will normally be completed during regular safety and soundness examination activities. The

FCA's rating will identify the association's YBS program performance as either "Pass" or "Fail." The FCA Board will publicly disclose the results of the System's YBS compliance.

Finally, many commenters noted problems with measuring the System's YBS performance based on the YBS demographic data available to the System, including the limited applicability and accuracy of the data. Many commenters also noted the prohibitive costs associated with conducting independent YBS demographic studies. Other commenters noted that a conflict of interest exists if System institutions are allowed to conduct their own demographic studies. Still other commenters suggested that System institutions hire independent researchers to study the YBS demographics of their lending territories.

One of the minimum components for YBS programs set forth in the proposed rule requires that each direct lender association develop quantitative targets based on the YBS demographic data in its territory. The agency recognizes that YBS demographic data available to the System has limitations. The agency also recognizes that it could be costly and burdensome for System associations to conduct their own studies, or hire an independent source to complete such studies, when reasonably reliable census data exists. In recognition of these limitations, the proposed rule permits direct lender associations to use existing YBS demographic data to establish quantitative targets for their YBS lending as long as they can support that such data is reasonably reliable. In addition to demographic data reliability, it is just as important for direct lender associations to ensure that their quantitative targets reasonably reflect the YBS demographics in their territory and to be able to explain any inconsistencies between the YBS demographics in their territory and their association's YBS data. For example, if the demographic is based on the number of potential YBS borrowers in the territory and an association's quantitative target is based on some variation of loans, an association must disclose this difference when reporting its YBS data.

E. Reporting and Disclosure of YBS Performance

A significant group of commenters stated that current reporting and disclosure requirements are adequate with no additional changes needed. Many of these commenters pointed out that information on the System's YBS performance is already available to the

public through the FCA's annual report. Many of these commenters also believe that FCA lacks authority to require more reporting and disclosure than what is already set forth in section 4.19 of the Act.¹⁰ Many of these commenters also noted that YBS disclosure by individual direct lender associations would be misleading to the public because of territorial differences. Several commenters argued that additional reporting would only serve to increase costs that would be passed on to the borrower with no positive effect on YBS lending. Finally, several commenters expressed concern over the possibility of publicly disclosing individual examination reports on YBS performance.

Another group of commenters noted that increased YBS reporting and disclosure would be beneficial. These commenters articulated that increased reporting and disclosure would apply pressure on System institutions to enhance their YBS lending. Specifically, many of these commenters suggested that YBS reporting be included in the System's annual reports to shareholders. Other commenters noted that the System's status as a GSE compels more reporting and public disclosure of the System's YBS performance. These same commenters suggested that YBS examination results be published in each direct lender association's annual reports.

The agency believes enhanced YBS reporting and disclosure would be beneficial to the public and the System. Additional reporting and disclosure would help the System focus on its YBS performance to better fulfill its YBS mission. In turn, additional YBS reporting and disclosure will give the public a better understanding of the System's YBS performance. The agency has authority to require, in its oversight and regulatory role, the reporting and disclosure we believe necessary for the System's fulfillment of its YBS mission. Further, we do not believe the enhanced reporting requirements in the proposed rule add significant burdens or costs to System banks or direct lender associations.

The proposed rule requires each direct lender association to report, in its

¹⁰ Section 4.19(b) of the Act sets forth YBS reporting requirements for Farm Credit System banks and associations. Specifically, section 4.19(b) provides: The Farm Credit Bank for each district shall annually obtain from associations under its supervision reports of activities under programs developed pursuant to subsection (a) of this section and progress toward program objectives. On the basis of such reports, the bank shall provide to the FCA an annual report summarizing the operations and achievements in its district under such programs.

annual report to shareholders, on each component of its YBS program. As many commenters recommended, the proposed rule also requires both System banks and direct lender associations to include YBS performance results in their annual reports to shareholders. The proposed rule also requires System banks to include, in their annual reports to investors, consolidated, quantitative YBS performance results for their affiliated direct lender associations.

Finally, some commenters expressed concern over disclosing individual examination reports on YBS performance. We believe it is not necessary to disclose confidential examination report information. We believe the additional transparency provided by the enhanced reporting and disclosure requirements in the proposed rule will give the public a sound understanding of the System's YBS performance results and will therefore preclude the need for disclosing FCA examination reports on System YBS performance.

F. YBS Data Collection Issues

In response to whether the agency should count the number of YBS borrowers or loans, many commenters expressed a preference for counting loans while others expressed a preference for counting borrowers. Many other commenters said the issue of consistency in data collection was a key issue rather than whether the agency counts YBS loans or borrowers. Other commenters stated the System should not be allowed to inflate its YBS numbers by allowing the same loan to be counted separately in each applicable YBS category.

In 1998, the agency announced it would collect YBS data from the System based on the number of loans that benefit "young," "beginning," or "small" farmers and ranchers rather than the number of borrowers. This change was consistent with the new definitions the agency developed in 1998, which captured more complete information on loans to partners and family members and thus made it more difficult to track borrowers. The agency believes, along with many of the commenters, that the key issue in YBS data collection is consistency. We believe the reasons for changing our data collection procedures from borrowers to loans in 1998 are still valid, making it unnecessary to change our approach once again.

In 1998, the agency also changed how the System should categorize loans to YBS borrowers. The agency previously required reporting a YBS borrower in one of four mutually exclusive

categories: Young borrowers; beginning borrowers; small borrowers; and borrowers that met at least two of the definitions. The agency now requires System banks and direct lender associations to report a loan in each applicable YBS category. If a loan is made to a borrower who is young, beginning, and small, it is reported in each category. This practice is consistent with other GSE mission-related reporting, such as Fannie Mae and Freddie Mac reports on their annual housing goals.¹¹

In the agency's annual Performance and Accountability Report, the information on the System's YBS lending explicitly states that YBS categories are not mutually exclusive and therefore each category cannot be added together for a total number of System YBS loans. We believe that this method of categorizing and counting the System's YBS loans provides the most accurate and complete picture of how the System institutions are fulfilling their YBS mission. We also believe that this method is consistent with the intent of Congress to report on the System's service to each category of YBS farmers and ranchers.

G. Definitions

Many of the commenters expressed concerns about the current agency definitions for "young," "beginning," and "small" farmers and ranchers. Several commenters recommended tightening the parameters on YBS definitions. These commenters suggested that FCA reduce the "beginning" farmer definition from the current 10 years to 5 years.

Current agency definitions for "young," "beginning," and "small" farmers and ranchers are set forth in 1998 FCA guidance.¹² The guidance defines "young" as a farmer, rancher, or producer or harvester of aquatic products who is age 35 or younger as of the loan transaction date. The current guidance is a change from the previous definition of "less than 35 years old." The current definition remains similar to the United States Department of Agriculture's *National Agricultural Statistics Service Census of Agriculture* (USDA Census of Agriculture), which defines a "young" farmer as being less than 35 years old.

The current guidance defines "beginning" as a farmer, rancher, or producer or harvester of aquatic products who has 10 years or less

farming or ranching experience as of the loan transaction date. Before 1998, the definition of beginning had been a "farmer, rancher and producer or harvester of aquatic products means one who is in the process of establishing an agricultural operation and who has not assumed the full control and risk of such an operation for longer than 5 years." The current definition of "10 years or less" is consistent with section 343 of the Consolidated Farm and Rural Development Act, as amended, which defines, in part, a "qualified beginning farmer or rancher" as an applicant "who has not operated a farm or ranch, or who has operated a farm or ranch for not more than 10 years."¹³

Several commenters also recommended that FCA reduce the small farmer definition from \$250,000 in gross annual sales to something less, such as \$100,000 in gross annual sales. The guidance defines "small" as a farmer, rancher, or producer or harvester of aquatic products who normally generates less than \$250,000 in annual gross sales of agricultural or aquatic products. Before 1998, the definition of small was one who has "sustained gross sales from agricultural or aquatic production and a net worth as prescribed by the FCA." The agency's current definition of "small" is significantly more conservative than the definitions used by other Federal financial regulatory agencies for Community Reinvestment Act¹⁴ reporting of small farmer loans. The Small Business Administration considers most agricultural production enterprises as "small" if their annual receipts do not exceed \$750,000.¹⁵ Commercial banks and savings associations use thresholds of \$1,000,000 for annual sales and a loan size of less than \$500,000 for small loans.¹⁶ The National Commission on Small Farms¹⁷ (Commission) recommended that the United States Department of Agriculture (USDA) focus its programs on farm operations that generate less than \$250,000 in annual gross agricultural sales. The Commission believed such a level of income represents small farm operators and, after expenses, is equivalent to the net disposable income that the average non-farm family receives. As these various definitions indicate, there is no

¹³ 7 U.S.C. 1991.

¹⁴ See, for example, 12 CFR 25.42(h)(1)(iv).

¹⁵ See section 3(a)(1) of the Small Business Act, Pub. L. 85-536, as amended.

¹⁶ Depository lenders report on loans to small farm operators as part of their compliance with the Community Reinvestment Act.

¹⁷ USDA, A Report to the USDA National Commission on Small Farms, January 1998.

¹¹ The annual housing goals are established and supervised by the Department of Housing and Urban Development, Fannie Mae's and Freddie Mac's mission regulator.

¹² See *supra* note 4.

uniform description of a small farm. The agency adopted the most conservative of these thresholds, \$250,000 in annual gross agricultural sales.

Several commenters recommended that FCA exclude loans that are \$5,000 or less from any YBS reporting. The agency's current definitions for YBS farmers and ranchers include all loans, even those that fall under a *de minimis* loan amount, such as \$5,000. We do not believe a *de minimis* exclusion would provide an accurate and complete picture of the System's YBS lending.

One commenter recommended making "small" the umbrella category for "young" and "beginning" farmers and ranchers. This commenter also recommended creating a category for "small" loans to farmers and ranchers who are not "young" or "beginning." Section 4.19 of the Act requires that the System have programs for "young," "beginning," and "small" farmers and ranchers. The agency has interpreted this statutory provision as requiring System policies, programs, and reporting to be based on these three distinct YBS categories. The agency believes that changing these categories by making any one of them the umbrella for other categories, as suggested by the commenter, would be inconsistent with Congressional intent. Moreover, the agency's current "small" category already captures small farmers and ranchers who are not "young" and "beginning." Therefore, to rearrange the categories, as suggested by the commenter, would be unnecessarily burdensome and not more useful.

One commenter noted the inconsistency between the FCA and the USDA definitions for certain categories of YBS borrowers. The agency has considered a variety of data, including USDA benchmarks, in developing what it believes to be YBS definitions most appropriate for the System's mission.

A few commenters noted that a borrower should have a "material stake" in the agricultural operation before he or she can be counted in one of the YBS categories. The current definitions for young and beginning farmers and ranchers apply to individuals who benefit from System loans. Loans to sole proprietors and partners qualify for reporting purposes if a young or beginning borrower is obligated on the loan. Loans to a closely held legal entity qualify for reporting purposes if a young or beginning borrower has an ownership interest in the entity. The current definitions do not require that a young or beginning borrower have a material stake in the agricultural operation. We believe a material stake requirement is inconsistent with the purpose of YBS

lending, which is to provide credit and services to those borrowers who are just getting started in agriculture and often have a low equity position, thereby precluding their ability to have a "material stake" in an agricultural operation.

Finally, one commenter noted that System institutions do not consistently apply YBS definitions. The agency's 1998 guidance for YBS reporting provided a phase-in period for the new definitions, which required compliance by January 2001. During this transition period, System institutions may have adopted different implementation dates for their reporting changes. The agency annually reviews and provides instructions to each System direct lender association for its YBS reporting to ensure that it is both accurate and complete. In addition, FCA examiners evaluate and test the direct lender associations' internal controls to verify whether the designation of YBS farmers and ranchers is correct, the accuracy of the direct lender associations' databases, and the quality of reporting to association boards and FCA.

In summary, the agency believes the current YBS definitions reflect the changes in agriculture occurring over the years and provide the most accurate picture of the System's service to YBS farmers and ranchers. The definitions for YBS categories are not included in the proposed rule, but continue to remain in agency guidance set forth in an agency booklet (1998 BL-040).

H. Other Authorities To Enhance YBS Lending

A significant number of commenters offered suggestions on ways to improve credit and services to YBS farmers and ranchers in lieu of issuing a revised YBS regulation. These suggestions included:

1. Reviving the national charter issue to eliminate territorial restrictions and thereby improve competition, availability, and access to credit to YBS farmers and ranchers;
2. Removing the existing scope of lending restrictions limiting lending to less than full-time farmers so that part-time farmers have more access to credit;
3. Removing restrictions on rural home loan lending;
4. Authorizing System institutions to make investments in rural America;
5. Expanding the System's lending authority to include lending to businesses located in rural areas; and
6. Enhancing the System's lending to other financing institutions. One commenter opposed any initiatives that would expand the System's lending authorities.

The proposed rule focuses only on System YBS policies and programs. The agency's regulatory performance plan (which is available on the agency's Web site) includes many of the topics raised by the commenters. As the regulatory performance plan indicates, many of these topics may be addressed in separate agency rulemakings.

IV. Regulatory Approach

As discussed above, the agency received contrasting comments on whether further guidance is necessary to strengthen the System's mission to provide sound and constructive credit and services to YBS farmers and ranchers. After reviewing the comment letters and public testimony, the agency is proposing a regulation that balances the needs for additional direction while allowing System direct lender associations the flexibility to design YBS programs unique to the needs of their territories and within their risk-bearing capacities.

The proposed rule outlines the minimum components that must be a part of each direct lender association's YBS program. Thus, it is responsive to the GAO report recommendation for a regulation that "outlines specific activities and standards that constitute an acceptable program to implement the YBS statutory requirement."

GAO also recommended publicly disclosing the results of the examinations for YBS compliance for individual System associations. The Federal financial regulatory agencies, including the FCA, have a longstanding policy of keeping examination results confidential to everyone other than the board of directors of the affected institution.¹⁸ The purposes of this policy are to protect financial institutions by withholding reports that contain candid evaluations of their stability and to promote cooperation and communication between the institution and examiners.

We believe the proposed rule meets the intent of the GAO recommendation for improved public disclosure of the System's YBS performance results. The agency will assign a rating for each direct lender association's overall YBS program. The rating will identify the association's YBS program performance as either "Pass" or "Fail." The FCA Board will publicly disclose the results

¹⁸ An exemption under the Freedom of Information Act permits the agency to withhold from the public any agency record "contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions." See 5 U.S.C. 552(b)(8).

of the System's YBS compliance. The proposed rule also requires System banks and direct lender associations to discuss their YBS programs and results in their annual reports to shareholders and investors. We believe these reporting and disclosure requirements will create more meaningful and transparent disclosure of the System's YBS program results than would the reporting of YBS examination results. Moreover, we believe such reporting and disclosure requirements will provide an added incentive to System banks and direct lender associations to focus on and enhance their YBS policies and programs.

Finally, the GAO recommended more consistent and complete YBS examination procedures. In response to this recommendation, FCA has made numerous changes to improve the YBS examination process. Such changes included implementing additional controls to provide assurance that examiners are fully completing the comprehensive YBS examination procedures. Before the GAO review, examiners had been completing YBS examination procedures using a "risk-based" approach, focusing attention on those areas deemed to be significant to that particular institution. Shortly after receiving the GAO report, the "risk-based" approach was discontinued and comprehensive scope examinations became mandatory in all association examinations, with full documentation of work performed and conclusions drawn. Senior examiners are now required to provide close supervision of the YBS examination program, and quality assurance examiners review the work completed and certify that the examiners followed all applicable guidance. After reviewing the agency's progress in this area, the GAO concluded that our corrective action plan satisfies the recommendation contained in the report regarding YBS examination activities.

The agency proposes to revise its YBS regulation by removing the current rule in its entirety and replacing it with the proposed rule discussed below.

V. Section-by-Section Analysis

Section 614.4165(a)—Definitions

We have added a definition section to clarify that the term "credit" includes all loans and interests in participations made by System banks and direct lender associations operating under title I or II of the Act. This section also clarifies that the term "services" as used in section 4.19(a) of the Act includes all leases made under title I or II authorities and all related services made by System

banks and direct lender associations operating under title I or II of the Act.

Section 614.4165(b)—Farm Credit Bank Policies

This section implements certain provisions of section 4.19 of the Act, which require each:

1. Direct lender association to adopt a YBS program under the policies of its funding¹⁹ Farm Credit bank board;

2. Direct lender association to coordinate with other System institutions in its territory, and other Governmental and private sources of credit in extending credit and services to YBS farmers and ranchers;

3. Direct lender association to report annually on its YBS programs and performance results to its funding bank; and

4. Farm Credit bank to report annually to the FCA, summarizing the YBS program operations and achievements of its affiliated direct lender associations.

Direct lender associations have gained more autonomy from their funding banks since 1980, when section 4.19 of the Act was added. In recognizing this autonomy, we are proposing that the Farm Credit bank policies be kept to a minimum. Instead, the proposed rule focuses on ensuring that the direct lender associations establish YBS programs that fulfill the provisions of section 4.19 of the Act.

Section 614.4165(c)—Direct Lender Association YBS Programs

This section sets forth the minimum components that each direct lender association must include in its YBS program. This section allows each direct lender association to design a YBS program unique to the needs of the YBS farmers and ranchers in its territory. Setting forth minimum components for YBS programs conveys FCA's expectations for specific activities and standards that constitute an acceptable YBS program.

The first component of this section requires each direct lender association to develop a mission statement for its YBS program. The exercise of developing a mission statement will compel each direct lender association to focus on the objectives of its YBS program and the steps it must take to accomplish such objectives.

The second and third components of this section require each direct lender association to develop annual

quantitative targets and qualitative goals to be incorporated into its operational and strategic business plan. Although the proposed regulation provides several suggestions on how to establish quantitative targets, these are suggestions only and are not mandatory. Each direct lender association has the flexibility to establish quantitative targets that best fit the needs of its territory. These targets must be established for each category of YBS borrowers. We note that no matter how direct lender associations establish their quantitative targets, the agency will continue to require annual YBS reports on loan volume and numbers.

The proposed rule requires that quantitative targets reasonably relate to the demographic data in each direct lender association's territory. We realize, based on the comments received, that the demographic data available to the System is not a perfect representation of the potential pool of eligible YBS borrowers in each direct lender association's territory. However, demographic data available from the *Census of Agriculture*, for example, is suitable as long as the direct lender association makes a reasonable effort to determine the reliability of the data. Moreover, quantitative targets must reasonably reflect the YBS demographics in each direct lender association's territory.

The quantitative targets and qualitative goals outlined in the proposed rule are similar to current FCA policy and reporting requirements for System YBS programs. Therefore, we do not believe these components impose significant new burdens for System direct lender associations.

The fourth component of this section requires each direct lender association to have methods to ensure that it conducts its YBS program in a safe and sound manner and within its risk-bearing capacity. It is possible that YBS farmers and ranchers pose a higher credit risk than other System borrowers. However, through the use of loan participations, capital pooling, guarantors such as the Farm Service Agency and state organizations that address specific YBS lending needs, a direct lender association can better manage its risk and increase opportunities for its YBS borrowers. The use of credit enhancements is one method to manage risk while providing more opportunities.

Section 614.4165(d)—YBS Advisory Committee

Under this section, each direct lender association may establish and maintain an advisory committee comprised of

¹⁹ Although section 4.19 of the Act refers to "district" and "supervising" Farm Credit bank, we use the term "funding" bank, which we believe more appropriately reflects the current relationship between a Farm Credit bank and its affiliated direct lender associations.

young, beginning, and small farmers and ranchers. We believe a YBS advisory committee could help each association determine the credit and services needs of YBS farmers and ranchers in the association's territory. Similarly, this committee could serve as the association's conduit to the YBS community and other agricultural interest groups and lending sources serving the needs of YBS farmers and ranchers. For example, an advisory committee could reach out to the YBS community to inform such potential borrowers of the association's credit and services programs designed to serve YBS farmers and ranchers. For these reasons, we believe this committee will be extremely helpful to System associations.

Section 614.4165(e)—Review and Approval of YBS Programs

This section implements section 4.19(a) of the Act, which requires each YBS program to be subject to review and approval by the funding bank. We recognize that because System associations are now all direct lenders, their relationship with their funding banks has significantly changed since 1980, when section 4.19 was added to the Act. Direct lender associations have been increasingly more responsible for their own programs and operations. Accordingly, we have limited each funding bank's review and approval of YBS programs to whether or not the YBS programs are complete and include the necessary components required in the proposed rule.

Section 614.4165(f)—YBS Program and the Operational and Strategic Business Plan

This paragraph requires direct lender associations to include their YBS quantitative targets and qualitative goals in their operational and strategic business plan. The annual targets and goals will establish the steps by which the association hopes to reach its longer-term YBS program objectives as identified in its operational and strategic business plan.

Section 614.4165(g)—YBS Program Internal Controls

Proper oversight and control of a YBS program will help ensure that the program is managed effectively and will contribute to its overall success. Therefore, we believe comprehensive and detailed internal controls are a critical component of a YBS program. These internal controls include establishing clear lines of responsibility for YBS program implementation, YBS performance results, and YBS quarterly

reporting. Regular and reliable reporting to the board of directors helps the association to assess the strengths and weaknesses of its YBS program. The quarterly reporting requirement in the proposed rule will provide the board of directors an opportunity to assess its YBS program and consider any necessary changes or adjustments to its program components.

Section 620.5(n)—Contents of the Annual Report to Shareholders

A significant number of commenters noted how successfully the System is fulfilling its YBS mission. However, many commenters also noted that the System could do a better job of sharing its YBS mission accomplishments with the public. Therefore, the proposed rule includes a requirement for each direct lender association and Farm Credit bank to report on its YBS mission accomplishments in its annual report to shareholders. The reporting information required in the proposed rule is not significantly different than the information solicited by the agency each year from each direct lender association through its funding bank. Therefore, the agency believes this reporting requirement will not be significantly burdensome or costly to the System.

Reporting requirements for the direct lender associations are more detailed than the Farm Credit bank disclosure requirements. Each direct lender association must provide a description of its YBS program, including a status report on each program component as set forth in § 614.4165(c), and the definitions of "young," "beginning," and "small" farmers and ranchers. Each direct lender association must also describe the YBS demographics in its territory and the source of its demographic data as well as any differences between this data and the association's YBS data. For example, if an association uses the USDA Census of Agriculture to report on the demographics of its territory, it must cite this source. Furthermore, if there are differences between the demographic data and the YBS data being collected by the association, the differences must be explained in the report. For instance, the USDA Census of Agriculture reports on number of farmers and ranchers, whereas System associations report on the number of loans.

In addition, each association must discuss any other information necessary for a comprehensive understanding of the association's YBS program and its results. For example, the association may need to describe the choice of services that it offers to its YBS farmers

and ranchers. The association may also need to discuss any significant changes in quantitative targets or qualitative goals between reporting periods.

Section 4.19(b) of the Act requires each Farm Credit bank to summarize the YBS operations and achievements for all its affiliated direct lender associations and report such information to the agency. The proposed rule requires each Farm Credit bank to include such information in its annual report to shareholders. Specifically, the proposed rule requires the banks to include in its annual report to shareholders a summary report of the quantitative YBS data from its affiliated direct lender associations. The annual report to shareholders must also include the definitions of "young," "beginning," and "small" farmers and ranchers. We note that the proposed rule requires each Farm Credit bank to report on quantitative data only. However, a narrative report may be necessary for an ample understanding of the YBS mission results.

We believe reporting to shareholders and the public will create more transparent disclosure of the System's YBS mission accomplishment. Such transparency will underscore the importance of the YBS mission to the System, not only in its role as a provider of sound, constructive, and dependable credit to all of American agriculture, but also in its public purpose role as a GSE.

To increase the transparency of the System's YBS disclosure, we would encourage all System banks and direct lender associations to provide Web site access to their annual reports to shareholders. We note that much of the YBS information currently reported to the agency by System banks and associations is available on our Web site.

Section 630.20—Contents of the Annual Report to Investors

In order to strive for more transparency in the System's fulfillment of its YBS mission, the proposed rule requires Farm Credit banks to include, in their annual report to investors, a report on consolidated YBS lending data of their affiliated direct lender associations. The annual report to investors must also include the definitions of "young," "beginning," and "small" farmers and ranchers.

VI. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the FCA hereby certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. Each of the

banks in the System, considered together with its affiliated associations, has assets and annual income in excess of the amounts that would qualify them as small entities. Therefore, System institutions are not "small entities" as defined in the Regulatory Flexibility Act.

List of Subjects

12 CFR Part 614

Agriculture, Banks, banking, Flood insurance, Foreign trade, Reporting and recordkeeping requirements, Rural areas.

12 CFR Part 620

Accounting, Agriculture, Banks, banking, Reporting and recordkeeping requirements, Rural areas.

12 CFR Part 630

Accounting, Agriculture, Banks, banking, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Rural areas.

For the reasons stated in the preamble, parts 614, 620, and 630, chapter VI, title 12 of the Code of Federal Regulations are proposed to be amended as follows:

PART 614—LOAN POLICIES AND OPERATIONS

1. The authority citation for part 614 continues to read as follows:

Authority: 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128; secs. 1.3, 1.5, 1.6, 1.7, 1.9, 1.10, 1.11, 2.0, 2.2, 2.3, 2.4, 2.10, 2.12, 2.13, 2.15, 3.0, 3.1, 3.3, 3.7, 3.8, 3.10, 3.20, 3.28, 4.12, 4.12A, 4.13, 4.13B, 4.14, 4.14A, 4.14C, 4.14D, 4.14E, 4.18, 4.18A, 4.19, 4.25, 4.26, 4.27, 4.28, 4.36, 4.37, 5.9, 5.10, 5.17, 7.0, 7.2, 7.6, 7.8, 7.12, 7.13, 8.0, 8.5 of the Farm Credit Act (12 U.S.C. 2011, 2013, 2014, 2015, 2017, 2018, 2019, 2071, 2073, 2074, 2075, 2091, 2093, 2094, 2097, 2121, 2122, 2124, 2128, 2129, 2131, 2141, 2149, 2183, 2184, 2199, 2201, 2202, 2202a, 2202c, 2202d, 2202e, 2206, 2206a, 2207, 2211, 2212, 2213, 2214, 2219a, 2219b, 2243, 2244, 2252, 2279a, 2279a-2, 2279b, 2279c-1, 2279f, 2279f-1, 2279aa, 2279aa-5); sec. 413 of Pub. L. 100-233, 101 Stat. 1568, 1639.

Subpart D—General Loan Policies for Banks and Associations

2. Section 614.4165 is revised to read as follows:

§ 614.4165 Young, beginning, and small farmers and ranchers.

(a) Definitions.

(1) For purposes of this subpart, the term "credit" includes:

(i) Loans made to farmers and ranchers and producers or harvesters of aquatic products under titles I or II of the Act; and

(ii) Interests in participations made to farmers and ranchers and producers or harvesters of aquatic products under titles I or II of the Act.

(2) For purposes of this subpart, the term "services" includes:

(i) Leases made to farmers and ranchers and producers or harvesters of aquatic products under titles I or II of the Act; and

(ii) Related services to farmers and ranchers and producers or harvesters of aquatic products under titles I or II of the Act.

(b) *Farm Credit bank policies.* Each Farm Credit Bank and Agricultural Credit Bank must adopt written policies that direct:

(1) The board of each affiliated direct lender association to establish a program to provide sound and constructive credit and services to young, beginning, and small farmers and ranchers and producers or harvesters of aquatic products (YBS farmers and ranchers or YBS). The terms "bona fide farmer or rancher," and "producer or harvester of aquatic products" are defined in § 613.3000 of this chapter.

(2) Each affiliated direct lender association to include in its YBS farmers and ranchers program provisions ensuring coordination with other Farm Credit System institutions in the territory and other governmental and private sources of credit.

(3) Each affiliated direct lender association to provide, annually, a complete and accurate YBS farmers and ranchers operations and achievements report to its funding bank.

(4) The bank to provide the Farm Credit Administration a complete and accurate annual report summarizing the YBS program operations and achievements of its affiliated direct lender associations.

(c) *Direct lender association YBS programs.* The board of directors of each direct lender association must establish a program to provide sound and constructive credit and services to YBS farmers and ranchers in its territory. Such a program must include the following minimum components:

(1) A mission statement describing program objectives and specific means for achieving such objectives.

(2) Annual quantitative targets for credit to YBS farmers and ranchers that are based on reasonably reliable demographic data and that reasonably reflect the YBS demographics in the lending territory. Such targets may include:

(i) Loan volume and loan number goals for "young," "beginning," and

"small" farmers and ranchers in the territory;

(ii) Percentage goals representative of the demographics for "young," "beginning," and "small" farmers and ranchers in the territory;

(iii) Percentage goals for loans made to new borrowers qualifying as "young," "beginning," and "small" farmers and ranchers in the territory;

(iv) Goals for capital committed to loans made to "young," "beginning," and "small" farmers and ranchers in the territory.

(3) Annual qualitative YBS goals that must include efforts to:

(i) Offer related services, either directly or in coordination with others that are responsive to the needs of the "young," "beginning," and "small" farmers and ranchers in the territory;

(ii) Take full advantage of opportunities for coordinating credit and services offered among other Farm Credit System institutions in the territory and other Governmental and private sources of credit who offer credit and services to those who qualify as "young," "beginning," and "small" farmers and ranchers;

(iii) Implement effective outreach programs to attract YBS farmers and ranchers, which may include advertising campaigns, and educational, credit and services programs beneficial to "young," "beginning," and "small" farmers and ranchers in the territory.

(4) Methods to ensure that credit and services offered to YBS farmers and ranchers are provided in a safe and sound manner and within a direct lender association's risk-bearing capacity. Such methods could include customized loan underwriting standards, loan guarantee programs, fee waiver programs, or other credit enhancement programs.

(d) *YBS Advisory Committee.* The YBS program of each direct lender association may include an advisory committee comprised of "young," "beginning," and "small" farmers and ranchers to provide views on how the credit and services of the direct lender association could best serve YBS farmers and ranchers.

(e) *Review and approval of YBS programs.* The YBS program of each direct lender association is subject to the review and approval of its funding bank. However, the funding bank's review and approval is limited to a determination that the YBS program contains all required components as set forth in paragraph (c) of this section. Any conclusion by the bank that a YBS program is incomplete must be communicated to the direct lender association in writing.

(f) *YBS program and the operational and strategic business plan.* Targets and goals outlined in paragraphs (c)(2) and (c)(3) of this section must be included in each direct lender association's operational and strategic business plan for at least the succeeding 3 years (as set forth in § 618.8440 of this chapter).

(g) *YBS program internal controls.* Each direct lender association must have internal controls that establish clear lines of responsibility for YBS program implementation, YBS performance results, and YBS quarterly reporting to the association's board of directors.

PART 620—DISCLOSURE TO SHAREHOLDERS

3. The authority citation for part 620 continues to read as follows:

Authority: Secs. 5.17, 5.19, 8.11 of the Farm Credit Act (12 U.S.C. 2252, 2254, 2279aa-11); sec. 424 of Pub. L. 100-233, 101 Stat. 1568, 1656.

Subpart B—Annual Report to Shareholders

4. Amend § 620.5 by adding a new paragraph (n) to read as follows:

§ 620.5 Contents of the annual report to shareholders.

* * * * *

(n) *Credit and services to young, beginning, and small farmers and ranchers and producers or harvesters of aquatic products.*

(1) Each direct lender association must describe the YBS demographics in its territory and the source of the demographic data. If there are differences in the methods by which the demographic and YBS data are presented, these differences must be described.

(2) Each direct lender association must provide a description of its YBS program, including a status report on each program component as set forth in § 614.4165(c) of this chapter and the definitions of "young," "beginning," and "small" farmers and ranchers. The discussion must provide such other information necessary for a comprehensive understanding of the direct lender association's YBS program and its results.

(3) Each Farm Credit bank must include a summary report of the quantitative YBS data from its affiliated direct lender associations as described in the Farm Credit Administration's instructions for the annual YBS yearend report. The report must include the definitions of "young," "beginning," and "small" farmers and ranchers. A narrative report may be necessary for an

ample understanding of the YBS mission results.

PART 630—DISCLOSURE TO INVESTORS IN SYSTEMWIDE AND CONSOLIDATED BANK DEBT OBLIGATIONS OF THE FARM CREDIT SYSTEM

5. The authority citation for part 630 continues to read as follows:

Authority: Secs. 5.17, 5.19 of the Farm Credit Act (12 U.S.C. 2252, 2254).

Subpart B—Annual Report to Investors

6. Amend § 630.20 by adding a new paragraph (p) to read as follows:

§ 630.20 Contents of the annual report to investors.

* * * * *

(p) *Credit and services to young, beginning, and small farmers and ranchers and producers or harvesters of aquatic products.* The Farm Credit banks must include a report on consolidated YBS lending data of their affiliated associations. The report must include the definitions of "young," "beginning," and "small" farmers and ranchers. A narrative report may be necessary for an ample understanding of the YBS mission results.

Dated: September 10, 2003.

Jeanette C. Brinkley,
Secretary, Farm Credit Administration Board.
[FR Doc. 03-23421 Filed 9-12-03; 8:45 am]
BILLING CODE 6705-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

Planned Establishment of the Sanford Airport Class C Airspace Area, Sanford, FL, and Modification of the Orlando International Airport Class B Airspace Area, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meetings.

SUMMARY: This document announces two fact-finding informal airspace meetings to solicit information from airspace users, and others, concerning a plan to establish a Class C airspace area at the Orlando-Sanford International Airport, Sanford, FL, and to modify the Orlando, FL, Class B airspace area. This planned establishment of a Class C airspace area is expected to increase the level of safety and efficiency in that airspace; and, the planned modification of the Class B airspace area at the

Orlando International Airport, FL, is expected to make the Orlando Class B airspace area's design more efficient and user-friendly. The planned modifications are a result of a 6-month review of the Sanford Class D airspace area and the Orlando Class B airspace area. The purpose of these meetings is to provide interested parties an opportunity to present views, recommendations, and comments on the plan to establish a Class C airspace area at the Orlando-Sanford International Airport, Sanford, FL, and the planned modification the Orlando, FL, Class B airspace area. All comments received during these meetings will be considered prior to any revision or issuance of a notice of proposed rulemaking.

DATES: These informal airspace meetings will be held on Thursday, November 6, 2003, from 7 p.m.–10 p.m.; and Friday, November 7, 2003, at 7 p.m.–10 p.m. Comments must be received on or before December 8, 2003.

ADDRESSES: On Thursday, November 6, the meeting will be held at the Orlando-Sanford International Airport, Terminal A, Vigilante Room, 1200 Red Cleveland Blvd, Sanford, FL. On Friday, November 7, the meeting will be held at the Orlando Airport Marriott, 7499 Augusta National Drive, Orlando, FL.

Comments: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, Southern Region, ASO-500, Federal Aviation Administration, P.O. Box 20636, Atlanta, GA 30320.

FOR FURTHER INFORMATION CONTACT: Donna Gropper, Manager, Orlando International Airport Traffic Control Tower, Orlando International Airport, 9399 Airport Blvd., Orlando, FL, telephone (407) 852-7500.

SUPPLEMENTARY INFORMATION:

Meeting Procedures

(a) These meetings will be informal in nature and will be conducted by one or more representatives of the FAA Southern Region. A representative from the FAA will present a formal briefing on the planned establishment of a Class C airspace area at the Orlando-Sanford International Airport, Sanford, FL, and modification of the Orlando, FL, Class B airspace area. Each participant will be given an opportunity to deliver comments or make a presentation at the meetings. Only comments concerning the plan to establish a Class C at the Orlando-Sanford Airport, Sanford, FL, and to modify the Orlando, FL, Class B airspace area will be accepted.

(b) These meetings will be open to all persons on a space-available basis.

There will be no admission fee or other charge to attend and participate.

(c) Any person wishing to make a presentation to the FAA panel will be asked to sign in and estimate the amount of time needed for such presentation. This will permit the panel to allocate an appropriate amount of time for each presenter.

(d) These meetings will not be adjourned until everyone on the list has had an opportunity to address the panel.

(e) Position papers or other handout material relating to the substance of these meetings will be accepted. Participants wishing to submit handout material should present and original and two copies (3 copies total) to the presiding officer. There should be additional copies of each handout available for other attendees.

(f) These meetings will not be formally recorded.

Agenda for the Meetings

- Presentation of Meeting Procedures.
- Presentation on the planned establishment of a Class C airspace area at the Orlando-Sanford International Airport, Sanford, FL, and the planned modification of the Class B airspace area at the Orlando International Airport, Orlando, FL.
- Public Presentations and Discussions.
- Closing Comments.

Issued in Washington, DC, on September 8, 2003.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 03-23294 Filed 9-12-03; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 1000

[Docket No. FR-4676-N-11]

Native American Housing Assistance and Self-Determination Negotiated Rulemaking Committee; Meeting

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of Negotiated Rulemaking Committee Meeting.

SUMMARY: This document announces a meeting of the Native American Housing Assistance and Self-Determination Negotiated Rulemaking Committee. The purpose of the Committee is to discuss and negotiate a proposed rule that would change the regulations for the Indian Housing Block Grant (IHBG) program allocation

formula, and other regulatory issues that arise out of the allocation or reallocation of IHBG funds.

DATES: The committee meeting will be held on Monday, September 22, 2003, Tuesday, September 23, 2003, Wednesday, September 24, 2003, and Thursday, September 25, 2003. The committee meeting will begin at approximately 9 a.m. on Monday, September 23, 2003, and is scheduled to adjourn at 3 p.m. on Thursday, September 25, 2003.

ADDRESSES: The meeting will take place at the Hilton Washington, 1919 Connecticut Avenue NW., Washington, DC 20009; telephone (202) 797-5820 (this is not a toll-free number).

FOR FURTHER INFORMATION CONTACT:

Rodger J. Boyd, Deputy Assistant Secretary for Native American Programs, Room 4126, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-5000, telephone, (202) 401-7914 (this is not a toll-free number). Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

I. Background

HUD has established the Native American Housing Assistance and Self-Determination Negotiated Rulemaking Committee for the purposes of discussing and negotiating a proposed rule that would change the regulations for the Indian Housing Block Grant (IHBG) program allocation formula, and other IHBG program regulations that arise out of the allocation or reallocation of IHBG funds.

The IHBG program was established under the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*) (NAHASDA). NAHASDA reorganized housing assistance to Native Americans by eliminating and consolidating a number of HUD assistance programs in a single block grant program. In addition, NAHASDA provides federal assistance for Indian tribes in a manner that recognizes the right of Indian self-determination and tribal self-government. Following the procedures of the Negotiated Rulemaking Act of 1990 (5 U.S.C. 561-570), HUD and its tribal partners negotiated the March 12, 1998 (63 FR 12349) final rule, which created a new 24 CFR part 1000 containing the IHBG program regulations.

II. Negotiated Rulemaking Committee Meeting

This document announces a meeting of the Native American Housing Assistance and Self-Determination Negotiated Rulemaking Committee. The committee meeting will take place as described in the **DATES** and **ADDRESSES** section of this document. The agenda planned for the meeting includes discussion of work group reports by the full committee and the development of draft regulatory language. The meeting will be open to the public without advance registration. Public attendance may be limited to the space available. Members of the public may be allowed to make statements during the meeting, to the extent time permits, and file written statements with the committee for its consideration. Written statements should be submitted to the address listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

Dated: September 9, 2003.

Rodger J. Boyd,

Deputy Assistant Secretary for Native American Programs.

[FR Doc. 03-23330 Filed 9-12-03; 8:45 am]

BILLING CODE 4210-33-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-131997-02]

RIN 1545-BA85

Section 42 Carryover and Stacking Rule Amendments; Hearing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed rulemaking.

SUMMARY: This document cancels the public hearing on proposed regulations relating to carryover and stacking rule amendments under section 42 of the Internal Revenue Code.

DATES: The public hearing originally scheduled for Tuesday, September 23, 2003, at 10 a.m., is cancelled.

FOR FURTHER INFORMATION CONTACT: Guy R. Traynor in the Publications and Regulations Branch, Associate Chief Counsel (Procedures & Administration), at (202) 622-3693 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking and notice of public hearing that appeared in the **Federal Register** on July 7, 2003 (68 FR

40218), announced that a public hearing was scheduled for September 23, 2003, at 10 a.m. in room 2615 of the Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. The subject of the public hearing is proposed regulations under section 42 of the Internal Revenue Code. The deadline for submitting outlines and requests to speak at the hearing for these proposed regulations expired on September 5, 2003.

The notice of proposed rulemaking and notice of public hearing, instructed those interested in testifying at the public hearing to submit a request to speak and an outline of the topics to be addressed. As of September 9, 2003, no one has requested to speak. Therefore, the public hearing scheduled for September 23, 2003 is cancelled.

Cynthia E. Grigsby,

Acting Chief, Publications & Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedures & Administration).

[FR Doc. 03-23469 Filed 9-12-03; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1926

[Docket No. S-030]

RIN No. 1218-AC01

Safety Standards for Cranes and Derricks

AGENCY: Occupational Safety and Health Administration (OSHA), U.S. Department of Labor.

ACTION: Notice of the third meeting of the Negotiated Rulemaking Committee.

SUMMARY: The Occupational Safety and Health Administration (OSHA) announces the third meeting of the Crane and Derrick Negotiated Rulemaking Advisory Committee (C-DAC). The Committee will review summary notes of the second meeting, review draft regulatory text and continue to address substantive issues. The meeting will be open to the public.

DATES: The meeting will be on October 1, 2, 3, 2003. It will begin each day at 8:30 a.m.

ADDRESSES: The meeting will be held at the U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 and will be in conference room N-3437 A, B and C.

Written comments to the Committee may be submitted in any of three ways:

by mail, by fax, or by e-mail. Please include "Docket No. S-030" on all submissions.

By mail, submit three (3) copies to: OSHA Docket Office, Docket No. S-030, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-2625, Washington, DC 20210, telephone (202) 693-2350. Note that receipt of comments submitted by mail may be delayed by several weeks.

By fax, written comments that are 10 pages or fewer may be transmitted to the OSHA Docket Office at fax number (202) 693-1648.

Electronically, comments may be submitted through OSHA's Web page at <http://ecomments.osha.gov>. Please note that you may not attach materials such as studies or journal articles to your electronic comments. If you wish to include such materials, you must submit three copies to the OSHA Docket Office at the address listed above. When submitting such materials to the OSHA Docket Office, clearly identify your electronic comments by name, date, subject, and Docket Number, so that we can attach the materials to your electronic comments.

FOR FURTHER INFORMATION CONTACT:

Michael Buchet, Office of Construction Standards and Guidance, Occupational Safety and Health Administration, U.S. Department of Labor, Room N-3468, 200 Constitution Avenue, NW., Washington, DC 20210; Telephone: (202) 693-2345.

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I. Background

On July 16, 2002, OSHA published a notice of intent to establish a negotiated rulemaking committee, requesting comments and nominations for membership (Volume 67 of the **Federal Register**, page 46612). In subsequent notices the Department of Labor announced the establishment of the Committee (Volume 68 of the **Federal Register**, page 35172, June 12, 2003), requested comments on a list of proposed members (68 FR 9036, February 27, 2003), published a final membership list (68 FR 39877, July 3, 2003), announced the first meeting, (68 FR 39880, July 3, 2003), which was held July 30-August 1, 2003 and announced the second meeting (68 FR 48843, August 15, 2003), which was held September 3-5, 2003.

II. Agenda

The Committee will address the locations for future meetings, review draft materials prepared by the Agency on issues discussed at the first and second meetings, and address additional issues.

III. Anticipated Key Issues for Negotiation

OSHA anticipates that key issues to be addressed will include:

1. The identification/description of what constitutes "cranes and derricks" for purposes of determining the equipment that will be covered by the proposed rule.
2. Qualifications of individuals who operate, maintain, repair, assemble, and disassemble cranes and derricks.
3. Work zone control.
4. Crane operations near electric power lines.
5. Qualifications of signal-persons and communication systems and requirements.
6. Load capacity and control procedures.
7. Wire rope criteria.
8. Crane inspection/certification records.
9. Rigging procedures.
10. Requirements for fail-safe, warning, and other safety-related devices/technologies.
11. Verification criteria for the structural adequacy of crane components.
12. Stability testing requirements.
13. Blind pick procedures.
14. Fall protection.

IV. Public Participation

All interested parties are invited to attend this public meeting at the time and place indicated above. Note, however, that a government issued photo ID card (State or Federal) is required for entry into the Department of Labor building. No advanced registration is required. The public must enter the Department of Labor for this meeting through the 3rd and C Street, NW., entrance. Seating will be available to the public on a first-come, first-served basis. Individuals with disabilities wishing to attend should contact Luz Delacruz by telephone at 202-693-2020 or by fax at 202-693-1689 to obtain appropriate accommodations no later than Wednesday, September 24, 2003. The C-DAC meeting is expected to last two and a half days.

In addition, members of the general public may request an opportunity to make oral presentations to the Committee. The Facilitator has the authority to decide to what extent oral

presentations by members of the public may be permitted at the meeting. Oral presentations will be limited to statements of fact and views, and shall not include any questioning of the committee members or other participants.

Minutes of the meetings and materials prepared for the Committee will be available for public inspection at the OSHA Docket Office, Room N-2625, 200 Constitution Ave., NW., Washington, DC 20210; Telephone (202) 693-2350.

The Facilitator, Susan Podziba, can be reached at Susan Podziba and Associates, 21 Orchard Road, Brookline, MA 02445; telephone (617) 738-5320, fax (617) 738-6911.

Signed at Washington, DC, this 9th day of September, 2003.

John L. Henshaw,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 03-23404 Filed 9-12-03; 8:45 am]

BILLING CODE 4510-26-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD05-03-110]

RIN 1625-AA00

Security Zone; Limerick Generating Station, Schuylkill River, Montgomery County, PA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes establishing a permanent security zone on the waters adjacent to the Limerick Generating Station. This would protect the safety and security of the plant from subversive activity, sabotage, or terrorist attacks initiated from surrounding waters. This action would close water areas around the plant.

DATES: Comments and related material must reach the Coast Guard on or before November 14, 2003.

ADDRESSES: You may mail comments and related material to Coast Guard Marine Safety Office Philadelphia, One Washington Avenue, Philadelphia, Pennsylvania 19147. The Marine Safety Office Philadelphia Waterways Management Branch 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 the above mentioned office between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Lieutenant Junior Grade Kevin Sligh or Lieutenant Junior Grade Toussaint Alston, Coast Guard Marine Safety Office/Group Philadelphia, at (215) 271-4889.

SUPPLEMENTARY INFORMATION:

Regulatory Information

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 (CGD05-03-110), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know 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.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the Marine Safety Office Philadelphia, Waterways Management Branch at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

Terrorist attacks on September 11, 2001, inflicted catastrophic human casualties and property damage. These attacks highlighted the terrorists' ability and desire to utilize multiple means in different geographic areas to increase their opportunities to successfully carry out their mission, thereby maximizing destruction using multiple terrorist acts.

Since the September 11, 2001 terrorist attacks on the World Trade Center in New York, the Pentagon in Arlington, Virginia and Flight 93, the Federal Bureau of Investigation (FBI) has issued several warnings concerning the potential for additional terrorist attacks within the United States. The threat of maritime attacks is real as evidenced by the October 2002 attack on a tank vessel off the coast of Yemen and the prior

attack on the USS COLE. These attacks manifest a continuing threat to U.S. assets as described in the President's finding in Executive Order 13273 of August 21, 2002 (67 FR 56215, September 3, 2002) that the security of the U.S. is endangered by the September 11, 2001 attacks and that such disturbances continue to endanger the international relations of the United States. *See also* Continuation of the National Emergency with Respect to Certain Terrorist Attacks, (67 FR 58317, September 13, 2002); Continuation of the National Emergency With Respect To Persons Who Commit, Threaten To Commit, Or Support Terrorism, (67 FR 59447, September 20, 2002). The U.S. Maritime Administration (MARAD) in Advisory 02-07 advised U.S. shipping interests to maintain a heightened state of alert against possible terrorist attacks. MARAD more recently issued Advisory 03-01 informing operators of maritime interests of increased threat possibilities to vessels and facilities and a higher risk of terrorist attack to the transportation community in the United States. The ongoing hostilities in Afghanistan and Iraq have made it prudent for U.S. ports and waterways to be on a higher state of alert because the al Qaeda organization and other similar organizations have declared an ongoing intention to conduct armed attacks on U.S. interests worldwide.

Due to increased awareness that future terrorist attacks are possible, the Coast Guard as lead federal agency for maritime homeland security, has determined that the Captain of the Port must have the means to be aware of, deter, detect, intercept, and respond to asymmetric threats, acts of aggression, and attacks by terrorists on the American homeland while still maintaining our freedoms and sustaining the flow of commerce. A security zone is a tool available to the Coast Guard that may be used to limit vessel traffic in a specific area to help protect waterfront facilities from damage, injury, or terrorist attack.

On June 4, 2003, we published a temporary final rule entitled, "Security Zone; Limerick Generating Station, Schuylkill River, Montgomery County, Pennsylvania," in the **Federal Register** (68 FR 33386). The temporary final rule designates the waters of the Schuylkill River in the vicinity of the Limerick Generating Station a security zone. No person or vessel may enter or navigate within this security zone without the permission of the Coast Guard. We propose to make the security zone in this area permanent.

Discussion of Proposed Rule

This NPRM proposes to place a permanent security zone around critical infrastructure at the Limerick Generating Station on the Schuylkill River in Montgomery County, Pennsylvania. No person or vessel would be able to enter or remain in the prescribed security zone without the permission of the Captain of the Port, Philadelphia, PA or designated representative. Federal, state, and local agencies would assist the Coast Guard in the enforcement of this proposed rule.

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.

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 may affect the following entities, some of which may be small entities: Owners or operators of fishing vessels and recreational vessels intending to transit portions of the Schuylkill River.

This security zone would not have a significant impact on a substantial number of small entities for the following reasons: The restrictions affect only a limited area and vessel traffic could pass safely around the security zone. Additionally, the opportunity to engage in recreational and charter

fishing outside the geographical limits of the security zone would not be disrupted.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they could better evaluate its effects on them and participate in the rulemaking process. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant Junior Grade Kevin Sligh or Lieutenant Junior Grade Toussaint Alston, Coast Guard Marine Safety Office/Group Philadelphia, at (215) 271–4889.

Collection of Information

This proposed 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 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 expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would 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 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 Security Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to security that may disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a "tribal implication" under the Order.

Energy Effects

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

Environment

We have 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) (g), 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 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05-1(G), 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1

2. Add § 165.551—to read as follows:

§ 165.551 Security Zone; Limerick Generating Station, Schuylkill River, Montgomery County, Pennsylvania.

(a) *Location.* The following area is a security zone: the waters of the Schuylkill River in the vicinity of the Limerick Generating Station bounded by a line beginning at 40°13'21.34" N, 075°35'27.49" W; thence to 40°13'18.92" N, 075°35'29.83" W; thence to 40°13'11.36" N, 075°35'27.57" W; thence to 40°13'12.97" N, 075°35'22.74" W, thence back to the beginning point at 40°13'21.34" N, 075°35'27.49" W. All coordinates reference Datum: NAD 1983.

(b) *Regulations.* (1) All persons are required to comply with the general regulations governing security zones in § 165.33 of this part.

(2) No person or vessel may enter or navigate within this security zone unless authorized to do so by the Coast Guard or designated representative. Any person or vessel authorized to enter the security zone must operate in strict conformance with any directions given by the Coast Guard or designated representative and leave the security zone immediately if the Coast Guard or designated representative so orders.

(3) The Coast Guard or designated representative enforcing this section can be contacted on VHF Marine Band

Radio, channels 13 and 16. The Captain of the Port can be contacted at (215) 271-4807.

(4) The Captain of the Port will notify the public of any changes in the status of this security zone by Marine Safety Radio Broadcast on VHF-FM marine band radio, channel 22 (157.1 MHz).

(c) *Definitions.* For the purposes of this section, *Captain of the Port* means the Commanding Officer of the Coast Guard Marine Safety Office/Group Philadelphia or any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port to act as a designated representative on his behalf.

Dated: August 7, 2003.

Jonathan D. Sarubbi,

Captain, U.S. Coast Guard, Captain of the Port Philadelphia.

[FR Doc. 03-23504 Filed 9-12-03; 8:45 am]

BILLING CODE 4910-15-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD05-03-111]

RIN 1625-AA00

Security Zone; Oyster Creek Generation Station, Forked River, Ocean County, NJ

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes establishing a permanent security zone on the waters adjacent to the Oyster Creek Generation Station. This would protect the safety and security of the plant from subversive activity, sabotage, or terrorist attacks initiated from surrounding waters. This action would close water areas around the plant.

DATES: Comments and related material must reach the Coast Guard on or before November 14, 2003.

ADDRESSES: You may mail comments and related material to Coast Guard Marine Safety Office Philadelphia, One Washington Avenue, Philadelphia, Pennsylvania, 19147. The Marine Safety Office Philadelphia Waterways Management Branch 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 the above mentioned office between 8 a.m. and 4

p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Kevin Sligh or Lieutenant Junior Grade Toussaint Alston, Coast Guard Marine Safety Office/Group Philadelphia, at (215) 271-4889.

SUPPLEMENTARY INFORMATION:

Regulatory Information

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 (CGD05-03-111), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know 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.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the Marine Safety Office Philadelphia, Waterways Management Branch at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

Terrorist attacks on September 11, 2001, inflicted catastrophic human casualties and property damage. These attacks highlighted the terrorists' ability and desire to utilize multiple means in different geographic areas to increase their opportunities to successfully carry out their mission, thereby maximizing destruction using multiple terrorist acts.

Since the September 11, 2001 terrorist attacks on the World Trade Center in New York, the Pentagon in Arlington, Virginia and Flight 93, the Federal Bureau of Investigation (FBI) has issued several warnings concerning the potential for additional terrorist attacks within the United States. The threat of maritime attacks is real as evidenced by the October 2002 attack on a tank vessel off the coast of Yemen and the prior attack on the USS COLE. These attacks manifest a continuing threat to U.S. assets as described in the President's finding in Executive Order 13273 of

August 21, 2002 (67 FR 56215, September 3, 2002) that the security of the U.S. is endangered by the September, 11, 2001 attacks and that such disturbances continue to endanger the international relations of the United States. *See also* Continuation of the National Emergency with Respect to Certain Terrorist Attacks, (67 FR 58317, September 13, 2002); *Continuation of the National Emergency With Respect To Persons Who Commit, Threaten To Commit, Or Support Terrorism*, (67 FR 59447, September 20, 2002). The U.S. Maritime Administration (MARAD) in Advisory 02-07 advised U.S. shipping interests to maintain a heightened state of alert against possible terrorist attacks. MARAD more recently issued Advisory 03-01 informing operators of maritime interests of increased threat possibilities to vessels and facilities and a higher risk of terrorist attack to the transportation community in the United States. The ongoing hostilities in Afghanistan and Iraq have made it prudent for U.S. ports and waterways to be on a higher state of alert because the al Qaeda organization and other similar organizations have declared an ongoing intention to conduct armed attacks on U.S. interests worldwide.

Due to increased awareness that future terrorist attacks are possible, the Coast Guard as lead federal agency for maritime homeland security, has determined that the Captain of the Port must have the means to be aware of, deter, detect, intercept, and respond to asymmetric threats, acts of aggression, and attacks by terrorists on the American homeland while still maintaining our freedoms and sustaining the flow of commerce. A security zone is a tool available to the Coast Guard that may be used to limit vessel traffic in a specific area to help protect waterfront facilities from damage, injury, or terrorist attack.

On June 2, 2003, we published a temporary final rule entitled, "Security Zone; Oyster Creek Generation Station, Forked River, Ocean County, NJ," in the **Federal Register** (68 FR 32643). The temporary final rule designates the waters of the Forked River in the vicinity of the Oyster Creek Generation Station a security zone. No person or vessel may enter or navigate within this security zone without the permission of the Coast Guard. We propose to make the security zone in this area permanent.

Discussion of Proposed Rule

This NPRM proposes to place a permanent security zone around critical infrastructure at the Oyster Creek Generation Station on the Forked River,

Ocean County, New Jersey. No person or vessel would be able to enter or remain in the prescribed security zone without the permission of the Captain of the Port, Philadelphia, PA or designated representative. Federal, state, and local agencies would assist the Coast Guard in the enforcement of this proposed rule.

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.

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 may affect the following entities, some of which may be small entities: owners or operators of fishing vessels and recreational vessels intending to transit portions of the Forked River.

This security zone would not have a significant impact on a substantial number of small entities for the following reasons: the restrictions affect only a limited area and vessel traffic could pass safely around the security zone. Additionally, the opportunity to engage in recreational and charter fishing outside the geographical limits of the security zone would not be disrupted.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have

a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule so that they could better evaluate its effects on them and participate in the rulemaking process. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant Junior Grade Kevin Sligh or Lieutenant Junior Grade Toussaint Alston, Coast Guard Marine Safety Office/Group Philadelphia, at (215) 271-4889.

Collection of Information

This proposed 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 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 expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would 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 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 Security Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to security that may disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a "tribal implication" under the Order.

Energy Effects

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

Environment

We have 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)(g), 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 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05-1(G), 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1

2. Add § 165.552 to read as follows.

§ 165.552 Security Zone; Oyster Creek Generation Station, Forked River, Ocean County, New Jersey.

(a) *Location.* The following area is a security zone: starting at the south branch of the Forked River in the vicinity of the Oyster Creek Generation Station, bounded by a line beginning at 39°49'12.0" N, 074°12'13.0" W; thence to 39°48'39.7" N, 074°12'0" W; along the shoreline, thence to 39°48'40.0" N, 074°12'0.3" W; thence to 39°49'11.8" N, 074°12'10.5" W; thence back along the shoreline to the beginning point. All coordinates reference Datum: NAD 1983.

(b) *Regulations.* (1) All persons are required to comply with the general regulations governing security zones in § 165.33 of this part.

(2) No person or vessel may enter or navigate within this security zone unless authorized to do so by the Coast Guard or designated representative. Any person or vessel authorized to enter the security zone must operate in strict conformance with any directions given by the Coast Guard or designated representative and leave the security zone immediately if the Coast Guard or designated representative so orders.

(3) The Coast Guard or designated representative enforcing this section can be contacted on VHF Marine Band Radio, channels 13 and 16. The Captain of the Port can be contacted at (215) 271-4807.

(4) The Captain of the Port will notify the public of any changes in the status

of this security zone by Marine Safety Radio Broadcast on VHF-FM marine band radio, channel 22 (157.1 MHz).

(c) *Definitions.* For the purposes of this section, *Captain of the Port* means the Commanding Officer of the Coast Guard Marine Safety Office/Group Philadelphia or any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port to act as a designated representative on his behalf.

Dated: August 7, 2003.

Jonathan D. Sarubbi,

Captain, Coast Guard, Captain of the Port Philadelphia.

[FR Doc. 03-23503 Filed 9-12-03; 8:45 am]

BILLING CODE 4910-15-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD05-03-112]

RIN 1625-AA00

Security Zone; Peach Bottom Atomic Power Station, Susquehanna River, York County, PA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes establishing a permanent security zone on the waters adjacent to the Peach Bottom Atomic Power Station. This would protect the safety and security of the plant from subversive activity, sabotage, or terrorist attacks initiated from surrounding waters. This action would close water areas around the plant.

DATES: Comments and related material must reach the Coast Guard on or before November 14, 2003.

ADDRESSES: You may mail comments and related material to Coast Guard Marine Safety Office Philadelphia, One Washington Avenue, Philadelphia, Pennsylvania, 19147. The Marine Safety Office Philadelphia Waterways Management Branch 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 the above mentioned office between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Kevin Sligh or

Lieutenant Junior Grade Toussaint Alston, Coast Guard Marine Safety Office/Group Philadelphia, at (215) 271-4889.

SUPPLEMENTARY INFORMATION:

Regulatory Information

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 (CGD05-03-112), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know 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.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the Marine Safety Office Philadelphia, Waterways Management Branch at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

Terrorist attacks on September 11, 2001, inflicted catastrophic human casualties and property damage. These attacks highlighted the terrorists' ability and desire to utilize multiple means in different geographic areas to increase their opportunities to successfully carry out their mission, thereby maximizing destruction using multiple terrorist acts.

Since the September 11, 2001 terrorist attacks on the World Trade Center in New York, the Pentagon in Arlington, Virginia and Flight 93, the Federal Bureau of Investigation (FBI) has issued several warnings concerning the potential for additional terrorist attacks within the United States. The threat of maritime attacks is real as evidenced by the October 2002 attack on a tank vessel off the coast of Yemen and the prior attack on the USS COLE. These attacks manifest a continuing threat to U.S. assets as described in the President's finding in Executive Order 13273 of August 21, 2002 (67 FR 56215, September 3, 2002) that the security of the U.S. is endangered by the September, 11, 2001 attacks and that

such disturbances continue to endanger the international relations of the United States. See also Continuation of the National Emergency with Respect to Certain Terrorist Attacks, (67 FR 58317, September 13, 2002); Continuation of the National Emergency With Respect To Persons Who Commit, Threaten To Commit, Or Support Terrorism, (67 FR 59447, September 20, 2002). The U.S. Maritime Administration (MARAD) in Advisory 02-07 advised U.S. shipping interests to maintain a heightened state of alert against possible terrorist attacks. MARAD more recently issued Advisory 03-01 informing operators of maritime interests of increased threat possibilities to vessels and facilities and a higher risk of terrorist attack to the transportation community in the United States. The ongoing hostilities in Afghanistan and Iraq have made it prudent for U.S. ports and waterways to be on a higher state of alert because the al Qaeda organization and other similar organizations have declared an ongoing intention to conduct armed attacks on U.S. interests worldwide.

Due to increased awareness that future terrorist attacks are possible, the Coast Guard as lead federal agency for maritime homeland security, has determined that the Captain of the Port must have the means to be aware of, deter, detect, intercept, and respond to asymmetric threats, acts of aggression, and attacks by terrorists on the American homeland while still maintaining our freedoms and sustaining the flow of commerce. A security zone is a tool available to the Coast Guard that may be used to limit vessel traffic in a specific area to help protect waterfront facilities from damage, injury, or terrorist attack.

On June 4, 2003, we published a temporary final rule entitled, "Security Zone; Peach Bottom Atomic Power Station, Susquehanna River, York County, Pennsylvania," in the **Federal Register** (68 FR 33388). The temporary final rule designates the waters of the Susquehanna River in the vicinity of the Peach Bottom Atomic Power Station a security zone. No person or vessel may enter or navigate within this security zone without the permission of the Coast Guard. We propose to make the security zone in this area permanent.

Discussion of Proposed Rule

This NPRM proposes to place a permanent security zone around critical infrastructure at the Peach Bottom Atomic Power Station on the Susquehanna River, York County, Pennsylvania. No person or vessel would be able to enter or remain in the prescribed security zone without the

permission of the Captain of the Port, Philadelphia, PA or designated representative. Federal, state, and local agencies would assist the Coast Guard in the enforcement of this proposed rule.

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.

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 rule may affect the following entities, some of which may be small entities: owners or operators of fishing vessels and recreational vessels intending to transit portions of the Susquehanna River.

This security zone would not have a significant impact on a substantial number of small entities for the following reasons: the restrictions affect only a limited area and vessel traffic could pass safely around the security zone. Additionally, the opportunity to engage in recreational and charter fishing outside the geographical limits of the security zone would not be disrupted.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it

qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we want to assist small entities in understanding this proposed rule so that they could better evaluate its effects on them and participate in the rulemaking process. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant Junior Grade Kevin Sligh or Lieutenant Junior Grade Toussaint Alston, Coast Guard Marine Safety Office/Group Philadelphia, at (215) 271-4889.

Collection of Information

This proposed 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 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 expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would 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 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 Security Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to security that may disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a "tribal implication" under the Order.

Energy Effects

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

Environment

We have 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)(g), 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 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05-1(G), 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1

2. Add § 165.554 to read as follows:

§ 165.550 Security Zone; Peach Bottom Atomic Power Station, Susquehanna River, York County, Pennsylvania.

(a) *Location.* The following area is a security zone: the waters of the Susquehanna River in the vicinity of the Peach Bottom Atomic Power Station bounded by a line drawn from a beginning point located at 39°45'05.26" N, 076°15'43.64" W; thence to 39°45'36.36" N, 076°16'08.93" W; thence to 39°45'38.72" N, 076°15'57.00" W; thence to 39°45'09.60" N, 076°15'35.31" W; thence back to the beginning point at 39°45'05.26" N, 076°15'43.64" W. All coordinates reference Datum: NAD 1983.

(b) *Regulations.* (1) All persons are required to comply with the general regulations governing security zones in § 165.33 of this part.

(2) No person or vessel may enter or navigate within this security zone unless authorized to do so by the Coast Guard or designated representative. Any person or vessel authorized to enter the security zone must operate in strict conformance with any directions given by the Coast Guard or designated representative and leave the security zone immediately if the Coast Guard or designated representative so orders.

(3) The Coast Guard or designated representative enforcing this section can be contacted on VHF Marine Band Radio, channels 13 and 16. The Captain of the Port can be contacted at (215) 271-4807.

(4) The Captain of the Port will notify the public of any changes in the status of this security zone by Marine Safety Radio Broadcast on VHF-FM marine band radio, channel 22 (157.1 MHz).

(c) *Definitions.* For the purposes of this section, *Captain of the Port* means

the Commanding Officer of the Coast Guard Marine Safety Office/Group Philadelphia or any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port to act as a designated representative on his behalf.

Dated: August 7, 2003.

Jonathan D. Sarubbi,

Captain, U.S. Coast Guard, Captain of the Port Philadelphia.

[FR Doc. 03-23501 Filed 9-12-03; 8:45 am]

BILLING CODE 4910-15-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD05-03-113]

RIN 1625-AA00

Security Zone; Salem and Hope Creek Generation Stations, Delaware River, Salem County, NJ

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes establishing a permanent security zone on the waters adjacent to the Salem and Hope Creek Generation Stations. This would protect the safety and security of the plants from subversive activity, sabotage, or terrorist attacks initiated from surrounding waters. This action would close water areas around the plants.

DATES: Comments and related material must reach the Coast Guard on or before November 14, 2003.

ADDRESSES: You may mail comments and related material to Coast Guard Marine Safety Office Philadelphia, One Washington Avenue, Philadelphia, Pennsylvania 19147. The Marine Safety Office Philadelphia Waterways Management Branch 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 the above mentioned office between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Kevin Sligh or Lieutenant Junior Grade Toussaint Alston, Coast Guard Marine Safety Office/Group Philadelphia, at (215) 271-4889.

SUPPLEMENTARY INFORMATION:

Regulatory Information

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 (CGD05-03-113), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know 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.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the Marine Safety Office Philadelphia, Waterways Management Branch at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

Terrorist attacks on September 11, 2001, inflicted catastrophic human casualties and property damage. These attacks highlighted the terrorists' ability and desire to utilize multiple means in different geographic areas to increase their opportunities to successfully carry out their mission, thereby maximizing destruction using multiple terrorist acts.

Since the September 11, 2001 terrorist attacks on the World Trade Center in New York, the Pentagon in Arlington, Virginia, and Flight 93, the Federal Bureau of Investigation (FBI) has issued several warnings concerning the potential for additional terrorist attacks within the United States. The threat of maritime attacks is real as evidenced by the October 2002 attack on a tank vessel off the coast of Yemen and the prior attack on the USS COLE. These attacks manifest a continuing threat to U.S. assets as described in the President's finding in Executive Order 13273 of August 21, 2002 (67 FR 56215, September 3, 2002) that the security of the U.S. is endangered by the September, 11, 2001 attacks and that such disturbances continue to endanger the international relations of the United States. See also Continuation of the National Emergency with Respect to

Certain Terrorist Attacks, (67 FR 58317, September 13, 2002); Continuation of the National Emergency With Respect To Persons Who Commit, Threaten To Commit, Or Support Terrorism, (67 FR 59447, September 20, 2002). The U.S. Maritime Administration (MARAD) in Advisory 02-07 advised U.S. shipping interests to maintain a heightened state of alert against possible terrorist attacks. MARAD more recently issued Advisory 03-01 informing operators of maritime interests of increased threat possibilities to vessels and facilities and a higher risk of terrorist attack to the transportation community in the United States. The ongoing hostilities in Afghanistan and Iraq have made it prudent for U.S. ports and waterways to be on a higher state of alert because the al Qaeda organization and other similar organizations have declared an ongoing intention to conduct armed attacks on U.S. interests worldwide.

Due to increased awareness that future terrorist attacks are possible, the Coast Guard as lead federal agency for maritime homeland security, has determined that the Captain of the Port must have the means to be aware of, deter, detect, intercept, and respond to asymmetric threats, acts of aggression, and attacks by terrorists on the American homeland while still maintaining our freedoms and sustaining the flow of commerce. A Security Zone is a tool available to the Coast Guard that may be used to limit vessel traffic in a specific area to help protect waterfront facilities from damage, injury, or terrorist attack.

On June 3, 2003, we published a temporary final rule entitled, "Security Zone; Salem and Hope Creek Generation Stations, Delaware River, Salem County, NJ," in the **Federal Register** (68 FR 32996). The temporary final rule designates the waters of the Delaware River in the vicinity of the Salem and Hope Creek Generation Stations a security zone. No person or vessel may enter or navigate within this security zone without the permission of the Coast Guard. We propose to make the security zone in this area permanent.

Discussion of Proposed Rule

This NPRM proposes to place a permanent security zone around critical infrastructure at the Salem-Hope Generation Stations on the Delaware River in Salem County, New Jersey. No person or vessel would be able to enter or remain in the prescribed security zone without the permission of the Captain of the Port, Philadelphia, PA, or designated representative. Federal, state, and local agencies would assist the

Coast Guard in the enforcement of this proposed rule.

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.

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 rule may affect the following entities, some of which may be small entities: Owners or operators of fishing vessels and recreational vessels intending to transit portions of the Delaware River.

This security zone would not have a significant impact on a substantial number of small entities for the following reasons: The restrictions affect only a limited area and vessel traffic could pass safely around the security zone. Additionally, the opportunity to engage in recreational and charter fishing outside the geographical limits of the security zone will not be disrupted.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (*see ADDRESSES*) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they could better evaluate its effects on them and participate in the rulemaking process. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant Junior Grade Kevin Sligh or Lieutenant Junior Grade Toussaint Alston, Coast Guard Marine Safety Office/Group Philadelphia, at (215) 271–4889.

Collection of Information

This proposed 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 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 expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would 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 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 Security Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to security that may disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a "tribal implication" under the Order.

Energy Effects

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

Environment

We have 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)(g), 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 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(G), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.553 to read as follows:

§ 165.553 Security Zone; Salem and Hope Creek Generation Stations, Delaware River, Salem County, New Jersey.

(a) *Location.* The following area is a security zone: the waters of the Delaware River in the vicinity of the Salem and Hope Creek Generation Stations bounded by a line drawn from a point located at 39°28'08.0" N, 075°32'31.7" W to 39°28'06.5" N, 075°32'47.4" W, thence to 39°27'28.4" N, 075°32'15.8" W, thence to 39°27'28.8" N, 075°31'56.6" W, thence to 39°27'39.9" N, 075°31'51.6" W, thence along the shoreline to the point of 39°28'08.0" N, 075°32'31.7" W. All coordinates reference Datum: NAD 1983.

(b) *Regulations.* (1) All persons are required to comply with the general regulations governing security zones in § 165.33 of this part.

(2) No person or vessel may enter or navigate within this security zone unless authorized to do so by the Coast Guard or designated representative. Any person or vessel authorized to enter the security zone must operate in strict conformance with any directions given by the Coast Guard or designated representative and leave the security zone immediately if the Coast Guard or designated representative so orders.

(3) The Coast Guard or designated representative enforcing this section can be contacted on VHF Marine Band Radio, channels 13 and 16. The Captain of the Port can be contacted at (215) 271–4807.

(4) The Captain of the Port will notify the public of any changes in the status of this security zone by Marine Safety Radio Broadcast on VHF–FM marine band radio, channel 22 (157.1 MHz).

(c) *Definitions.* For the purposes of this section, *Captain of the Port* means the Commanding Officer of the Coast Guard Marine Safety Office/Group Philadelphia or any Coast Guard

commissioned, warrant, or petty officer who has been authorized by the Captain of the Port to act as a designated representative on his behalf.

Dated: August 7, 2003.

Jonathan D. Sarubbi,

Captain, U.S. Coast Guard, Captain of the Port Philadelphia.

[FR Doc. 03–23502 Filed 9–12–03; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[NC–107–200338(b); FRL–7558–1]

Approval and Promulgation of Implementation Plans; North Carolina: Mecklenburg-Union Transportation Conformity Interagency Memorandum of Agreement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve a revision to the North Carolina State Implementation Plan (SIP) that contains the transportation conformity memorandum of agreement with the Mecklenburg-Union Metropolitan Planning Organization and others. In the Final Rules Section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no significant, material, and adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Written comments must be received on or before October 15, 2003.

ADDRESSES: Comments may be submitted by mail to: Kelly Sheckler, Air Quality Modeling and Transportation Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Comments may also be submitted electronically, or through hand

delivery/courier. Please follow the detailed instructions described in the direct final rule, **SUPPLEMENTARY INFORMATION** (sections I.B.1.i. through iii.) which is published in the Rules Section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Kelly Sheckler, Air Quality Modeling and Transportation Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9042. Ms. Sheckler can also be reached via electronic mail at sheckler.kelly@epa.gov.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the Rules Section of this **Federal Register**.

Dated: August 28, 2003.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 03–23267 Filed 9–12–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[IL200–3b; FRL–7558–4]

Approval and Promulgation of Implementation Plans; Illinois; Revised Motor Vehicle Emissions Inventories and Motor Vehicle Emissions Budgets using MOBILE6

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing approval of a revision to the Illinois State Implementation Plan (SIP) for the attainment and maintenance of the one-hour national ambient air quality standard (NAAQS) for ozone submitted by Illinois on April 11, 2003. Specifically, EPA is proposing to approve Illinois' revised 2007 motor vehicle emission inventories and 2007 Motor Vehicle Emissions Budgets (MVEB) recalculated using MOBILE6 for the Chicago severe ozone area.

In the "Rules and Regulations" section of this **Federal Register**, EPA is approving the State's request as a direct final rule without prior proposal, because EPA views this action as noncontroversial and anticipates no adverse comments. The rationale for approval is set forth in the direct final rule. If EPA receives no relevant written adverse comments, EPA will take no

further action on this proposed rule. If EPA receives relevant adverse written comment, we will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect. In that event, EPA will address all relevant public comments in a subsequent final rule based on this proposed rule. In either event, EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

DATES: Comments on this action must be received by October 15, 2003.

ADDRESSES: Written comments should be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR-18J), USEPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Comments may also be submitted electronically, or through hand delivery/courier, please follow the detailed instructions described in [Part(I)(B)] of the **SUPPLEMENTARY INFORMATION** section.

A copy of the plan revision request is available for inspection at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (Please telephone Patricia Morris at (312) 353-8656 before visiting the Region 5 Office. Or by e-mail contact morris.patricia@epa.gov.)

FOR FURTHER INFORMATION CONTACT: Patricia Morris, Environmental Scientist, Regulation Development Section, Air Programs Branch (AR-18J), USEPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-8656 or morris.patricia@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever “we,” “us,” or “our” are used we mean the EPA.

- I. General Information
- II. What action is EPA taking today?
- III. Where can I find more information about this proposal and corresponding direct final rule?

I. General Information

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

1. The Regional Office has established an official public rulemaking file for this action available for inspection at the Regional Office under Region 5 Air Docket Number IL200-3. The official public file consists of the documents specifically referenced in this action, any public comments received, and other information related to this action.

Although a part of the official docket, the public rulemaking file does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public rulemaking file is the collection of materials that is available.

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

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

B. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number by including the text “Public comment on proposed rulemaking Regional SIP EdoCKET Number IL200-3” in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked “late.” EPA is not required to consider these late comments.

1. **Electronically.** If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment

due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. **E-mail.** Comments may be sent by electronic mail (e-mail) to bortzer.jay@epa.gov, please include the text “Public comment on proposed rulemaking IL200-3” in the subject line. EPA's e-mail system is not an “anonymous access” system. If you send an e-mail comment directly without going through Regulations.gov, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket.

ii. **Regulations.gov.** Your use of regulations.gov is an alternative method of submitting electronic comments to EPA. Go directly to [regulations.gov](http://www.regulations.gov) at <http://www.regulations.gov>, then click on the button “TO SEARCH FOR REGULATIONS CLICK HERE”, and select Environmental Protection Agency as the Agency name to search on. The list of current EPA actions available for comment will be listed. Please follow the online instructions for submitting comments. The system is an “anonymous access” system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

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

2. **By Mail.** Send your comments to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch, (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. Please include the text “Public comment on proposed rulemaking Regional Air Docket IL 200-3b” in the subject line on the first page of your comment.

3. **By Hand Delivery or Courier.** Deliver your comments to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch, (AR-18J), U.S. Environmental Protection Agency,

Region 5, 77 West Jackson Boulevard, 18th floor, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal holidays.

C. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically to EPA. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2.

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

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

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

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

provide the name, date, and **Federal Register** citation related to your comments.

II. What Action Is EPA Taking Today?

On April 11, 2003, the Illinois Environmental Protection Agency submitted a revision to the Illinois SIP for the attainment and maintenance of the one-hour NAAQS for ozone. Specifically, the submittal included revised 2007 motor vehicle emission inventories and 2007 MVEB recalculated using MOBILE6 for the Chicago severe ozone area. The submittal also included a new 2005 projected MVEB. EPA is proposing to approve the SIP revision request.

III. Where Can I Find More Information About This Proposal and Corresponding Direct Final Rule?

For additional information see the direct final rule published in the rules section of this **Federal Register**.

Authority: 42 U.S.C. 4201 *et seq.*

Dated: August 28, 2003.

William E. Munro,

Acting Regional Administrator, Region 5.

[FR Doc. 03-23269 Filed 9-12-03; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

42 CFR Part 1001

RIN 0991-AB13

Medicare and Federal Health Care Programs: Fraud and Abuse; Clarification of Terms and Application of Program Exclusion Authority for Submitting Claims Containing Excessive Charges

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would amend OIG exclusion regulations addressing excessive claims, by including definitions for the terms "substantially in excess" and "usual charges," and by clarifying the "good cause" exception set forth in this section.

DATES: To assure consideration, public comments must be delivered and received at the address provided below by no later than 5 p.m. on November 14, 2003.

ADDRESSES: Please mail or deliver your written comments to the following

address: Office of Inspector General, Department of Health and Human Services, Attention: OIG-53-P, Room 5246, Cohen Building, 330 Independence Avenue, SW., Washington, DC 20201.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code OIG-53-P.

FOR FURTHER INFORMATION CONTACT: Darlene M. Hampton, Office of Counsel to the Inspector General, (202) 619-0335.

SUPPLEMENTARY INFORMATION:

I. Background

A. Current Legal Framework

Section 1128(b)(6)(A) of the Social Security Act (the Act) provides that the Secretary may exclude any individual or entity from participation in any Federal health care program if the Secretary determines that the individual or entity:

"has submitted or caused to be submitted bills or requests for payment (where such bills or requests are based on charges or cost) under subchapter XVIII of this chapter or a State health care program containing charges (or, in applicable cases, requests for payment of costs) for items or services furnished substantially in excess of such individual's or entity's usual charges (or, in applicable cases, substantially in excess of such individual's or entity's costs) for such items or services, unless the Secretary finds there is good cause for such bills or requests containing such charges or costs. * * *

The Secretary has specifically delegated the authority under section 1128 of the Act to the Department's Office of Inspector General (OIG) (53 FR 12993; April 20, 1988).

The implementing OIG regulations effectuating section 1128(b)(6)(A) of the Act are set forth at 42 CFR 1001.701. Section 1001.701(a)(1) provides that the OIG may exclude an individual or entity that has "[s]ubmitted, or caused to be submitted, bills or requests for payments under Medicare or any of the State health care programs containing charges or costs for items or services furnished that are substantially in excess of such individual's or entity's usual charges or costs for such items or services. * * *" In addition, § 1001.701(c)(1), implementing the statutory "good cause" exception, provides that an individual or entity will not be excluded for "[s]ubmitting, or causing to be submitted, bills or requests for payment that contain charges or costs substantially in excess of usual charges or costs when such charges or costs are due to unusual circumstances or medical complications

requiring additional time, effort, expense or other good cause. * * *

Absent certain aggravating or mitigating circumstances, a permissive exclusion imposed under section 1128(b)(6)(A) of the Act will be for a period of 3 years (§ 1001.701(d)(1)).

B. Previous OIG Rulemaking

The OIG has published 2 proposed rules in the **Federal Register** expressing its desire to provide further guidance related to § 1001.701. In the preamble to the April 2, 1990 proposed rule (55 FR 12205, 12215), the OIG stated that “[w]e are considering whether to define in regulations the terms ‘substantially in excess of’ and ‘usual charges or costs,’ and we invite comment on whether defining these terms would be useful, and if so, what the appropriate definitions should be.” Most commenters agreed that definitions would be helpful, although none were able to suggest feasible ones (57 FR 3298, 3307; January 29, 1992). After reviewing the public comments, the OIG elected to continue evaluating the billing patterns of individuals and entities on a case-by-case basis. (*Id.*)

Subsequently, the OIG published proposed rulemaking on September 8, 1997, setting forth the revised or expanded OIG exclusion authorities authorized by the Health Insurance Portability and Accountability Act of 1996, Public Law 104–191. As part of that rulemaking, the OIG proposed amending § 1001.701(a)(1) to authorize the exclusion of an individual or entity that has submitted, or caused to be submitted, bills or requests for Medicare or State health care program payments that contain charges or costs that are substantially in excess of its usual charges or costs for items or services furnished to any of its customers, clients, or patients (62 FR 47182, 47186). However, after reviewing the public comments, the OIG elected not to amend § 1001.701(a)(1). In the preamble to the final rule, the OIG noted that the increasing use of fee schedules could limit the application of § 1001.701(a)(1), which applies where a claim is made on a charge or cost basis (63 FR 46676, 46681; September 2, 1998).

II. Summary of Proposed Amendments

Notwithstanding the increasing use of fee schedules by Federal health care programs, many of the payment provisions of the Act, especially under Part B of Medicare, continue to be charge-based in that programs are only obligated to pay the lower of the actual

charge or the fee schedule amount.¹ In other words, the fee schedule is not an entitlement, but a cap on the amount that Medicare will pay for the item or service. In many cases, payments from Medicare and other Federal health care programs—even when capped by a fee schedule—may be substantially more than the payments that providers have agreed to accept from most or all of their other third party payors. (For convenience in this preamble, the term “providers” includes both suppliers and providers, where appropriate.) Other Medicare payment provisions, such as the inpatient outlier payment methodology, also depend in whole or part on a provider’s costs or charges. Therefore, section 1128(b)(6)(A) of the Act has continuing relevance for, and applicability to, bills and requests for payment submitted for items or services for which payment is based directly or indirectly on the provider’s charges or costs, especially in Medicare Part B, including by way of example only, clinical laboratory services, durable medical equipment, medical supplies, and drugs.

We are excluding from the scope of the proposed regulation claims for physician services reimbursed under the Medicare physician fee schedule, including physician services provided by other health care professionals paid under the aegis of the Medicare physician fee schedule, such as nurse practitioners. While reimbursement for physician services under section 1848(a) of the Act is the lower of the actual charge or the fee schedule amount, the Medicare fee schedule for physician services is developed independently by the Centers for Medicare and Medicaid Services based on a review of actual costs of delivering such services, updated annually, and subject to public notice and comment. Given that the physician fee schedule is subject to detailed statutory direction as to the components and the method of calculation, which include relative value units (RVUs) and empirical market data, we have determined that the fee schedule amounts for physician services under section 1848(a) of the Act are functionally equivalent to a prospective payment methodology and should be treated accordingly for

¹ Some State health care programs’ reimbursement is based upon a pure fee schedule payment (*i.e.*, a provider receives the fee schedule amount regardless of its charges) or some other payment methodology that is not based directly or indirectly on the provider’s charges or costs. In such cases, providers would have no opportunity to submit claims containing excessive charges or costs, and section 1128(b)(6)(A) of the Act would not apply to their bills or requests for payment.

purposes of section 1128(b)(6)(A) of the Act. We are soliciting comments as to whether any services reimbursed based on the physician fee schedule should be subject to these regulations. We note that ancillary services, such as laboratory tests and drugs, would remain subject to these regulations, even when furnished by physicians.

Because Medicaid programs vary by State, we cannot develop a uniform rule applicable to all Medicaid physician services. If a State’s Medicaid fee schedule is based on the Medicare fee schedule, we would treat it like the Medicare fee schedule. Other Medicaid reimbursement schemes would need to be analyzed on a case-by-case basis. Historically, Medicaid has typically been a low payor, and it would be unusual for a provider’s charge to Medicaid to be substantially in excess of its usual charge.

While Medicare pays for a number of other items and services using fee schedules, these fee schedules differ significantly from the physician RVU-based fee schedule. These other fee schedules are updated less regularly, are subject to fewer statutory constraints, and may receive less public input. The OIG recognizes that, in most cases, fee schedules are intended to approximate a reasonable payment amount. However, fee schedules are administered prices and, in some situations, may quickly become out-of-date based on market forces. When market forces cause a provider’s usual charge to most of its customers to drop substantially below the Medicare fee schedule allowance, some providers continue to charge Medicare at least the fee schedule amount. In this situation, the provider creates a two-tier pricing structure with Medicare paying more than other customers. Unless the price differential can be justified by costs that are uniquely associated with the Medicare program, the provider is simply overcharging Medicare. In such circumstances, section 1128(b)(6)(A) of the Act obligates providers to either charge Medicare and Medicaid approximately the same amount as they usually charge their other purchasers for the same items or services or risk exclusion from all Federal health care programs.

The principal protection against overpaying for services to Federal health care program beneficiaries is timely and accurate updating of the various fee schedules used by Federal health care programs. However, section 1128(b)(6)(A) of the Act provides useful backstop protection for the public fisc from providers that routinely charge Medicare or Medicaid substantially

more than their other customers. This proposed rule would clarify that providers are not required to give Medicare and Medicaid their best price. Rather, this proposed rule only addresses the narrow situation in which the providers are charging Medicare or Medicaid substantially more than they regularly charge a majority of their other customers for the same items or services.

In an effort to more clearly define the scope of section 1128(b)(6)(A) of the Act, we are proposing to revise § 1001.701 to define specifically the terms “usual charges” and “substantially in excess,” and to clarify the “good cause” exception.

A. Definition of “Usual Charges”

We propose to define the term “usual charges” to include the amounts billed to cash paying patients; the amounts billed to patients covered by indemnity insurers with which the provider has no contractual arrangement; and any fee-for-service rates it contractually agrees to accept from any payor, including any discounted fee-for-service rates negotiated with managed care plans. Given the changes in the health care marketplace, negotiated rates have become a substantial portion of many health care providers’ revenues. To the extent a provider agrees to discount its rates, the discounted contract rate is its “charge” to those patients.

Specifically, when a provider contractually agrees to accept a fixed amount for an item or service or an amount based upon a payor’s fee schedule, such amount is the provider’s charge for that item or service to patients covered by the contract.

We also propose that the following charges should *not* be included when determining the usual charge:

- Charges for services provided to uninsured patients free of charge or at a substantially reduced rate;
- Capitated payments;
- Rates offered under hybrid fee-for-service arrangements whereby more than 10 percent of the individual’s or entity’s maximum potential compensation could be paid in the form of a bonus and/or withhold payment; and
- Fees set by Medicare, State health care programs, and other Federal health care programs, subject to the limitations described below.

1. Determining the “Usual” Charge

To determine the “usual” charge, we are considering two alternative approaches. First, in order to determine the “usual” charge, we are considering using the provider’s average charge. To

determine the average charge, one would list all of the provider’s charges for a particular item or service for the most recent 1-year period (this 1-year period can be the calendar year or a rolling 12-month period ending with the most recent month for which data are available), and then divide the sum of the charges by the number of charges. As noted above, Medicare fee-for-service charges and certain other charges would not be included.

Alternatively, we are considering using the “fiftieth percentile” method (*i.e.*, the median). To determine the median, one would take the following steps:

- List the provider’s charges for a particular item or service for the most recent one-year period. (This one-year period can be the calendar year or a rolling 12-month period ending with the most recent month for which data are available.)

- Arrange the charges from the lowest to the highest. (If the same rate is charged more than once, it must be listed each time that it is charged.)

- Select the median, which is a charge (or charge range) at which exactly half the provider’s charges are below and half are above.

This can be done in the following manner:

- Count the total number of charges and divide that number by 2.
- If the result is a whole number (n), begin at the lowest charge and count to the n^{th} charge. The median is a number that is between the n^{th} charge and the $n^{\text{th}+1}$ charge.
- If the result is a fraction (*e.g.*, $n.5$), then begin at the lowest charge and count to the $n^{\text{th}+1}$ charge. This is the median charge.

Set forth below are 3 examples that demonstrate how the median should be calculated.

Example A: Even number of charges (*i.e.*, the result is a whole number).

Charges: \$100, \$100, \$150, \$175, \$200, \$250, \$300 and \$500.

Median: Any number between \$175 and \$200.

There are 8 charges. The result of 8 divided by 2 is 4 (*i.e.*, a whole number) and, therefore, n equals 4. Since the result (*i.e.*, 4) is a whole number, the median is a number that is between the n^{th} charge (*i.e.*, the 4th charge) and the $n^{\text{th}+1}$ charge (*i.e.*, 4th+1 charge or the 5th charge). The 4th charge is \$175 and the 5th charge is \$200. Therefore, the median is any number between \$175 and \$200.

Example B: Odd number of charges (*i.e.*, the result is a fraction).

Charges: \$100, \$100, \$150, \$175, \$200, \$300 and \$500.

Median: \$175.

There are 7 charges. The result of 7 divided by 2 is 3.5 (*i.e.*, a fraction) and, therefore, n

equals 3. Since the result (*i.e.*, 3.5) is a fraction, the median is the $n^{\text{th}+1}$ charge (*i.e.*, the 3rd +1 charge or the 4th charge). Therefore, the median is the 4th charge or \$175.

Example C: Many duplicate charges.

Charges: \$250, \$250, \$250, \$250, \$250, \$300, \$350 and \$350.

Median: \$250.

There are 8 charges. The result of 8 divided by 2 is 4 (*i.e.*, a whole number) and, therefore, n equals 4. Since the result (*i.e.*, 4) is a whole number, the median is a number that is between the n^{th} charge (*i.e.*, the 4th charge) and the $n^{\text{th}+1}$ charge (*i.e.*, 4th+1 charge or the 5th charge). The 4th charge is \$250 and the 5th charge is \$250. Therefore, the median is \$250.

We are soliciting public comments about these and other methodologies as a means of determining the “usual” charge.

2. Principles To Be Considered in Determining What Charges To Include

When determining what charges should be included in calculating a provider’s usual charges, the following principles should be considered:

a. Charges Billed Directly to Patients

The entire charge billed directly to patients can be included in determining usual charges as long as the provider makes a good faith effort to collect the full amount. However, if, for example, the provider charges \$100, but routinely accepts \$80 without trying to recoup the \$20 copayment balance, then the \$80 charge should be used in determining the usual charge. As noted above, charges for services provided to uninsured patients free of charge or at a substantially reduced rate are not included when determining the usual charge.

b. Charges Negotiated With a Third Party Payor

If the provider has a contract with a third party payor to accept an amount other than the provider’s actual charge, then for each service or item provided at the negotiated rate, this negotiated rate, together with the applicable copayment, if any, should be included when determining the usual charge.² This negotiated rate should be used even if the bill submitted to the payor lists a higher charge, because the higher charge is never collected.

² The lower negotiated rate may be based upon a predetermined fixed amount, a payor’s fee schedule, a fixed discount (such as a percentage discount) or some other payment methodology.

c. Charges Billed to Third Party Payors With Whom the Provider Does Not Have a Contractual Arrangement

A provider often bills third party payors with whom the provider does not have a contractual relationship. In such cases, the patient is usually responsible for the difference between the full charge that is billed to the third party payor and the amount received from it. The usual charge includes cost-sharing amounts that should be collected.

d. Contractual Rates Offered, Directly or Indirectly, to Managed Care Plans

In determining usual charges, providers should include any contractual per-service rate offered, directly or indirectly, to commercial managed care plans, Medicare+Choice plans, State managed care plans and other Federal managed care plans. In addition, providers should include contractual per-service rates that vary depending on conditions (i.e., bonuses or withholds), provided the total variance is less than or equal to 10 percent. We have selected the 10 percent benchmark because we believe it is a small enough number that we can be confident that the charge will be reasonably ascertainable. We believe that a larger percent would increase the uncertainty as to the actual amount of payment for the item or service. In determining usual charges, we propose that providers handle contractual per-service rates in the following manner:

- Include contractual per-service rates offered, directly or indirectly, to managed care plans only if 10 percent or less of the provider's maximum potential compensation could be paid in the form of a bonus and/or a return of certain funds previously deducted from the provider's compensation (i.e., a "withhold payment").

- In determining usual charges, the rate to be used for such contractual per-service rates would be the base contractual per-service rate (without the bonus and/or withhold payment), plus one-half the potential bonus and/or withhold payment, regardless of whether the bonus or withhold payments are actually paid.

We recognize that, in many cases, the aggregate rate paid for a particular item or service cannot be determined until a decision is made regarding the contingent, additional compensation. Notwithstanding, we believe that, in cases where the additional compensation is less than or equal to 10 percent of the provider's maximum potential compensation, the contractual per-service rate (adjusted in the manner

set forth above) can be included in a provider's usual charges without significantly distorting the accuracy of those charges.

We are soliciting comments on the foregoing, including comments on whether 10 percent is the appropriate range or whether a larger range would be appropriate in situations where the fee paid for the item or service could otherwise be ascertained. In addition, we are seeking comments about the difficulties, if any, that may arise in assessing the rates paid for items and services provided under managed care plans, and how those difficulties might be resolved.

e. Rates Offered to TriCare (Including TriCare Standard, Formerly Known as CHAMPUS)

Rates offered to the Department of Defense (DoD) for its various health care plans should be included in determining usual charges, regardless of whether they are offered in connection with a managed care plan, unless the rates are based upon (1) capitated payments or (2) hybrid fee-for-service arrangements employing bonuses or withhold payments that exceed the proposed 10 percent threshold established above in section II.A.2.d. of this preamble discussion. Providers often offer the DoD's health care programs rates that are significantly lower than those offered to other Federal health care programs.

f. Charges of Affiliated Entities

Some companies create separate legal entities for their Medicare and non-Medicare business. By segregating the Medicare business, such companies often have substantially different charges for Medicare and non-Medicare business. However, in determining the usual charge, the provider should include all charges of any affiliated entities providing substantially the same items or services in the same or substantially the same markets. An "affiliated entity" is any entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the provider.

B. Definition of "Substantially in Excess"

Section 1128(b)(6)(A) of the Act is a permissive exclusion statute. That is, the OIG may, but is not required to, exclude a provider for violation of the statute. In exercising its discretionary authority, the OIG is proposing that, for purposes of section 1128(b)(6)(A) of the Act, only those charges or costs that are more than 120 percent of a provider's

usual charges or costs will be deemed to be "substantially in excess." Having considered various options, we believe this 120 percent measure is a reasonable interpretation of "substantially in excess" and is high enough to permit reasonable variation. Based on anecdotal evidence and our review of particular factual situations in the advisory opinion context and elsewhere, we believe that a 20 percent differential is high enough that most people would agree that the charges to Medicare are substantially in excess.

For purposes of the regulation, where the actual charge submitted exceeds an applicable fee schedule, we would consider the fee schedule amount as the actual charge. As a result, providers submitting charges (as capped by any applicable fee schedule) or costs that are equal to or less than 120 percent of their usual charges or costs will not be subject to sanction under section 1128(b)(6)(A) of the Act. Moreover, for providers submitting charges or costs that are more than 120 percent of the provider's usual charges or costs, exclusion is not mandatory. That is, the authority regarding whether to exclude such a provider from Federal health care programs remains within the discretion of the OIG, notwithstanding the 120 percent benchmark.

We are specifically seeking comments on both this proposed definition of "substantially in excess" and the 120 percent benchmark. We are also interested in comments as to whether the numeric benchmark for "substantially in excess" should vary based upon certain factors (e.g., whether the benchmark should be lower for some providers than others based on the type or location of a provider or the reimbursement methodology applicable to the provider or whether the benchmark should take into account certain market considerations) and, if so, how and why. We will continue to consider data on charging practices and are interested in suggestions on potential sources of data. We are also interested in comments on whether and in what circumstances it might be appropriate to define "substantially in excess" on a case-by-case basis when below the threshold.

C. Clarification of the "Good Cause" Exception

Section 1128(b)(6)(A) of the Act grants the Secretary the authority to permit providers to charge Medicare or Medicaid substantially in excess of their usual costs or charges if the Secretary determines there is good cause for the higher charges or costs. The Secretary's decision regarding whether good cause

exists is not subject to administrative or judicial review. Moreover, as previously mentioned, the Secretary's authority under section 1128 of the Act, including the authority to assess "good cause," has been delegated to the OIG.

Given the myriad of health care payment and service arrangements, the OIG believes that "good cause" should be interpreted broadly. In general, we are proposing that § 1001.701(c)(1) should apply when there is a reasonable set of underlying facts and circumstances.³ The regulations in § 1001.701(c)(1) currently permit submission of excessive charges or costs that are due to unusual circumstances or medical complications requiring additional time, effort, or expense in individual cases. We are proposing a new exception for cases where the higher charge or cost submitted to Medicare or Medicaid is a result of increased costs associated with serving program beneficiaries. For example, higher charges or costs may result from claims processing or delays and denials in payment associated with serving Medicare or Medicaid beneficiaries. The burden of proof to establish the existence of, and to quantify, the higher charges or costs rests upon the individual or entity relying on the good cause exception.

We believe that there may be other circumstances in which providers should be permitted to submit higher charges or costs to Medicare and Medicaid, including factors specific to certain types of providers. The OIG is interested in comments on its proposed amendments pertaining to "good cause," including any comments identifying other circumstances that may constitute good cause for submitting excessive charges or costs.

In addition to the generic exceptions included in the proposed amendments, a provider may also request, in accordance with 42 CFR part 1008, a formal advisory opinion concerning the application of section 1128(b)(6)(A) of the Act to specific billing arrangements that either are in existence or are arrangements the provider in good faith plans to undertake. In order to receive a binding opinion, the specific regulatory requirements and procedures for official advisory opinions set forth in 42 CFR part 1008 must be followed. In addition, the OIG has created preliminary questions and a preliminary

checklist as a guide to crafting advisory opinion requests. All of these materials can be found on our web page at <http://oig.hhs.gov/fraud/advisoryopinions.html>.

Finally, wholly apart from the "good cause" exception, the determination to exclude a provider is discretionary and must be for a remedial purpose. Accordingly, use of this authority for isolated or unintentional mistakes would be inconsistent with the remedial purpose and inappropriate.

III. Regulatory Impact Statement

A. Regulatory Analysis

We have examined the impacts of this proposed rule as required by Executive Order 12866, the Unfunded Mandates Reform Act of 1995, the Regulatory Flexibility Act (RFA) of 1980, and Executive Order 13132.

Executive Order 12866

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulations are necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). A regulatory impact analysis must be prepared for major rules with economically significant effects (\$100 million or more in any given year).

This is not a major rule as defined at 5 U.S.C. 804(2), and it is not economically significant since it would not have a significant effect on program expenditures and there are no additional substantive costs to implement the resulting provisions. This proposed rule is designed to further clarify existing statutory requirements. The statute has been in effect in the absence of these clarifying regulations. We presume that the vast majority of providers have been in compliance with the existing statute and will be minimally impacted, if at all, by these regulations. We hope that these regulations will facilitate compliance by establishing bright line rules that will make it easier for parties to ensure that they are not at risk of being excluded. Thus, we believe that any aggregate economic effect of these regulatory provisions would be minimal and would impact only those limited few who engage in prohibited behavior in violation of the statute. Although these regulations would not require providers to change their charges to the Medicare or Medicaid programs, we anticipate that some providers who are overcharging Medicare or Medicaid may

comply with the statute and regulations by lowering their charges to the programs. While we do not have adequate information at this time to ascertain and quantify the effect of such changes on Federal or State expenditures, we note that a number of OIG and General Accounting Office studies have shown that the Medicare program pays considerably more for some items and services than other payers. Notwithstanding, given the likelihood of substantial current compliance with the statute, we believe that the likely aggregate economic effect of these regulations would be less than \$100 million.

Regulatory Flexibility Act

The RFA, and the Small Business Regulatory Enforcement and Fairness Act of 1996, which amended the RFA, requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most providers are considered to be small entities by having revenues of \$5 million to \$25 million or less in any one year. For purposes of the RFA, most physicians and suppliers are considered to be small entities.

In addition, section 1102(b) of the Social Security Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural providers. This analysis must conform to the provisions of section 604 of the RFA. While these provisions may have some impact on small entities and rural providers, we believe that the aggregate economic impact of this proposed rulemaking would be minimal since it is the nature of the conduct and not the size or type of the entity that would result in a violation of the statute and the regulations. As a result, we have concluded that this proposed rule should not have a significant impact on the operations of a substantial number of small or rural providers, and that a regulatory flexibility analysis is not required for this rulemaking.

Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditures in any one year by State, local or tribal governments, in the aggregate, or by the private sector, of \$110 million. As indicated, these proposed revisions comport with congressional and statutory intent and

³ In order to make clear that the changes proposed in this rulemaking do not affect § 1001.701(c)(2) (which relates to a different exclusion authority, section 1128(b)(6)(B) of the Act), we have made a technical change in § 1001.701(c)(2) that does not change the existing substance or language of that provision.

clarify the Department's legal authorities against those who defraud or otherwise act improperly against the Federal and State health care programs. As a result, we believe that there are no significant costs associated with these revisions that would impose any mandates on State, local or tribal governments, or the private sector that will result in an expenditure of \$110 million or more (adjusted for inflation) in any given year, and that a full analysis under the Unfunded Mandates Reform Act is not necessary.

Executive Order 13132

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

The Office of Management and Budget (OMB) has reviewed this proposed rule in accordance with Executive Order 12866.

B. Paperwork Reduction Act

While the provisions of this proposed rule impose no express new reporting or recordkeeping requirements on health care providers, we believe some providers may wish to seek a determination by the Secretary that they qualify under the good cause exception on the basis of the costs associated with serving Medicare beneficiaries. While, in these limited situations, providers may need to generate documentation that shows such costs, we estimate that this number of providers would be less than 9 per year. We are soliciting public comments on the possible need to document such data.

IV. Response to Public Comments

Comments will be available for public inspection beginning on September 29, 2003 in Room 5518 of the Office of Inspector General at 330 Independence Avenue, SW., Washington, DC, on Monday and through Friday of each week from 8 a.m. to 4 p.m., (202) 619-0089. Because of the large number of comments we normally receive on regulations, we cannot acknowledge or respond to comments individually. However, we will consider all timely and appropriate comments when developing the final rule.

List of Subjects in 42 CFR Part 1001

Administrative practice and procedure, Fraud, Health facilities, Health professions, Medicaid, Medicare.

Accordingly, 42 CFR part 1001 would be amended as set forth below:

PART 1001—[AMENDED]

1. The authority citation for part 1001 would be revised to read as follows:

Authority: 42 U.S.C. 1302, 1320a-7, 1320a-7b, 1395u(j), 1395u(k), 1395y(e), 1395cc(b)(2), and 1395hh; and sec. 2455, Pub.L. 103-355, 108 Stat. 3327 (31 U.S.C. 6101 note).

2. Section 1001.701 would be amended by revising paragraphs (a) and (c) to read as follows:

§ 1001.701 Excessive claims or furnishing of unnecessary or substandard items or services.

(a) *Circumstance for exclusion.* (1) The OIG may exclude an individual or entity that has submitted, or caused to be submitted, bills or requests for payments under Medicare or any of the State health care programs containing charges or costs for items or services furnished (other than physician services under section 1848(a) of the Act reimbursed using the Medicare physician fee schedule) that are substantially in excess of such individual's or entity's usual charges or costs for such items or services.

(2) The OIG may exclude an individual or entity that has furnished, or caused to be furnished, to patients (whether or not covered by Medicare or any of the State health care programs) any items or services substantially in excess of the patient's needs, or of a quality that fails to meet professionally recognized standards of health care.

(3) For purposes of paragraphs (a)(1) and (c)(1) of this section, the terms *substantially in excess* and *usual charge* are defined as follows—

(i) *Substantially in excess* means any charge or cost submitted for a furnished item or service that is more than 120 percent of the individual's or entity's usual charge or cost for that item or service; provided, however, that for items and services whose reimbursement is subject to a payment cap, including without limitation, a payment cap in the form of a fee schedule amount, the charge or cost for that item or service will be deemed to be the lower of the submitted charge or cost or the payment cap.

(ii)(A) *Usual charge* for an item or service means an amount that is determined by—(1) Arraying for the most recent calendar or rolling 1-year period all charges for an item or service

offered or contracted for by the individual or entity (and its affiliated entities), including duplicate charges; provided, however, that an *affiliated entity* means any entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the individual or entity;

(2) Excluding certain unusual charges described in paragraph (a)(3)(ii)(B) of this section; and

(3) Dividing the sum of the remaining charges by the number of remaining charges.

(B) In determining the usual charge, the individual or entity should exclude—

(1) Charges for services provided to uninsured patients free of charge or at a substantially reduced rate;

(2) Charges based upon capitated payments or rates offered under contracted fee-for-service arrangements whereby more than 10 percent of the individual's or entity's maximum potential compensation could be paid in the form of a bonus and/or a return of all or part of certain funds previously deducted from the individual's or entity's compensation; and

(3) Fees set by Medicare, State health care programs, and other Federal health care programs; provided, however, that charges negotiated with the Department of Defense (DoD) for its health care programs, including TriCare Standard, and charges consisting of negotiated rates offered, directly or indirectly, to Medicare+Choice plans, State managed care plans, or other Federal managed care plans, including any DoD managed care plans, should be included (except where such charges are excluded in accordance with paragraph (a)(3)(ii)(B)(2) of this section).

* * * * *

(c) *Exceptions.* (1) Based on a reasonable set of facts and circumstances, an individual or entity will not be excluded for submitting, or causing to be submitted, bills or requests for payment that contain charges or costs substantially in excess of usual charges or costs when such charges or costs are due to—

(i) Unusual circumstances or medical complications requiring additional time, effort, or expense;

(ii) Increased costs associated with serving Medicare or Medicaid beneficiaries; or

(iii) Other good cause.

(2) An individual or entity will not be excluded for furnishing, or causing to be furnished, items or services in excess of the needs of patients, when the items or services were ordered by a physician or

other authorized individual, and the individual or entity furnishing the items or services was not in a position to determine medical necessity or to refuse to comply with the order of the physician or other authorized individual.

* * * * *

Dated: May 22, 2003.

Lewis Morris,

Acting Principal Deputy Inspector General.

Approved: June 5, 2003.

Tommy G. Thompson,

Secretary.

[FR Doc. 03-23351 Filed 9-12-03; 8:45 am]

BILLING CODE 4152-01-P

DEPARTMENT OF DEFENSE

48 CFR Parts 225 and 252

[DFARS Case 2002-D034]

Defense Federal Acquisition Regulation Supplement; Fish, Shellfish, and Seafood Products

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to further implement Section 8136 of the Defense Appropriations Act for Fiscal Year 2003. Section 8136 requires the acquisition of domestic fish, shellfish, and seafood, to include fish, shellfish, and seafood manufactured or processed, or contained in foods manufactured or processed, in the United States. This proposed rule contains clarifications to the interim rule published on February 14, 2003.

DATES: DoD will consider all comments received by November 14, 2003.

ADDRESSES: Respondents may submit comments directly on the World Wide Web at <http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm>. As an alternative, respondents may e-mail comments to: dfars@acq.osd.mil. Please cite DFARS Case 2002-D034 in the subject line of e-mailed comments.

Respondents that cannot submit comments using either of the above methods may submit comments to: Defense Acquisition Regulations Council, Attn: Ms. Amy Williams, OUSD (AT&L) DPAP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062; facsimile (703) 602-0350. Please cite DFARS Case 2002-D034.

At the end of the comment period, interested parties may view public comments on the World Wide Web at

<http://emissary.acq.osd.mil/dar/dfars.nsf>.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, (703) 602-0328.

SUPPLEMENTARY INFORMATION:

A. Background

DoD published an interim rule at 68 FR 7441 on February 14, 2003, to implement Section 8136 of the Defense Appropriations Act for Fiscal Year 2003 (Pub. L. 107-248). Section 8136 relates to application of 10 U.S.C. 2533a (the Berry Amendment), which prohibits DoD from acquiring certain items unless they are grown, reprocessed, reused, or produced in the United States. 10 U.S.C. 2533a(f) provides an exception from this prohibition for foods manufactured or processed in the United States. Section 8136 of Public Law 107-248 makes the exception at 10 U.S.C. 2533a(f) inapplicable to fish, shellfish, and seafood products. The interim rule published on February 14, 2003, amended DFARS 225.7002-2 and the clause at DFARS 252.225-7012 to add requirements for the acquisition of domestic fish, shellfish, and seafood in accordance with Section 8136 of Public Law 107-248.

Eight respondents submitted comments on the interim rule. Four respondents concurred with the rule. A discussion of comments received from the other respondents is provided below. As a result of the comments, DoD has made changes to the rule and is requesting additional public comments on those changes.

1. *Comment:* The rule does not provide a definition or other guidance for determining which items qualify as "domestic" fish, shellfish, and seafood products and thus are deemed to have been grown, reprocessed, reused, or produced in the United States. Nor is there a discussion whether domestic fish, shellfish, and seafood would include those caught by U.S.-flag or U.S.-owned vessels, or whether the domestic restriction is intended to focus on the place where the fish, shellfish, and seafood may be caught.

DoD Response: To clarify this issue, the proposed rule includes a new paragraph (d) in the clause at 252.225-7012 to address domestic requirements for fish, shellfish, and seafood. These requirements are based on the definition of "A good wholly obtained or produced" found in United States Customs Service regulations at 19 CFR 102.1(g).

2. *Comment:* The rule does not define the intended geographic limit of "United States" in which the fish, shellfish, and seafood must be

manufactured or processed to qualify as domestic. Neither DFARS 225.003 nor DFARS 225.7001 defines "United States." FAR 25.003 defines "United States" to include "the 50 States and the District of Columbia, U.S. territories and possessions, Puerto Rico, the Northern Mariana Islands, and any other place subject to U.S. jurisdiction," while DFARS 252.225-7012(b) refers to products from the "United States, its possessions, or Puerto Rico."

DoD Response: After issuance of the interim rule, the FAR was amended to clarify use of the term "United States" (FAC 2001-14; 68 FR 28079, May 22, 2003). This proposed rule amends the clause at 252.225-7012 to add a definition of "United States" that is consistent with the definition presently found in FAR 25.003.

Note: DoD assumes that the respondent meant "produced" rather than "manufactured or processed," because the point of this rule is that manufacturing or processing fish, shellfish, or seafood in the United States is not sufficient to meet the domestic source requirements of the law.

3. *Comment:* The rule makes the new prohibition applicable to all purchases of fish or seafood products and, therefore, makes the other statutory exceptions (at 225.7002-2(a), (b), (d), (e), (f), (g), and (h)) inapplicable to such purchases.

DoD Response: The rule was not intended to make all other Berry Amendment exceptions inapplicable to fish, shellfish, and seafood products. Therefore, the proposed rule revises the text at 225.7002-2(j) and 252.225-7012(c) to clarify this point.

4. *Comment:* The Berry Amendment should be revised or repealed.

DoD Response: This comment is outside the scope of the case. DoD has drafted this DFARS rule in accordance with existing statutory requirements.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

This proposed rule is a clarification of the changes contained in the interim DFARS rule published at 68 FR 7441 on February 14, 2003. The initial regulatory flexibility analysis prepared for that rule still applies. A copy of the analysis may be obtained from the address specified herein. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted

separately and should cite DFARS Case 2002–D034.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 225 and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, DoD proposes to amend 48 CFR Parts 225 and 252 as follows:

1. The authority citation for 48 CFR Parts 225 and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 225—FOREIGN ACQUISITION

2. Section 225.7002–2 is amended by revising paragraph (j) to read as follows:

225.7002–2 Exceptions.

* * * * *

(j) Acquisitions of foods manufactured or processed in the United States, regardless of where the foods (and any component if applicable) were grown or produced. However, in accordance with Section 8136 of the DoD Appropriations Act for Fiscal Year 2003 (Pub. L. 107–248), this exception does not apply to fish, shellfish, or seafood manufactured or processed in the United States or fish, shellfish, or seafood contained in foods manufactured or processed in the United States.

* * * * *

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.212–7001 [Amended]

3. Section 252.212–7001 is amended as follows:

a. By revising the clause date to read “(XXX 2003)”; and

b. In paragraph (b), in entry “252.225–7012”, by removing “(FEB 2003)” and adding in its place “(XXX 2003)”.

4. Section 252.225–7012 is amended as follows:

a. By revising the clause date to read “(XXX 2003)”; and

b. By adding paragraphs (a)(3) and (a)(4);

c. By revising paragraph (b) introductory text and paragraph (c)(3); and

d. By adding paragraph (d) to read as follows:

252.225–7012 Preference for Certain Domestic Commodities.

* * * * *

(a) * * *

(3) *United States* means the 50 States, the District of Columbia, and outlying areas.

(4) *U.S.-flag vessel* means a vessel of the United States or belonging to the United States, including any vessel registered or having national status under the laws of the United States.

(b) The Contractor shall deliver under this contract only such of the following items, either as end products or components, that have been grown, reprocessed, reused, or produced in the United States:

* * * * *

(c) * * *

(3) To foods, other than fish, shellfish, or seafood, that have been manufactured or processed in the United States, regardless of where the foods (and any component if applicable) were grown or produced. Fish, shellfish, or seafood manufactured or processed in the United States and fish, shellfish, or seafood contained in foods manufactured or processed in the United States shall be provided in accordance with paragraph (d) of this clause;

* * * * *

(d)(1) Fish, shellfish, and seafood delivered under this contract, or contained in foods delivered under this contract—

(i) Shall be taken from the sea by U.S.-flag vessels; or

(ii) If not taken from the sea, shall be obtained from fishing within the United States; and

(2) Any processing or manufacturing of the fish, shellfish, or seafood shall be performed on a U.S.-flag vessel or in the United States.

[FR Doc. 03–23342 Filed 9–12–03; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

48 CFR Part 246

[DFARS Case 2002–D032]

Defense Federal Acquisition Regulation Supplement; Government Source Inspection Requirements

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition

Regulation Supplement (DFARS) to eliminate Government source inspection requirements for contracts or delivery orders valued below \$250,000, unless certain conditions exist. This change will permit DoD contract administration offices to devote more resources to high-risk contracts.

DATES: DoD will consider all comments received by November 14, 2003.

ADDRESSES: Respondents may submit comments directly on the World Wide Web at <http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm>. As an alternative, respondents may e-mail comments to: dfars@osd.mil. Please cite DFARS Case 2002–D032 in the subject line of e-mailed comments.

Respondents that cannot submit comments using either of the above methods may submit comments to: Defense Acquisition Regulations Council, Attn: Mr. Steven Cohen, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062; facsimile (703) 602–0350. Please cite DFARS Case 2002–D032.

At the end of the comment period, interested parties may view public comments on the World Wide Web at <http://emissary.acq.osd.mil/dar/dfars.nsf>.

FOR FURTHER INFORMATION CONTACT: Mr. Steven Cohen, (703) 602–0293.

SUPPLEMENTARY INFORMATION:

A. Background

This proposed rule adds policy at DFARS 246.402 and 246.404 to eliminate requirements for Government quality assurance at source on contracts or delivery orders valued below \$250,000, unless (1) mandated by DoD regulation, (2) required by a memorandum of agreement between the acquiring department or agency and the contract administration agency, or (3) the contracting officer determines that certain conditions exist. The objective is to focus limited DoD contract management resources on high-risk areas, while providing flexibility for exceptions where needed.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the DFARS changes in this rule primarily affect the allocation of Government resources to contract quality assurance functions. Therefore,

DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subpart in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2002–D032.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that 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 246

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, DoD proposes to amend 48 CFR Part 246 as follows:

1. The authority citation for 48 CFR Part 246 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 246—QUALITY ASSURANCE

2. Section 246.402 is added to read as follows:

246.402 Government contract quality assurance at source.

Do not require Government contract quality assurance at source for contracts or delivery orders valued below \$250,000, unless—

- (1) Mandated by DoD regulation;
- (2) Required by a memorandum of agreement between the acquiring department or agency and the contract administration agency; or
- (3) The contracting officer determines that—
 - (i) Contract technical requirements are significant (*e.g.*, the technical requirements include drawings, test procedures, or performance requirements);
 - (ii) Critical product features/ characteristics or specific acquisition concerns have been identified; and
 - (iii) The contract is being awarded to—
 - (A) A manufacturer or producer; or
 - (B) A non-manufacturer or non-producer and specific Government verifications have been identified as necessary and feasible to perform.

3. Section 246.404 is added to read as follows:

246.404 Government contract quality assurance for acquisitions at or below the simplified acquisition threshold.

Do not require Government contract quality assurance at source for contracts or delivery orders valued at or below the simplified acquisition threshold unless the criteria at 246.402 have been met.

[FR Doc. 03–23341 Filed 9–12–03; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 223 and 224

[Docket No.020523130–3076–02;I.D. 030303C]

RIN 0648–AP94

Endangered and Threatened Wildlife and Plants; 12–Month Finding on a Petition to List the Northern and Florida Panhandle Loggerhead Sea Turtle (*Caretta caretta*) Subpopulations as Endangered

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

ACTION: Notice of petition finding.

SUMMARY: We, the FWS and NMFS (collectively “the Services”) announce a 12–month finding on a petition to reclassify the Northern and Florida Panhandle subpopulations of the loggerhead sea turtle (*Caretta caretta*), a species now listed as threatened throughout its range, as distinct population segments (DPSs) with endangered status and to designate critical habitat under the Endangered Species Act of 1973 (ESA), as amended. After review of all available scientific and commercial information, we find that the Northern and Florida Panhandle loggerhead subpopulations do not meet the criteria for classification as DPSs, and therefore the petitioned action is not warranted.

DATES: Effective September 9, 2003.

ADDRESSES: The petition finding, supporting data, and comments are available for public inspection, by appointment, during normal business hours at the Protected Resources

Division, NMFS Southeast Region, 9721 Executive Center Drive North, St. Petersburg, FL 33702. Copies of the 1991 Recovery Plan for the U.S. Atlantic population of the loggerhead turtle are available upon request at the above address, and the plan also is available on the NMFS website at http://www.nmfs.noaa.gov/prot_res/PR3/recovery.html.

FOR FURTHER INFORMATION CONTACT:

David Bernhart, NMFS Southeast Region (ph. 727–570–5312, fax 727–570–5517, e-mail David.Bernhart@noaa.gov), or Barbara Schroeder, NMFS Office of Protected Resources (ph. 301–713–1401, fax 301–713–0376, e-mail barbara.schroeder@noaa.gov).

SUPPLEMENTARY INFORMATION:

Background

Pursuant to section 4(b)(3)(B) of the ESA (16 U.S.C. 1531 *et seq.*), for any petition that presents substantial scientific and commercial information to revise the List of Endangered or Threatened Wildlife and Plants, we are required to make a finding within 12 months of the date of receipt of the petition on whether the petitioned action is (a) not warranted, (b) warranted, or (c) warranted but precluded from immediate proposal by other pending proposals of higher priority. Such 12–month findings are to be published promptly in the **Federal Register**.

On January 14, 2002, we received a petition from the Earthjustice Legal Defense Fund, on behalf of the Turtle Island Restoration Network and the Center for Biological Diversity, requesting that the Northern (northeast Florida through North Carolina) and Florida Panhandle subpopulations of the loggerhead sea turtle, a species currently listed as threatened throughout its worldwide range, be reclassified as DPSs and their status be changed to “endangered”. They also requested that critical habitat for the Northern and Florida Panhandle subpopulations be designated. In addition, the petition requested that the reclassification of these subpopulations to endangered be completed by an emergency rule.

On June 4, 2002 (67 FR 38459), NMFS announced a finding that the petition presented substantial scientific and commercial information indicating that the petitioned reclassification may be warranted. NMFS, therefore, solicited additional information and comments from the public to assist NMFS in its review of whether the Northern and Florida Panhandle loggerhead

subpopulations qualify as distinct population segments and, if so, whether they should be reclassified from threatened to endangered on the basis of the ESA's listing factors. NMFS found that the petition's request for emergency action was not warranted because the species was already afforded protection under the ESA. NMFS also noted that although designation of critical habitat is not subject to the ESA's petition provision, the ESA requires the Services, to the maximum extent prudent and determinable, to make a critical habitat designation concurrent with a listing determination. NMFS, therefore, solicited information and comments that would help identify areas for consideration as critical habitat for the Northern and Florida Panhandle subpopulations, should they be determined to warrant listing as DPSs.

Summary of Comments Received

NMFS received a total of 23 responses to its initial finding. These included responses from one Federal agency (the U.S. Army Corps of Engineers), two state agencies, four fishermen or fishing industry groups, four academics, five regional environmental groups, one representative of a consulting firm, and six non-affiliated citizens. Virtually all of the respondents provided additional information in the form of new data or a critique or analysis of existing data on the genetic identification of loggerhead subpopulations, the status of southeastern U.S. loggerheads, or the threats facing loggerheads in specific locations.

Of the 23 respondents, 19 expressed an opinion on the petitioned reclassification, the majority (11) of which supported reclassification. Most private citizens and environmental groups based their support for the petitioned action on their views regarding the need for enhanced protection of loggerheads in the water or on the nesting beaches, given their concerns about the vulnerability of these small subpopulations. Some researchers based their support on the genetic evidence for distinct subpopulations and the apparent demographic differences between certain subpopulations.

One respondent who opposed the petition challenged the equivocal nature of the existing scientific information regarding both genetic distinctness and population trends. All of the industry respondents opposed the petition, based on their view that there is a lack of sufficient data to support taking the requested action. The Federal agency, one state agency, and one environmental respondent did not

support reclassification, based on their view that there is a lack of sufficient data to support a DPS and listing change at this time. These respondents recommended that the loggerhead recovery team review the status of the subpopulations and possibly designate them as recovery units.

We have considered all of the comments and information that were submitted and included them in the administrative record for this decision. Some of the information submitted, especially new data and analyses, is explicitly cited in the discussion below.

Current Listing Status

We listed the loggerhead sea turtle as threatened under the ESA on July 28, 1978 (43 FR 32808), throughout its worldwide range. The species has a broad distribution, inhabiting continental shelves, bays, estuaries, and lagoons in temperate, subtropical, and tropical waters of the Atlantic, Pacific, and Indian Oceans. Adult females come ashore on beaches to lay eggs in nests they dig in the sand. Nesting generally occurs in temperate zones and subtropics, principally at the western rims of the Atlantic and Indian Oceans.

The U.S. jurisdiction over the species principally involves loggerheads in the Atlantic and Pacific populations. Although the Atlantic and Pacific populations are not formally recognized as different subspecies, the best available information indicates that the populations are separated across these large oceanic expanses. Given the need for management from the perspective of different ocean basins, separate recovery plans were prepared for the U.S. populations in the Atlantic and the Pacific. We published final recovery plans for the U.S. loggerhead sea turtle in the Atlantic in 1991 (NMFS and USFWS, 1991) and in the Pacific in 1998 (NMFS and USFWS, 1998). We also treat sea turtle populations in the Atlantic Ocean separately from those in the Pacific Ocean for the purposes of section 7 consultations under the ESA. Because of the separate conservation and management efforts already occurring for the Atlantic population of loggerheads, and because the petition focused on reclassifying two loggerhead subpopulations in the southeastern U.S., the background information for this 12-month finding is focused on loggerheads in the western North Atlantic.

Western North Atlantic Loggerhead Nesting Assemblages

The range of the loggerhead sea turtle in the western North Atlantic extends from Newfoundland to as far south as Argentina and Brazil. Within the

southeastern U.S., loggerheads nest from the coast of southern Virginia to the coast of Texas with the vast majority of nesting occurring from North Carolina through Florida. Elsewhere in the western North Atlantic, nesting has been reported along the Gulf coast of Mexico, in Cuba, Puerto Rico, Jamaica, Honduras, Nicaragua, Colombia, and Venezuela (Sternberg, 1981, as reported by the Turtle Expert Working Group (TEWG), 1998).

The 1991 recovery plan addresses loggerhead sea turtle conservation actions implemented under U.S. jurisdiction in the southeastern U.S., with an emphasis on the major nesting beaches in North and South Carolina, Georgia, and Florida. The plan established recovery objectives for nesting in each of these States. At the time the recovery plan was written, the known nesting in these States, taken collectively, was estimated to account for 35 to 40 percent of the known nesting of the species worldwide (NMFS and USFWS, 1991).

Since the adoption of the recovery plan for southeastern U.S. loggerheads in 1991, new information has become available on their population structure, status, and trends. Based on a review of available genetic studies of loggerheads in relation to mitochondrial DNA (mtDNA), which is inherited only from the mother, the Turtle Expert Working Group (TEWG, 1998; TEWG, 2000) and the NMFS Southeast Fisheries Science Center (NMFS SEFSC, 2001) identified five different nesting assemblages, also referred to as nesting subpopulations, in the western North Atlantic. Studies have confirmed the hypothesis that adult female loggerheads generally show natal homing (i.e., returning to the area of their natal beach to lay their eggs), and this behavior provides the key mechanism that has established and maintained the mtDNA differences among the nesting assemblages. The five nesting assemblages are the Northern subpopulation, occurring from North Carolina to northeast Florida; the South Florida subpopulation, occurring from 29° N. latitude on the east coast to Sarasota on the west coast; the Florida Panhandle subpopulation; the Yucatan subpopulation from the eastern Yucatan Peninsula, Mexico; and the Dry Tortugas subpopulation from the Dry Tortugas (located west of the Florida Keys), Florida. The Northern and Florida Panhandle subpopulations are the subject of the petition to be reclassified as endangered.

Status Summary

Due to the difficulty of conducting comprehensive population surveys

away from the nesting beaches, we use nesting beach survey data as an index to the status and trends of loggerheads. In the information that follows, we describe the general location and the amount and trends of known nesting for each of the five identified nesting assemblages in the western North Atlantic, including the Northern and the Florida Panhandle nesting subpopulations that are petitioned to be identified as DPSs and reclassified as endangered. Detection of nesting trends requires consistent data collection methods over long periods of time. In 1989, a statewide sea turtle Index Nesting Beach Survey (INBS) program was developed and implemented in Florida, and similar standardized daily survey programs have been implemented in Georgia, South Carolina, and North Carolina. Although data for the Dry Tortugas in Florida are from beaches that are not part of the INBS program, these beaches have moderately good monitoring consistency. There are few nesting surveys for loggerheads in Mexico; however, some nesting survey data for the Yucatan Peninsula are available. Survey results show that the five nesting subpopulations differ in their overall size and trends, as described below.

South Florida Subpopulation

The South Florida nesting subpopulation is the largest known loggerhead nesting assemblage in the Atlantic, with annual nesting totals (i.e., number of nests) ranging from 48,531 to 83,442 annually over the past decade. In terms of trends, data from all beaches within the subpopulation where nesting activity has been recorded indicate substantial increases when data are compared over the last 25 years. However, an analysis limited to nesting data from the INBS program from 1989 to 2002, a period encompassing index surveys that are more consistent and more accurate than surveys in previous years, has shown no detectable trend (Blair Witherington, Florida Fish and Wildlife Conservation Commission (FFWCC), pers. comm., 2002).

Northern Subpopulation

The Northern nesting subpopulation is much smaller than the adjacent South Florida subpopulation, with the reported total number of nests ranging from 4,370 to 7,887 annually between 1989 and 1998, representing an average of approximately 1,524 nesting females per year and characterized as stable or declining (TEWG, 2000). Although longer-term trends are not available for the Northern subpopulation, researchers have documented substantial declines

in nesting on some beaches within this nesting assemblage since the early 1970s. Data from standardized nesting beach surveys that were analyzed for a 30-year period showed that nesting decreased 1.2 percent. However, these results are based on information from only 3 beaches, representing 6 percent of the total nesting of the Northern subpopulation, that met the criteria for standardized surveys during this time period. An analysis covering a 21-year period, when 8 beaches representing 31 percent of the total nesting of the Northern subpopulation met the criteria for standardized surveys, showed no detectable trend. A longer time series may be necessary, however, to detect annual changes in nesting activity (Mark Dodd, Georgia Department of Natural Resources, pers. comm., 2003).

As stated earlier, taken as a whole, the Northern nesting subpopulation is characterized by the TEWG as stable or declining (TEWG, 2000). Within this subpopulation, South Carolina usually accounts for half or more of the annual nesting of the Northern subpopulation, averaging 3,471 nests annually from 1989 to 1998. Nesting in South Carolina has been declining at an average of 3.1 percent per year from 1980 to 2002, according to estimates of statewide nesting as determined through aerial surveys (South Carolina Department of Natural Resources, unpub. data). Northeast Florida is the next largest, with an annual average of 1,055 nests, followed by Georgia with an average of 991 nests, and North Carolina with an average of 730 nests (TEWG, 2000).

Florida Panhandle Subpopulation

The Florida Panhandle subpopulation appears to be the third largest in size, with annual nesting totals ranging from 113 to 1,285 nests between 1989 and 2002 (FFWCC, unpub. data). Evaluation of long-term nesting trends for the Florida Panhandle subpopulation is difficult because of changed and expanded beach survey coverage. Although there are six years of INBS data for the Florida Panhandle subpopulation, the time series is too short to detect a trend (Blair Witherington, FFWCC, pers. comm., 2003).

Yucatan Peninsula Subpopulation

The Yucatan nesting subpopulation appears to be one of the two smallest of the five identified subpopulations in the western North Atlantic. This nesting assemblage had 1,052 nests reported in 1998 and the nesting trend is believed to be stable or increasing, but with little nesting survey data available for trend analyses (TEWG, 2000).

Dry Tortugas Subpopulation

The Dry Tortugas nesting subpopulation appears to be the smallest of the five identified nesting assemblages, with an average of 213 nests reported per year (range of 184 to 270 from 1995 to 2001; FFWCC, unpub. data). Trend data for the Dry Tortugas subpopulation are from beaches that are not part of the INBS program but have moderately good monitoring consistency. There are 7 years of data for this subpopulation, but the time series is too short to detect a trend (Blair Witherington, FFWCC, pers. comm., 2003).

Distinct Population Segment Review

Pursuant to the ESA, we must consider for listing any species, subspecies, or DPS of vertebrates if there is sufficient information to indicate that such action may be warranted. The Services published the Policy Regarding the Recognition of Distinct Vertebrate Population Segments under the ESA (the DPS policy) on February 7, 1996 (61 FR 4722), to clarify the application of the provision in the ESA to list, delist, or reclassify DPSs of any vertebrate species of fish or wildlife.

The DPS policy describes a process for evaluating vertebrate populations as potential DPSs for ESA listing decisions. The first step involves determining whether the population is discrete in relation to the remainder of the taxon. Under our DPS policy, a population segment of a vertebrate species may be considered discrete if it satisfies either one of the following conditions: (1) It is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors (quantitative measures of genetic or morphological discontinuity may provide evidence of this separation); or (2) it is delimited by international governmental boundaries within which significant differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D) of the ESA.

If a population is determined to be discrete under one or both of the above conditions, its biological and ecological significance to the taxon will then be considered in light of Congressional guidance (Senate Report 151, 96th Congress 1st Session) that the authority to list DPS's be used "...sparingly and only when the biological evidence indicates that such action is warranted" while encouraging the conservation of genetic diversity. The policy recognizes that the biological and ecological

circumstances in every case will differ, and the particular scientific evidence available will determine whether a population is considered significant. Our DPS policy states that the consideration of significance may include, but is not limited to, the following: (1) Persistence of the discrete population segment in an ecological setting unusual or unique for the taxon; (2) evidence that loss of the discrete population segment would result in a significant gap in the range of the taxon; (3) evidence that the discrete population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historic range, or (4) evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics.

If a population is determined to be both discrete and significant, it can be considered a DPS and its status as an endangered or threatened species then is evaluated, based on the ESA's definitions of those terms and on a review of the factors enumerated in ESA section 4(a). Only then, if the population's status warrants it, would a listing or reclassification be appropriate through the usual rulemaking procedures specified in the ESA.

Discreteness

As explained above, if a population meets either of two specified conditions, it may be considered discrete under our DPS policy. One of the conditions is specific to a population delimited by international governmental boundaries across which there are differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms. Because there was no clear way to delimit the Northern or the Florida Panhandle subpopulations by international boundaries, the Services have decided not to rely on this criterion to establish the discreteness of either of these two subpopulations.

The other condition under which a population can be determined to be discrete is if it is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors. Quantitative measures of genetic or morphological discontinuity may provide evidence of this separation. With regard to this condition, we examined several lines of evidence to evaluate whether the Northern and Florida Panhandle nesting subpopulations of loggerhead sea turtles are discrete based on the DPS policy criteria. These lines of evidence include

information related to genetics (including maternally inherited mtDNA and biparentally inherited nuclear (nDNA)), physiological and ecological factors, foraging behavior as related to the distribution of loggerheads at areas other than nesting beaches, and morphometrics (measurement of the structure and form of organisms).

Genetic information comes from studies of the maternally inherited mtDNA genome, as well as from nDNA genetic markers (microsatellites) that are biparentally inherited. The results of the mtDNA and nDNA studies differ, as described below.

Non-coding regions of the mtDNA genome serve as maternally-inherited neutral markers that can be used to help evaluate population substructure. The TEWG (2000) concluded that studies of mtDNA support a stock structure of at least five different nesting assemblages of loggerhead sea turtles in the western North Atlantic (as described above), including the Northern and the Florida Panhandle nesting subpopulations that are the subject of the petitioned action. The tendency of females to return to their natal beaches to lay eggs restricts maternal gene flow. Results of mtDNA studies of sea turtles support the hypothesis of natal homing (Encalada *et al.*, 1996; Encalada *et al.*, 1998; Bass, 1999; Dutton *et al.*, 1999). Based on mtDNA analyses, Encalada *et al.* (1998) reported there is evidence of strong mtDNA (maternally inherited) differences between the identified nesting subpopulations, which they considered to be demographically independent.

A subsequent study by Francisco *et al.*, (2000) expanded the sites from which samples were taken for mtDNA analysis, and found the situation to be somewhat more complex. For instance, they reported a tentative conclusion that there is an additional, separate nesting assemblage associated with beaches in Volusia County, Florida which is within the area described as comprising the Northern subpopulation. They also reported that there were no statistically significant differences in the mtDNA analysis for some widely separated populations, including Amelia Island (in the Northern nesting assemblage) and Eglin Air Force Base (in the Florida Panhandle nesting assemblage).

Fine-scale mtDNA analysis from Florida rookeries indicates that separations of nesting assemblages generally begin to appear (from the standpoint of being detected through mtDNA analysis) between nesting beaches separated by more than 100 kilometers (km) (62 miles) of coastline that do not host nesting (Francisco *et al.*,

2000). Consistent with the results obtained from mtDNA analyses, data collected from females tagged on nesting beaches indicate high nesting site fidelity, with nest site relocations of distances greater than 100 km (62 miles) occurring only rarely (CMTTP, unpub. data; LeBuff, 1974, 1990; Ehrhart, 1979; Richardson, 1982; Bjorndal *et al.*, 1983). The typical distance between nest sites used by individual nesting females is 3 miles (5 km) or less (Schroeder *et al.*, in press).

Overall, the mtDNA information is consistent with natal homing, with nesting colonies separated by a few hundred kilometers appearing to represent isolated reproductive aggregates. The Northern subpopulation may be an exception to this pattern, however. Encalada *et al.* (1998) found that loggerheads from various beaches within the range of the Northern subpopulation from Amelia Island, in northeastern Florida, to North Carolina are indistinguishable based on mtDNA. However, they suggested the possibility of differentiation within the Northern nesting assemblage that has not yet been detected, concluding that the lack of mtDNA differentiation may be due to relatively recent colonization that has not allowed sufficient time to accumulate the genetic variation needed to detect any fine-scale population substructure. The subsequent analysis of samples from a larger number of areas and the resulting indication that the vicinity of Volusia County may have a separate nesting assemblage (Francisco *et al.*, 2000) suggests that the subpopulation may be further differentiated or that Volusia County may represent an area of overlap, including nesting females from both the Northern and South Florida subpopulations. With regard to the Florida Panhandle, Encalada *et al.* (1998) found insufficient genetic diversity to further differentiate the stock structure within the subpopulation. Thus, although partitioning within these nesting assemblages may exist, as appears to be indicated by the results of Francisco *et al.* (2000), we are unable to clearly discern it based on available information. Fine-structure analysis will benefit from additional data collection and analyses, and may well reveal that the identified subpopulations can be further divided.

In addition to studies based on maternally inherited mtDNA, other studies have used nuclear (nDNA) genetic markers (microsatellites) to examine fine-scale population structure. Since these nDNA markers are biparentally inherited, information on

the role of males in population structure is provided that is not available from mtDNA. The results of recent nDNA analysis (Francisco-Pearce, 2001) show no substantial subdivisions across the loggerhead nesting colonies in the southeastern United States. These findings, which contrast with the mtDNA evidence showing general segregation of female lineages among the loggerhead subpopulations, suggest that male loggerheads from each subpopulation are able to breed with females from other southeastern United States subpopulations. This male-mediated gene flow would be sufficient to prevent the rise of detectable nDNA genetic differences among the subpopulations. These results should be interpreted cautiously, due to the preliminary nature of nDNA analysis for loggerheads; nDNA genetic differences between subpopulations may exist but will require larger sample sizes and additional multiple markers to detect.

We considered information on the degree of similarity in nesting variability within and between nesting assemblages as a possible indication of ecological or physiological factors that might indicate discreteness while acknowledging that the variability could be the result of other factors that are independent of discreteness. Loggerhead nesting typically shows high variability from year to year. The TEWG (2000) reported correlations of nesting variability within and between the Northern, South Florida, and Florida Panhandle nesting assemblages. Annual variation in nesting activity is significantly correlated across nesting beaches within the Northern subpopulation. Within the South Florida subpopulation, the correlation between the southeast and southwest portions of the subpopulation also were statistically significant. The correlation between the Northern and the South Florida subpopulations was lower than those within each of them, but still was statistically significant. The Florida Panhandle subpopulation results showed a high, significant correlation with nest numbers reported annually for the South Florida subpopulation as a whole, and for the portion in southwest Florida, but not with the southeastern Florida area or with the Northern nesting assemblage.

The correlations indicate support for the concept of a considerable degree of cohesiveness within the identified nesting subpopulations in terms of annual variability in nesting. However, the results also indicate some degree of similarity across the subpopulations. Compared to beaches within a subpopulation, the correlations between

the different nesting subpopulations are lower, but there is some degree of similarity and in some cases the correlations between subpopulations are statistically significant in terms of the annual variability in nesting. The mechanism(s) that drive annual variability within and between nesting assemblages is not well understood.

Because the sex of loggerhead hatchlings is environmentally determined by nest incubation temperatures, we considered information about the sex ratios of progeny from different nesting assemblages to evaluate whether they indicate marked separation of the assemblages as a consequence of environmental factors. Pivotal (i.e., the incubation temperature that produces equal numbers of males and females) and transitional ranges of temperatures determine whether a nest will produce males, females, or both (Mrosovsky and Pieau, 1991). For example, Mrosovsky and Provancha (1989) suggest that the majority of nests laid at a major rookery near Cape Canaveral, Florida, an area near where the segregation between the South Florida and Northern subpopulations occur, incubate at such warm temperatures that virtually no males are produced. In contrast, males are predominately although not exclusively - produced in rookeries of the Northern subpopulation, presumably because of a nesting season characterized by cooler incubation temperatures.

NMFS SEFSC (2001) evaluated a combination of genetic data and observed juvenile sex ratios from several southeast U.S. locations. They estimated that the South Florida nesting subpopulation produces 20 percent male hatchlings, the Yucatan subpopulation produces 31 percent males, and the Northern subpopulation produces 65 percent males. They did not assess the sex ratios of hatchlings from the Dry Tortugas or Florida Panhandle nesting assemblages. The Florida Cooperative Fish and Wildlife Research Unit, in response to NMFS' request for additional information, submitted data on loggerhead nesting in northwest Florida and reported that based on nest incubation temperatures, sex ratios of hatchlings from the Florida Panhandle subpopulation are mixed, with an apparently larger proportion of males than the 20 percent proportion found in nests from the South Florida subpopulation.

Since male-mediated gene flow appears to be keeping the subpopulations genetically similar on a nDNA level, the relatively higher percentage of males produced in the

smaller Northern and Florida Panhandle subpopulations is of management interest, as it may play an important role in providing males to mate with females from the other, female-dominated subpopulations, thereby helping to ensure reproductive success for loggerheads in the entire western North Atlantic. Although the South Florida nesting assemblage apparently produces only about 20 percent males, the total number of males produced is likely greater than that produced by the Northern and Florida Panhandle assemblages, due to the larger size of the South Florida assemblage. However, males produced from the Northern and Florida Panhandle nesting assemblages contribute to the overall number of males available for breeding and contribute to maintaining or increasing outbreeding.

In our evaluation of whether the two petitioned nesting subpopulations are markedly separated from other populations of the taxon, we also considered evidence of morphological discontinuity. Morphometrics is a common taxonomic tool used to establish stock distinctions, and a common feature of morphometric variation in widely distributed animals is a latitudinal cline in body size. Reviews of the standard sea turtle size measurements (Tiwari and Bjorndal, 2000; Stoneburner, 1980) found no evidence of this latitudinal cline in carapace length and width for Atlantic loggerheads. Stoneburner (1980) suggested that body depth of nesting female loggerheads decreases with latitude from North Carolina to Florida; however, more recent data and analyses (NMFS SEFSC, unpub. data) show no differences in body depth over the same area. The lack of morphometric variation among the western North Atlantic loggerhead subpopulations is consistent with the reported lack of nDNA genetic differentiation.

We have considered information on the non-nesting distribution of loggerheads to determine if it indicates that there is a marked separation of the petitioned subpopulations from other populations. As described below, this included consideration of information on foraging and stranded sea turtles, carapace epibionts (living organisms attached to the carapace), and migrations of post-nesting females.

Genetic samples (mtDNA) taken from immature loggerheads at representative foraging grounds from the northeast United States to Florida Bay (at the southern tip of the mainland of Florida) have been analyzed to determine the origin of the individuals (see review in TEWG 2000 and NMFS SEFSC 2001).

The South Florida nesting subpopulation was the largest contributor at almost all sampling sites. For example, samples from an estuarine area in North Carolina indicated that about 64 percent of the individuals were from the South Florida subpopulation, 30 percent from the Northern subpopulation, and 5 percent from Mexico (Bass et al., 2000). This information demonstrates mixing of the immatures from the Northern and South Florida nesting assemblages in these foraging areas. The information also indicates that loggerheads from the Northern and South Florida subpopulations are not distributed randomly, i.e., not in proportion to the relative abundance of the subpopulations. Along the Atlantic seaboard and off the west coast of Florida, the Northern nesting subpopulation was represented disproportionately to its level of nesting. Specifically, although the Northern subpopulation accounts for only 8.5 percent of the total U.S. loggerhead nesting in the western North Atlantic, 25 to 59 percent of the loggerheads found foraging from the northeast United States to Georgia come from the Northern subpopulation and approximately 20 percent of those found off both Florida coasts come from the Northern nesting subpopulation (TEWG, 2000).

The study of epibiont colonization on turtle carapaces may provide clues as to where turtles are foraging because a number of long-lived sessile organisms within the epibiont community are likely unaffected by short term migrations. Carapace epibionts have been studied on female loggerhead turtles nesting along a portion of the east coast of the U.S., including parts of the Northern and South Florida nesting assemblages (from Pritchard's Island, South Carolina, south to Hutchinson Island, Florida) (Caine, 1986). The results provide an indirect indication that adult females are more strongly segregated on the foraging grounds than immature loggerheads. Caine found that differences in the epibiont communities began to appear on nesting females in the area between Flagler Beach and Cape Canaveral National Seashore in northeast Florida, indicating some separation in foraging areas used by nesting females from the Northern and South Florida nesting subpopulations. Certain epibionts of the turtles from the South Florida nesting areas were of Caribbean origin, whereas some of the epibionts of turtles from the Northern nesting assemblage were indicative of the Sargasso Sea, in the central North

Atlantic. The amount of overlap in the epibiont communities is relatively low, 4.2 to 7.5 percent, which is an indirect indication that nesting turtles from northern versus southern nesting areas were inhabiting different foraging environments.

Satellite telemetry and tagging data also suggest that adult females from the Northern and South Florida nesting assemblages are not using the same foraging areas. Based on satellite telemetry studies and analyses of flipper tag return data, non-nesting adult females from the South Florida subpopulation are distributed throughout the Bahamas, Greater Antilles, Cuba, Yucatan, eastern and western Gulf of Mexico, and southern Florida (Meylan, 1982; Meylan *et al.*, 1983; Barbara Schroeder, NMFS, pers. comm., 2003), whereas non-nesting adult females from the Northern subpopulation appear to occur almost exclusively along the east coast of the United States (Plotkin and Spotila, 2002; Griffin and Murphy, 2003; Sally Murphy, South Carolina Department of Natural Resources, pers. comm., 2003). Only one Northern subpopulation mature female has been reported to enter the Gulf of Mexico (Bell and Richardson, 1978). Limited tagging data suggest that adult females from the Florida Panhandle subpopulation remain in the Gulf of Mexico (Barbara Schroeder, NMFS, pers. comm., 2003) and overlap in foraging areas exist between adult females from the Florida panhandle and south Florida nesting subpopulations (Meylan, 1982; Barbara Schroeder, NMFS, pers. comm., 2003).

Conclusion

The petitioners cited a number of points in support of their assertion that the Northern and Florida Panhandle subpopulations meet the discreteness criteria of our DPS policy. These included mtDNA distinctions, physical and ecological separations based on the behavioral attribute of females returning to their natal beaches to nest, differences in nesting chronology between "northern" and "southern" turtles, and post-nesting movement to foraging areas by turtles in the Northern subpopulation as compared to those in the Southern subpopulation. We have reviewed information presented in the petition and other available information pertaining to the discreteness as defined by DPS policy.

On the question of the discreteness of the petitioned Northern and Florida Panhandle nesting subpopulations, while numerous lines of evidence indicate the identified nesting assemblages are discrete to some degree,

the separation is not highly rigid and the subpopulations are not markedly separated from each other based on the criteria for discreteness in our DPS policy. Although our DPS policy does not require an absolute separation or reproductive isolation for a population to satisfy the discreteness requirement, several factors within the overall loggerhead population structure indicate that the subpopulations are not markedly separated, and thus are not discrete under our DPS policy.

Marked separation on the basis of genetic discontinuity is not definitive for the subpopulations. Natal homing behavior and nest site fidelity of females apparently are the mechanisms that result in being able to distinguish nesting subpopulations on the basis of maternally inherited mtDNA. However, recent genetic studies indicate that mtDNA distinctions between and among subpopulations are complex. Further subdivisions of some of the nesting assemblages, including the Northern subpopulation, may exist (e.g., the data for Volusia County) and some widely separated populations, including Amelia Island (in the Northern nesting assemblage) and Eglin Air Force Base (in the Florida Panhandle nesting assemblage) have no statistically significant differences in the mtDNA analysis. In addition, the recently available nDNA information suggests that males likely interbreed with females across subpopulations, and thus the subpopulations are not separable on this basis. From the standpoint of our DPS policy criteria, the evidence of marked separation based on genetic discontinuity at the nDNA level is inconclusive for the petitioned subpopulations.

There is a high correlation of the annual variation in nesting activity across beaches within subpopulations. However, there also are statistically significant correlations in nesting activity between the Northern and South Florida subpopulations, and between the Florida Panhandle and South Florida subpopulations. Therefore, the comparison of annual variation in nesting activity does not indicate marked separation of the subpopulations.

The Northern and South Florida subpopulations differ considerably in the percentage of male hatchlings produced, as a result of environmental differences in nest incubation temperatures. The percentage of males produced from the Florida Panhandle population is not known, but is estimated to be higher than that of the South Florida subpopulation. Because of its much larger size, however, the

South Florida subpopulation likely produces a larger number of male hatchlings than the smaller Northern and Florida Panhandle subpopulations. Male hatchlings from the Northern and Florida Panhandle subpopulations contribute to having sufficient males to mate with females from other subpopulations, including the female-dominated South Florida subpopulation, and thus help contribute to reproductive success of loggerheads in the western North Atlantic, as well as increasing outbreeding. Although this is an important management consideration in terms of survival and recovery goals, and it will be addressed in the update to the 1991 recovery plan, it does not indicate that the subpopulations are markedly separated in terms of the criteria for discreteness under our DPS policy.

Quantitative measures of morphological characteristics do not show differences between the subpopulations. Specifically, measurements of carapace length and width, and body depth, did not show distinctions among Atlantic loggerheads.

Genetic analyses indicate that immature loggerheads from the South Florida, Northern, and Florida Panhandle subpopulations are mixed in foraging areas. Although it is of management concern in terms of survival and recovery goals for the species that the Northern subpopulation is represented off the Atlantic coast in a higher proportion than its relative abundance would suggest, this does not meet the definition of marked separation in the DPS Policy. The study of epibionts on nesting females from the Northern and South Florida nesting assemblages provides an indirect indication that the adult females from these two subpopulations are using different foraging areas, and satellite telemetry and tagging data more clearly indicate they are using different foraging areas. The satellite telemetry and tagging data show that adult females from the Florida Panhandle and South Florida subpopulations overlap in foraging areas. Overall, the information on foraging distribution indicates overlap of immatures from different subpopulations, apparent use of different areas by adult females from the Northern and South Florida subpopulations, and apparent overlap by adult females from the Florida Panhandle and South Florida subpopulations. This information does not meet the definition for marked separation in the DPS Policy.

Differences in nesting chronology between the subpopulations (i.e., earlier

onset of the nesting season in south Florida) were mentioned by the petitioners as a possible behavioral measure of discreteness. These differences likely result from a combination of ecological and biological factors including climate, oceanographic conditions, and reproductive endocrinology. The effects of these factors on reproductive timing are not fully understood. Differences in nesting chronology could, in theory, provide a mechanism leading to reproductive separation between sea turtle populations. However, the nesting chronology differences are not extreme (i.e., nesting seasons of the petitioned sub-populations largely overlap), and other lines of evidence (mDNA data) show that they have not led to a marked separation as a consequence of behavioral factors, as required by the discreteness criteria of the DPS policy.

To be discrete under our DPS policy, a population segment of a vertebrate species must be markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors. The available information does not support a conclusion that the loggerhead sea turtle subpopulations are discrete according to our DPS policy.

Significance

Our DPS policy is clear that significance is analyzed only when a population segment has been identified as discrete. Therefore, we did not evaluate the subpopulations for significance under the DPS policy.

Status

Again, our DPS policy is clear that the separate evaluation of listing status is conducted only if a population segment is determined to be both discrete and significant. Therefore, because we concluded that the subpopulations are not DPSs, we did not evaluate the subpopulations for separate reclassification.

Finding

We have reviewed the petition, the literature cited in the petition, other available literature and information, and consulted with biologists and researchers familiar with the loggerhead sea turtle. On the basis of the best available scientific and commercial information, we find that the Northern and Florida Panhandle subpopulations of the loggerhead sea turtle are not discrete, and therefore are not distinct population segments and do not qualify for reclassification as DPSs. Therefore, we find that the petitioned action is not warranted.

Effect of Finding on Management and Conservation of Atlantic Loggerheads

The petitioned action was the reclassification of certain subpopulations of the loggerhead sea turtle as DPSs with endangered status. In ESA section 7 consultations, NMFS has characterized the southeastern U.S. subpopulations as critical components of the overall loggerhead species and found that significant adverse effects on the survival and recovery of the individual subpopulations would adversely affect the overall survival and recovery of the entire listed species (see e.g., NMFS, 2001). The subpopulations are interdependent for the species' survival and recovery.

Under the 1991 recovery plan, delisting of the southeastern U.S. population of the loggerhead may be considered if, over a period of 25 years, the following three conditions are met: (1) The adult female population in Florida is increasing, and nesting in Georgia, South Carolina, and North Carolina returns to pre-listing levels identified in the plan; (2) certain amounts of available nesting beaches are in public ownership; and (3) all the identified recovery tasks necessary to prevent extinction or irreversible decline have been successfully implemented (NMFS and USFWS, 1991). Since the adoption of the 1991 recovery plan, new information has become available on loggerhead population structure, status, and trends, and we recently convened a recovery team to revise and update the Atlantic loggerhead recovery plan and have solicited information from the public to use as part of this effort (68 FR 13662). We anticipate formal public review of the draft plan will occur in 2004.

As a result of their threatened status and through protective regulations implemented by us, the states (e.g., 1995 Florida gillnet ban), and several municipalities (e.g., 2000 Lighting Ordinance for Town of Ocean Isle Beach, North Carolina), loggerhead sea turtles receive significant legal protections. Taking sea turtles (i.e., to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to do so) is prohibited, with certain exceptions specified at 50 CFR 223.206. In addition to these prohibitions, loggerhead sea turtles are the beneficiaries of research and conservation programs implemented under the recovery plans and other conservation measures that result from ESA section 7 consultations on projects that are funded, permitted, or carried out by Federal agencies. Incidental mortality of loggerheads from fisheries

(e.g., shrimp trawling and pelagic longlining) and from coastal construction (e.g., beach nourishment and hopper dredging) has been greatly reduced as a result of these protective measures.

While implementing various management measures to protect the species, as listed, we have been mindful of the different dynamics of the subpopulations. Biological opinions, issued under section 7 of the ESA, have specifically considered the effects of actions on the Northern and South Florida subpopulations. For example, NMFS SEFSC (2001) modeled the differential effects of pelagic longline fishing in the Atlantic on the Northern and South Florida subpopulations of loggerheads, and NMFS' biological opinion on the Atlantic Highly Migratory Species fisheries (NMFS, 2001) concluded that the impact of ongoing mortality of loggerheads, particularly Northern loggerheads, in the pelagic longline fishery, together with the environmental baseline and cumulative effects acting on the species, would be expected to appreciably reduce the survival and recovery of the species. Consequently, NMFS implemented a reasonable and prudent alternative to reduce the impacts of the pelagic longline fishery. The biological opinion and particularly the treatment of the subpopulations' interdependence for the species' survival and recovery were challenged and upheld in court (*Bluewater Fishermen's Assoc. vs. NMFS*, U.S. District Court for the District of Massachusetts, September 30, 2002).

As stated previously, we have convened a recovery team to update and revise the Atlantic recovery plan for loggerheads. The recovery team is conducting a full, independent review of the species' biological and habitat requirements and re-evaluating appropriate recovery goals and recovery actions to meet those goals. We will request that the recovery team consider establishing "recovery units" within the recovery plan, specifically looking at the previously identified subpopulations. In this determination, we found that the western North Atlantic loggerhead subpopulations are not discrete and thus not distinct population segments. The subpopulations are interrelated for recovery purposes, and they are important individually in many ways. These interrelated subpopulations are consistent with the recovery units set forth in some recovery plans. In recovery plans that use this concept, the Services generally describe recovery units as geographic or otherwise identifiable subunits of the listed entity

that individually are necessary to conserve genetic robustness, demographic robustness, important life stages, or some other feature necessary for long-term sustainability of the overall listed entity. Designation of subpopulations as recovery units in the recovery plan would make the importance and interdependence of the subpopulations clearer and would give us greater guidance on recovery actions that will benefit individual subpopulations and most effectively conserve loggerheads as a species.

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Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

Dated: September 9, 2003.

William T. Hogarth,

Assistant Administrator for Fisheries,
National Marine Fisheries Service.

Dated: August 21, 2003.

Steve Williams,

Director, Fish and Wildlife Service.

[FR Doc. 03–23434 Filed 9–12–03; 8:45 am]

BILLING CODES 3510–22–S, 4310–55–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

Animal and Plant Health Inspection Service

[Docket No. 98–103–3]

Importation of Artificially Dwarfed Plants in Growing Media From the People's Republic of China; Availability of an Environmental Assessment and Request for Comments

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability and request for comments.

SUMMARY: We are informing the public that the Animal and Plant Health Inspection Service has prepared an environmental assessment for a proposal to allow the importation of specific species of artificially dwarfed (penjing) plants of the genera *Buxus*, *Ehretia* (*Carmona*), *Podocarpus*, *Sageretia*, and *Serissa* to be imported into the United States from the People's Republic of China in an approved growing medium subject to specified growing, inspection, and certification requirements. The environmental assessment documents our review and analysis of environmental impacts associated with the proposed action. We are making this environmental assessment available to the public for review and comment.

DATES: We will consider all comments that we receive on or before October 15, 2003.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 98–103–3, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment

refers to Docket No. 98–103–3. If you use e-mail, address your comment to regulations@aphis.usda.gov. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and “Docket No. 98–103–3” on the subject line.

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

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

FOR FURTHER INFORMATION CONTACT: Mr. William Thomas, Import Specialist, Phytosanitary Issues Management, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236; (301) 734–6799.

SUPPLEMENTARY INFORMATION:

Background

The Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture regulates the importation of plants and plant parts into the United States to guard against the introduction of plant pests and noxious weeds into the United States.

The regulations pertaining to the importation of plants and plant parts are set forth in the Code of Federal Regulations (CFR), title 7, chapter III.

On September 20, 2000, we published in the **Federal Register** (65 FR 56803–56806, Docket No. 98–103–1) a proposal to amend the regulations to allow artificially dwarfed plants of the genera *Buxus*, *Ehretia* (*Carmona*), *Podocarpus*, *Sageretia*, and *Serissa* to be imported into the United States from the People's Republic of China in an approved growing medium subject to specified growing, inspection, and certification requirements. We accepted comments

on our proposal for a total of 90 days, ending December 20, 2000.¹

In response to comments received on the proposed rule, APHIS has revised the pest risk assessments, created a risk mitigation document, and narrowed the application of the rule to apply to particular species of the genera mentioned previously. The five revised pest risk assessments as well as the risk mitigation document are available on the Internet at <http://www.aphis.usda.gov/ppq/pim>. We have also concluded section 7 consultation with the U.S. Fish and Wildlife Service (FWS) to assess the potential effects of the proposed action on endangered or threatened species, as required under the Endangered Species Act. On April 10, 2003, FWS concluded the section 7 consultation process by concurring with APHIS' determination that the importation of *Buxus sinica*, *Ehretia microphylla*, *Podocarpus macrophyllus*, *Sageretia thea*, and *Serissa foetida* from the People's Republic of China will not adversely affect federally listed or proposed endangered or threatened species or their habitats.

Upon receiving FWS concurrence and after preparing the revised pest risk assessments and the pest mitigation document, APHIS prepared an environmental assessment in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

This notice announces the availability of the environmental assessment for public review and comment. The assessment, titled “Final Rule for the Importation of Artificially Dwarfed Plants in Growing Media From the People's Republic of China” and dated September 2003, is available on the Internet at <http://www.aphis.usda.gov/ppd/es/ppqdocs.html>. You may request paper copies of the environmental assessment from the person listed under **FOR FURTHER INFORMATION CONTACT**.

¹ The comment period on the proposed rule was extended from 60 to 90 days in a notice published in the **Federal Register** on December 1, 2000 (65 FR 75187, Docket No. 98–103–2).

Please refer to the title of the assessment when requesting copies.

The environmental assessment is also available for review in our reading room (the location and the hours of the reading room are listed under the heading **ADDRESSES** at the beginning of this notice).

Done in Washington, DC, this 11th day of September 2003.

Bobby R. Acord,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03-23545 Filed 9-12-03; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Trade Adjustment Assistance for Farmers

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

The Administrator, Foreign Agricultural Service (FAS), today accepted petitions filed by the United Fishermen of Alaska, Juneau, Alaska; the Puget Sound Salmon Commission, Seattle, Washington; and Salmon for All, Astoria, Oregon for trade adjustment assistance. The groups represent Pacific salmon fishermen in the states of Alaska, Washington, and Oregon, respectively. The Administrator will determine within 40 days whether or not imports of fresh, chilled, or frozen farmed salmon, whole or in fillets, contributed importantly to a decline in domestic producer prices of 20 percent or more during calendar 2002. If the determination is positive, all fishermen represented by the petitioners will be eligible to apply to the Farm Service Agency for adjustment assistance cash benefits and for technical assistance at no cost.

FOR FURTHER INFORMATION CONTACT: Jean-Louis Pajot, Coordinator, Trade Adjustment Assistance for Farmers, FAS, USDA, (202) 720-2916, e-mail: trade.adjustment@fas.usda.gov.

Signed at Washington, DC September 10, 2003.

Lyle Sebranek,

Acting Administrator, Foreign Agricultural Service and Acting Vice President, Commodity Credit Corporation.

[FR Doc. 03-23564 Filed 9-12-03; 8:45 am]

BILLING CODE 3410-10-P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Trade Adjustment Assistance for Farmers

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

The Administrator, Foreign Agricultural Service (FAS), today accepted a petition filed by the Wild Blueberry Commission of Maine, Orono, Maine for trade adjustment assistance. The group represents producers of wild blueberries in the state of Maine. The Administrator will determine within 40 days whether or not imports of wild blueberries contributed importantly to a decline in domestic producer prices of 20 percent or more during the marketing period beginning July 2002 and ending June 2003. If the determination is positive, all producers represented by the group will be eligible to apply to the Farm Service Agency for adjustment assistance cash benefits and for technical assistance at no cost.

FOR FURTHER INFORMATION CONTACT: Jean-Louis Pajot, Coordinator, Trade Adjustment Assistance for Farmers, FAS, USDA, (202) 720-2916, e-mail: trade.adjustment@fas.usda.gov.

Signed at Washington, DC, September 10, 2003.

Lyle Sebranek,

Acting Administrator, Foreign Agricultural Service and Acting Vice President, Commodity Credit Corporation.

[FR Doc. 03-23563 Filed 9-12-03; 8:45 am]

BILLING CODE 3410-10-P

DEPARTMENT OF AGRICULTURE

Forest Service

Wrangell-Petersburg Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Wrangell-Petersburg Resource Advisory Committee (RAC) will meet from 8:30 a.m. until 5:15 p.m. (or until the conclusion of public testimony) on Friday, October 24, from 8:30 a.m. until 5:15 p.m. (or until the conclusion of public testimony), Saturday, October 25, 2003, in Wrangell, Alaska. The purpose of this meeting is to review, discuss and potentially recommend for funding proposals received pursuant to Title II, Public Law 106-393, H.R. 2389, the Secure Rural Schools and Community Self-Determination Act of 2000, also called

the "Payments to States" Act. Public testimony regarding the proposals will also be taken.

DATES: The meeting will be held commencing at 8:30 a.m. on Friday, October 24, through 5:15 p.m., Saturday, October 25, 2003.

ADDRESSES: The meeting will be held at Harding's Old Sourdough Lodge, 1104 Peninsula, Wrangell, Alaska.

FOR FURTHER INFORMATION CONTACT: Chip Weber, Wrangell District Ranger, P.O. Box 51, Wrangell, AK 99929, phone (907) 874-2323, email cweber@fs.fed.us, or Patty Grantham, Petersburg District Ranger, P.O. Box 1328, Petersburg, AK 99833, phone (907) 772-3871, email pgrantham@fs.fed.us. For further information on RAC history, operations, and the application process, a Web site is available at <http://www.fs.fed.us/r10/ro/payments>.

SUPPLEMENTARY INFORMATION: This is the first meeting of the RAC since April 2003 and the committee's summer hiatus. This meeting will focus on the review and discussion of proposals received by the RAC for funding under Title II of the Payments of States legislation (Pub. L. 106-393), particularly proposals that were of high interest to the committee, but lacked enough information for the committee to act. New information will be introduced concerning these proposals. No new proposals (initial reading) will be discussed at this meeting. The committee may make recommendations for project funding at this meeting. A field trip to review proposals proximate to the Wrangell, Alaska, area may take place. The meeting is open to the public. Should members of the public wish to participate in the potential field trip, please contact Patty Grantham or Chip Weber at the above noted addresses/emails/telephone numbers. Public input opportunity will be provided and individuals will have the opportunity to address the committee at that time.

Dated: September 4, 2003.

Olleke E. Rappe-Daniels,

Acting Forest Supervisor.

[FR Doc. 03-23369 Filed 9-12-03; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance, the following proposal for an extension of a currently approved collection of information under the

provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of Economic Analysis.

Title: Survey of Foreign Airline Operators' Revenues and Expenses in the United States.

Form Number(s): BE-36.

Agency Approval Number: 0608-0013.

Type of Request: Extension of a currently approved collection.

Burden: 360 hours.

Number of Respondents: 72.

Avg Hours Per Response: 5 hours.

Needs and Uses: The Bureau of Economic Analysis is responsible for the compilation of the U.S. balance of payments accounts. The information collected in this survey is an integral part of the "transportation" portion of the U.S. balance of payments accounts. The balance of payments accounts, which are published quarterly in the Bureau's monthly publication, the *Survey of Current Business*, are one of the major statistical products of BEA. The accounts provide a statistical summary of U.S. international transactions and are used by government and private organizations for national and international policy formulation, and analytical studies.

The information collected is also used for compiling the U.S. national income and product accounts, and for reporting to international organizations such as the International Monetary Fund. Without the information collected in this survey, annual data needed for estimating an integral component of the transportation account would be unavailable. No other Government agency collects comprehensive annual data on foreign airline operators' revenues and expenses in the United States.

The survey requests information from U.S. agents of foreign air carriers operating in the United States. Information is collected on an annual basis from foreign air carriers with total covered revenues or total covered expenses incurred in the United States of \$500,000 or more. Foreign air carriers with total covered revenues and total covered expenses below \$500,000 are exempt from reporting.

Affected Public: U.S. agents of foreign air carriers.

Frequency: Annually.

Respondent's Obligation: Mandatory.

Legal Authority: The International Investment and Trade in Services Survey Act, 22 U.S.C. 3101-3108.

OMB Desk Officer: Paul Bugg, (202) 395-3093.

Copies of the above extension of a currently approved collection can be obtained by calling or writing Diane Hynek, DOC Forms Clearance Officer, (202) 482-0266, Department of Commerce, room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations in response to this extension of a currently approved collection should be sent within 30 days of publication of this notice to Paul Bugg, OMB Desk Officer, Room 10201, New Executive Office Building, Washington, DC 20503; fax: 202-395-7245; e-mail: pbugg@omb.eop.gov.

Dated: September 9, 2003.

Madeleine Clayton,

Management Analyst, Office of Chief Information Officer.

[FR Doc. 03-23370 Filed 9-12-03; 8:45 am]

BILLING CODE 3510-06-P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance, the following proposal for an extension of a currently approved collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of Economic Analysis.

Title: (1) Survey of Ocean Freight Revenues and Foreign Expenses of United States Carriers (BE-30).

(2) Survey of U.S. Airline Operators' Foreign Revenues and Expenses (BE-37).

Form Number(s): BE-30/BE-37.

Agency Approval Number: 0608-0011.

Type of Request: Extension of a currently approved collection.

Burden: 780 hours (BE-30); 304 hours (BE-37).

Number of Respondents: 39 (BE-30); 19 (BE-37).

Avg Hours Per Response: 5 hours (BE-30); 4 hours (BE-37).

Needs and Uses: The Bureau of Economic Analysis is responsible for the compilation of the U.S. balance of payments accounts. The information collected in these surveys is an integral part of the "transportation" portion of the U.S. balance of payments accounts. The balance of payments accounts, which are published quarterly in the Bureau's monthly publication, the *Survey of Current Business*, are one of

the major statistical products of BEA. The accounts provide a statistical summary of U.S. international transactions and are used by government and private organizations for national and international policy formulation, and analytical studies. The information collected is also used for compiling the U.S. national income and product accounts, and for reporting to international organizations such as the International Monetary Fund. Without the information collected in these surveys, quarterly data needed for estimating an integral component of the transportation account would be unavailable. No other Government agency collects comprehensive quarterly data on U.S. ocean carriers' freight revenues and foreign expenses or U.S. airline operators' foreign revenues and expenses.

These surveys request information from U.S. ocean and air carriers engaged in the international transportation of goods and/or passengers. Information is collected on a quarterly basis from U.S. ocean and air carriers with total annual covered revenues or total annual covered foreign expenses of \$500,000 or more. U.S. ocean and air carriers with total annual covered revenues and total annual covered foreign expenses below \$500,000 are exempt from reporting.

Affected Public: U.S. ocean and air carriers.

Frequency: Quarterly.

Respondent's Obligation: Mandatory.

Legal Authority: The International Investment and Trade in Services Survey Act, 22 U.S.C. 3101-3108.

OMB Desk Officer: Paul Bugg, (202) 395-3093.

Copies of the above extension of a currently approved collection can be obtained by calling or writing Diane Hynek, DOC Forms Clearance Officer, (202) 482-0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations in response to this extension of a currently approved collection should be sent within 30 days of publication of this notice to Paul Bugg, OMB Desk Officer, Room 10201, New Executive Office Building, Washington, DC 20503; fax: 202-395-7245; e-mail: pbugg@omb.eop.gov.

Dated: September 9, 2003.

Madeleine Clayton,

Management Analyst, Office of Chief Information Officer.

[FR Doc. 03-23371 Filed 9-12-03; 8:45 am]

BILLING CODE 3510-06-P

DEPARTMENT OF COMMERCE**Submission for OMB Review;
Comment Request**

DOC has submitted to the Office of Management and Budget (OMB) for clearance, the following proposal for an extension of a currently approved collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of Economic Analysis.

Title: Survey of Foreign Ocean Carriers' Expenses in the United States.

Form Number(s): BE-29.

Agency Approval Number: 0608-0012.

Type of Request: Extension of a currently approved collection.

Burden: 652 hours.

Number of Respondents: 163.

Avg Hours Per Response: 4 hours.

Needs and Uses: The Bureau of

Economic Analysis is responsible for the compilation of the U.S. balance of payments accounts. The information collected in this survey is an integral part of the "transportation" portion of the U.S. balance of payments accounts. The balance of payments accounts, which are published quarterly in the Bureau's monthly publication, the *Survey of Current Business*, are one of the major statistical products of BEA. The accounts provide a statistical summary of U.S. international transactions and are used by government and private organizations for national and international policy formulation, and analytical studies.

The information collected is also used for compiling the U.S. national income and product accounts, and for reporting to international organizations such as the International Monetary Fund. Without the information collected in this survey, annual data needed for estimating an integral component of the transportation account would be unavailable. No other Government agency collects comprehensive annual data on foreign ocean carriers' expenses in the United States.

The survey requests information from U.S. agents of foreign ocean carriers. Information is collected on an annual basis from U.S. agents that handle 40 or more port calls by foreign vessels and have annual total covered expenses of \$250,000 or more. U.S. agents with less than 40 port calls or with annual total covered expenses below \$250,000 are exempt from reporting.

Affected Public: U.S. agents of foreign ocean carriers.

Frequency: Annually.

Respondent's Obligation: Mandatory.

Legal Authority: The International Investment and Trade in Services Survey Act, 22 U.S.C. 3101-3108.

OMB Desk Officer: Paul Bugg, (202) 395-3093.

Copies of the above extension of a currently approved collection can be obtained by calling or writing Diane Hynek, DOC Forms Clearance Officer, (202) 482-0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations in response to this extension of a currently approved collection should be sent within 30 days of publication of this notice to Paul Bugg, OMB Desk Officer, Room 10201, New Executive Office Building, Washington, DC 20503; fax: (202) 395-7245; e-mail: pbugg@omb.eop.gov.

Dated: September 9, 2003.

Madeleine Clayton,

Management Analyst, Office of Chief Information Officer.

[FR Doc. 03-23372 Filed 9-12-03; 8:45 am]

BILLING CODE 3510-06-P

DEPARTMENT OF COMMERCE**Submission for OMB Review;
Comment Request**

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Institute of Standards and Technology (NIST).

Title: Inadequate Interoperability Cost Analysis of the U.S. Capital Facilities Industry Surveys.

Form Number(s): None.

OMB Approval Number: None.

Type of Review: Regular submission.

Burden Hours: 113.

Number of Respondents: 225.

Average Hours Per Response: 30 minutes.

Needs and Uses: The surveys, to be administered to capital facilities architects, general contractors, engineers, suppliers, software developers, and owner-operators, are designed to gather quantitative data. The data will be used to calculate the efficiency loss, in dollars, of inadequate electronic interoperability in the capital facilities supply chain and in capital facilities life cycle management. Each aforementioned stakeholder group will be administered a survey tailored to their activities in the design,

construction, and operation of capital facilities.

The surveys will collect data on respondents' capital facilities projects, business processes involving the exchange of electronic and paper-based communication, information technology investments, and the amount of labor involved in managing information flows internally and externally. The respondents will also be offered the opportunity to freely comment on the extent to which interoperability issues impact their businesses and operations.

Affected Public: Business or for-profit organizations.

Frequency: One-time.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Jacqueline Zeiher, (202) 395-4638.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482-0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at dHynek@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Jacqueline Zeiher, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: September 9, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03-23373 Filed 9-12-03; 8:45 am]

BILLING CODE 3510-13-P

DEPARTMENT OF COMMERCE**Bureau of the Census**

[Docket Number 030829216-3216-01]

RIN 0607-AA40

Annual Trade Survey

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice and request for comments.

SUMMARY: The Bureau of the Census (Census Bureau) is proposing to expand the 2003 Annual Trade Survey (ATS) to include manufacturers' sales branches and offices (MSBO). The Census Bureau proposes this expansion at the request of the Bureau of Economic Analysis (BEA). The BEA considers this information vital to its accurate measurement of sales and inventories for wholesale trade. These data are

important inputs to BEA's preparation of National Income and Product accounts and its annual input-output tables.

DATES: Written comments must be submitted on or before October 15, 2003.

ADDRESSES: Direct all written comments to the Director, U.S. Census Bureau, Room 2049, Federal Building 3, Washington, DC 20233.

FOR FURTHER INFORMATION CONTACT: John Trimble, Chief, Annual Trade and Special Projects Branch, Service Sector Statistics Division, on (301) 763-7223, or by e-mail: John.Trimble@census.gov.

SUPPLEMENTARY INFORMATION: The Census Bureau is authorized to conduct surveys necessary to furnish current data on subjects covered by the major censuses authorized by Title 13, United States Code (U.S.C.), Sections 182, 224, and 225. Reporting by MSBO establishments will be mandatory and provide continuing and timely national statistical data. Data collected in this survey will be within the general scope, type, and character of those inquiries covered in the Economic Census.

The current ATS collects data only for merchant wholesalers. The expanded survey will include a selected sample of firms and operating establishments primarily selling goods that they manufacture in the United States. These data will be a vital source for accurately measuring sales, inventories, and operating expenses for wholesale trade. The BEA has made repeated requests for this information. The expanded ATS will cover approximately 90 percent of sales from the wholesale sector and over 99 percent of its inventories compared to about 58 percent of sales and 85 percent of inventories in the present ATS sample.

Beginning with the survey year 2003, the goal will be to maximize industry coverage within our available resources. In order to establish reporting arrangements and reduce respondent burden, we will mail report forms to a sample of firms on a company basis and contact them in person, as well as by phone and mail. We will mail a survey introduction letter followed by report forms to the firms covered by this survey and require the report forms to be returned thirty days after receipt. The report forms will request similar data items, but different forms are needed to accommodate both merchant wholesale and MSBO companies as well as both large and small firms. Later, as necessary, additional mail follow-ups and telephone follow-ups will be conducted.

The primary users of these data will be federal, state and local government agencies, including the Bureau of the Census, BEA, and the Environmental Protection Agency. Other users will include business firms, academics, trade associations, and research and consulting organizations.

Rulemaking Requirements

Executive Order 12866

This rule has been determined to be not significant for purposes of Executive Order 12866.

Regulatory Flexibility Act

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule would not have a significant economic impact on a substantial number of small entities. The Census Bureau is proposing to expand the 2003 Annual Trade Survey (ATS) to include manufacturers' sales branches and offices (MSBO). If this proposed rule is adopted, the expanded ATS would cover approximately 90 percent of sales from the wholesale sector and over 99 percent of its inventories compared to about 58 percent of sales and 85 percent of inventories in the present ATS sample.

If this rule is adopted, it is estimated that the survey will require an additional 1,800 MSBOs to respond to the survey. It is estimated that approximately 1,200, or 67 percent, of the respondents would be small entities. The approximate total additional burden hours as a result of this rule is 800 hours (27 minutes per survey). This includes time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information collection. The total cost is estimated to be \$14,560 based on an annual response burden of 800 hours and a rate of \$18.20 per hour to complete the form. The total cost to respondents that are small entities is estimated to be \$9,755.

Because small businesses are subject to minimal recording-keeping and reporting burdens as a result of this rule, the Chief Counsel for Regulation certifies that this proposed rule will not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to

requirements of the Paperwork Reduction Act (PRA), unless that collection of information displays a current valid Office of Management and Budget (OMB) control number. This proposed rule contains a collection of information subject to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). In accordance with the PRA, this collection of information will be submitted to OMB for approval. We estimate the number of additional respondents to be 1,800 and estimate an additional 800 annual burden hours with this expanded data collection. Also, we estimate that the time for the additional responses associated with this data collection will be approximately 27 minutes. We will furnish report forms to organizations included in the survey, and additional copies will be available on written request to the Director, U.S. Census Bureau, Washington, DC 20233-0101.

Dated: September 9, 2003.

Charles Louis Kincannon,

Director, Bureau of the Census.

[FR Doc. 03-23352 Filed 9-12-03; 8:45 am]

BILLING CODE 3510-07-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-848]

Freshwater Crawfish Tail Meat From the People's Republic of China: Extension of Time Limit for Preliminary Results of New Shipper Review

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

SUMMARY: The Department of Commerce is extending the time limit for issuing the preliminary results of the new shipper review of Shanghai Ocean Flavor International Trading Co., Ltd. (Shanghai Ocean Flavor) under the antidumping duty order on freshwater crawfish tail meat from the People's Republic of China until no later than February 24, 2004. The period of review is September 1, 2002, through February 28, 2003. This extension is made pursuant to section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended.

EFFECTIVE DATE: September 15, 2003.

FOR FURTHER INFORMATION CONTACT: Thomas Gilgunn or Addilyn Chams-Eddine, AD/CVD Enforcement Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone: (202) 482-4236 or (202) 482-0648, respectively.

SUPPLEMENTARY INFORMATION:**Time Limits**

Section 351.214(i) of the regulations requires the Department to issue the preliminary results of a new shipper review within 180 days after the date on which the new shipper review was initiated, and final results of review within 90 days after the date on which the preliminary results were issued. However, if the Department determines the issues are extraordinarily complicated, section 351.214(i)(2) of the regulations allows the Department to extend the deadline for the preliminary results to up to 300 days after the date on which the new shipper review was initiated.

Background

On March 28, 2003 the Department received a timely request from Shanghai Ocean Flavor, in accordance with section 751(a)(2)(B) of the Act and section 351.214(c) of the regulations, for a new shipper review of the antidumping duty order on freshwater crawfish tail meat from the People's Republic of China ("PRC"), which has a September anniversary date. On April 30, 2003 the Department initiated this new shipper review covering the period September 1, 2002 through February 28, 2003. See *Freshwater Crawfish Tail Meat From the People's Republic of China: Initiation of New Shipper Antidumping Review* (68 FR 23962). The preliminary results of review are currently due October 27, 2003.

Extension of Time Limit for Preliminary Results

Pursuant to section 751(a)(2)(B)(iv) of the Act, the Department may extend the deadline for completion of the preliminary results of a new shipper review if it determines that the case is extraordinarily complicated. The Department has determined that this case is extraordinarily complicated, and the preliminary results of this new shipper review cannot be completed within the statutory time limit of 180 days. The Department finds that this new shipper review is extraordinarily complicated because there are a number of issues that must be addressed. For example, the Department issued a supplemental questionnaire regarding possible affiliations as well as supplemental questions regarding the importer of the subject merchandise. This information may necessitate a request of additional information from Shanghai Ocean Flavor and its importer. Therefore, in accordance with section 351.214(i)(2) of the regulations, the Department is extending the time limit

for the completion of preliminary results by 120 days. The preliminary results are now due no later than February 24, 2004.

This notice is published pursuant to sections 751(a)(2)(B) and 777(i)(1) of the Act.

Dated: September 9, 2003.

Joseph A. Spetrini,

Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 03-23460 Filed 9-12-03; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE**International Trade Administration****University of Chicago; 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 AM and 5 PM in Suite 4100W, Franklin Court Building, U.S. Department of Commerce, 1099 14th Street, NW., Washington, DC.

Docket Number: 03-037. *Applicant:* University of Chicago, Chicago, IL 60637. *Instrument:* (19) each Pattern Trigger Modules. *Manufacturer:* Hytec Electronics Ltd, United Kingdom. *Intended Use:* See notice at 68 FR 48341, August 13, 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:* These are compatible accessories for an existing instrument purchased for the use of the applicant.

The accessories are pertinent to the intended uses and we know of no domestic accessories which can be readily adapted to the previously imported instrument.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 03-23456 Filed 9-12-03; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE**International Trade Administration****University of Wisconsin, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes**

This is a decision consolidated 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, Franklin Court Building, U.S. Department of Commerce, 1099 14th Street, NW., Washington, DC.

Docket Number: 03-036. *Applicant:* University of Wisconsin, Madison, WI 53705-4494. *Instrument:* Electron Microscope, Model H-7600. *Manufacturer:* Hitachi High-Technologies Corporation, Japan. *Intended Use:* See notice at 68 FR 48341, August 13, 2003. *Order Date:* February 19, 2003.

Docket Number: 03-039. *Applicant:* University of Texas, Houston, TX 77030. *Instrument:* Electron Microscope, Model Tecnai G² Polara. *Manufacturer:* FEI Company, The Netherlands. *Intended Use:* See notice at 68 FR 48341, August 13, 2003. *Order Date:* March 28, 2002.

Docket Number: 03-040. *Applicant:* Georgetown University, Washington, DC 20007. *Instrument:* Electron Microscope, Model H-7600-1. *Manufacturer:* Hitachi High-Technologies Corporation, Japan. *Intended Use:* See notice at 68 FR 48342, August 13, 2003. *Order Date:* May 19, 2003.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered. *Reasons:* Each foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States at the time of order of each instrument.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 03-23457 Filed 9-12-03; 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: 03-035. *Applicant:* Villanova University, Villanova, PA 19085. *Instrument:* fNO_x500 Fast CLD System for NO analysis. *Manufacturer:* Cambustion Ltd, United Kingdom. *Intended Use:* See notice at 68 FR 48341, August 13, 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 extremely fast measurement of NO_x gas components using an electrical photomultiplier detector with a 10-90% response time of 2.0 ms for use in automotive emissions research. The Southwest Research Institute advised August 26, 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. 03-23458 Filed 9-12-03; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[C-122-815]

Pure Magnesium and Alloy Magnesium from Canada: Final Results of Countervailing Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of countervailing duty administrative reviews.

SUMMARY: On May 12, 2003, the Department of Commerce published in the **Federal Register** the preliminary results of the administrative reviews of the countervailing duty orders on pure magnesium and alloy magnesium from Canada for the period January 1, 2001 through December 31, 2001. We gave interested parties an opportunity to comment on the preliminary results.

Our analysis of the comments received on the preliminary results did not lead to any changes of the net subsidy rate. Therefore, the final results do not differ from the preliminary results. The final net subsidy rate for the reviewed company is listed below in the section entitled "Final Results of Reviews."

EFFECTIVE DATE: September 15, 2003.

FOR FURTHER INFORMATION CONTACT:

Melanie Brown, AD/CVD Enforcement, Office 1, Group 1, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482-4987.

SUPPLEMENTARY INFORMATION:**Background**

On May 12, 2003, the Department of Commerce ("the Department") published the preliminary results of these administrative reviews (see *Pure Magnesium and Alloy Magnesium From Canada: Preliminary Results of Countervailing Duty Administrative Reviews*, 68 FR 25339 (May 12, 2003) ("Preliminary Results"). The respondent, Norsk Hydro Canada, Inc. ("NHCI"), submitted a case brief on June 11, 2003. On June 16, 2003, U.S. Magnesium, LLC., ("the petitioner") filed a rebuttal brief.

Scope of the Reviews

The products covered by these reviews are shipments of pure and alloy magnesium from Canada. Pure magnesium contains at least 99.8 percent magnesium by weight and is sold in various slab and ingot forms and sizes. Magnesium alloys contain less than 99.8 percent magnesium by weight with magnesium being the largest metallic element in the alloy by weight, and are sold in various ingot and billet forms and sizes.

The pure and alloy magnesium subject to review is currently classifiable under items 8104.11.0000 and 8104.19.0000, respectively, of the Harmonized Tariff Schedule of the United States ("HTSUS"). Although the

HTSUS subheadings are provided for convenience and customs purposes, the written descriptions of the merchandise subject to the orders are dispositive.

Secondary and granular magnesium are not included in the scope of these orders. Our reasons for excluding granular magnesium are summarized in *Preliminary Determination of Sales at Less Than Fair Value: Pure and Alloy Magnesium From Canada*, 57 FR 6094 (February 20, 1992).

Period of Review

The period of review for which we are measuring subsidies is from January 1, 2001 through December 31, 2001.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to these administrative reviews are addressed in the September 9, 2003, *Issues and Decision Memorandum for the Final Results of the Tenth Countervailing Duty Administrative Reviews of Pure and Alloy Magnesium from Canada* ("Decision Memorandum") from Jeffrey May, Deputy Assistant Secretary, Import Administration, to James J. Jochum, Assistant Secretary for Import Administration, which is hereby adopted by this notice. Attached to this notice as Appendix I is a list of the issues which parties have raised and to which we have responded in the Decision Memorandum. Parties can find a complete discussion of this issue raised in these reviews and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, Room B-099 of the Department. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Internet at <http://www.ia.ita.doc.gov/frn/index.html>. The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Changes Since the Preliminary Results

Based on our analysis of the record and comments received, we have made no changes to the preliminary results net subsidy rate.

Final Results of Reviews

In accordance with 19 CFR 351.221(b)(4)(i), we calculated an individual subsidy rate for each producer/exporter subject to these reviews. For the period January 1, 2001 through December 31, 2001, we determine the net subsidy rate for the reviewed company to be as follows:

NET SUBSIDY RATE

Manufacturer/Exporter	Percent
Norsk Hydro Canada, Inc.	1.68

Assessment Rates

We will instruct the U.S. Bureau of Customs and Border Protection ("BCBP") to assess countervailing duties as indicated above. As requested by NHCI, pursuant to 19 U.S.C. § 1516a(g)(5)(c)(i), the Department will not order the liquidation of entries of pure magnesium from Canada exported by NHCI on or after August 1, 2000, pending final disposition of the NAFTA panel review of this case. Liquidation will occur at the rates described in these final results of review, if appropriate, following the final judgment in the NAFTA panel dispute.

Cash Deposit Instructions

The Department will instruct the BCBP to collect cash deposits of estimated countervailing duties in the percentage detailed above of the f.o.b. invoice value on all shipments of the subject merchandise from NHCI, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of these administrative reviews.

We will instruct BCBP to continue to collect cash deposits for non-reviewed companies at the most recent company-specific or country-wide rate applicable to the company (except Timminco Limited, which was excluded from the orders in the original investigations). Accordingly, the cash deposit rate that will be applied to non-reviewed companies covered by these orders is that established in *Pure and Alloy Magnesium From Canada: Final Results of the Second (1993) Countervailing Duty Administrative Reviews*, 62 FR 48607 (September 16, 1997) or the company-specific rate published in the most recent final results of an administrative review in which a company participated. These rates shall apply to all non-reviewed companies until a review of a company assigned these rates is requested.

This notice serves as a reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

These administrative reviews and notice are in accordance with section 751(a)(1) of the Act.

Dated: September 9, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

APPENDIX I**List of Comments and Issues in the Decision Memorandum**

Comment 1: Adjusting Current Assessment Rates to Compensate for Over-assessment on Prior Entries [FR Doc. 03-23459 Filed 9-12-03; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE**International Trade Administration**

[C-427-815]

Stainless Steel Sheet and Strip in Coils from France: Final Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Countervailing Duty Administrative Review.

SUMMARY: The Department is issuing the final results of the second administrative review of the countervailing duty order on stainless steel sheet and strip in coils from France for the period January 1, 2001, through December 31, 2001.

EFFECTIVE DATE: September 15, 2003.

FOR FURTHER INFORMATION CONTACT: Jesse Cortes at (202) 482-3986; Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:**Case History**

Since the publication of the preliminary results in the **Federal Register** (see *Stainless Steel Sheet and Strip in Coils from France: Preliminary Results of Second Countervailing Duty Administrative Review*, 68 FR 24921 (May 9, 2003) ("*Preliminary Results*")), the following events have occurred:

On June 9, 2003, we received a case brief and request for a hearing from Ugine SA, Imphy Ugine Precision, Ugine France Service, Sollac Mediterranee, Usinor Packaging, Sollac Lorraine, Sollac Atlantique, CARLAM, G. Fer, IRSID, and Usinor Stainless (collectively referred to as "Usinor").

The petitioners (*i.e.*, Allegheny Ludlum Corporation, AK Steel, Inc., North American Stainless, United Steelworkers of America, AFL-CIO/CLC, Butler Armco Independent Union, and Zanesville Armco Independent Organization) submitted a rebuttal brief on June 16, 2003. On July 7, 2003, Usinor withdrew its request for a hearing.

Scope of Review

The products covered by this countervailing duty order are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (*e.g.*, cold-rolled, polished, aluminized, coated, etc.) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise covered by this order is currently classifiable in the *Harmonized Tariff Schedule of the United States* ("HTSUS") at the following subheadings:

7219.13.00.30, 7219.13.00.50, 7219.13.00.70, 7219.13.00.80, 7219.14.00.30, 7219.14.00.65, 7219.14.00.90, 7219.32.00.05, 7219.32.00.20, 7219.32.00.25, 7219.32.00.35, 7219.32.00.36, 7219.32.00.38, 7219.32.00.42, 7219.32.00.44, 7219.33.00.05, 7219.33.00.20, 7219.33.00.25, 7219.33.00.35, 7219.33.00.36, 7219.33.00.38, 7219.33.00.42, 7219.33.00.44, 7219.34.00.05, 7219.34.00.20, 7219.34.00.25, 7219.34.00.30, 7219.34.00.35, 7219.35.00.05, 7219.35.00.15, 7219.35.00.30, 7219.35.00.35, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.12.10.00, 7220.12.50.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.20.70.05, 7220.20.70.10, 7220.20.70.15, 7220.20.70.60, 7220.20.70.80, 7220.20.80.00, 7220.20.90.30, 7220.20.90.60, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80.

Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written

description of the merchandise under review is dispositive.

Excluded from the scope of this order are the following: (1) sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled; (2) sheet and strip that is cut to length; (3) plate (*i.e.*, flat-rolled stainless steel products of a thickness of 4.75 mm or more); (4) flat wire (*i.e.*, cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm); and (5) razor blade steel. Razor blade steel is a flat-rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. See Chapter 72 of the HTSUS, "Additional U.S. Note" 1(d).

Also excluded from the scope of this order are:

Flapper Valve Steel: Flapper valve steel is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors.

Suspension Foil: Suspension foil is a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection and flatness of 1.6 mm over 685 mm length.

Certain Stainless Steel Foil for Automotive Catalytic Converters: This stainless steel strip in coils is a specialty

foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of less than 0.002 or greater than 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent Magnet Iron-chromium-cobalt Alloy Stainless Strip: This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as "Arnokrome III."¹

Certain Electrical Resistance Alloy Steel: This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials (ASTM) specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high-temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as "Gilphy 36."²

Certain Martensitic Precipitation-hardenable Stainless Steel: This high-strength, ductile stainless steel product is designated under the Unified Numbering System (UNS) as S45500-grade steel, and contains, by weight, 11 to 13 percent chromium and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging and will exhibit

yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as "Durphynox 17."³

Three Specialty Stainless Steels Typically Used in Certain Industrial Blades and Surgical and Medical Instruments: These include stainless steel strip in coils used in the production of textile cutting tools (*e.g.*, carpet knives).⁴ This steel is similar to AISI grade 420 but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as "GIN4 Mo."⁵ The second excluded stainless steel strip in coils is similar to AISI 420-J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent, and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per 100 square microns. An example of this product is "GIN5" steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, "GIN6."

Period of Review

The period of review ("POR") for which we are measuring subsidies is January 1, 2001, through December 31, 2001.

Attribution of Subsidies

Usinor has filed its responses on behalf of its French affiliates involved in the manufacture, production or

³ "Durphynox 17" is a trademark of Imphy, S.A.

⁴ This list of uses is illustrative and provided for descriptive purposes only.

⁵ "GIN4 Mo," "GIN5" and "GIN6" are the proprietary grades of Hitachi Metals America, Ltd.

¹ "Arnokrome III" is a trademark of the Arnold Engineering Company.

² "Gilphy 36" is a trademark of Imphy, S.A.

exportation of the subject merchandise (*i.e.*, Ugine SA, Imphy Ugine Precision, Ugine France Service, Sollac Mediterranee, Usinor Packaging, Sollac Lorraine, Sollac Atlantique, CARLAM, G. Fer, IRSID, and Usinor Stainless). Usinor holds a majority interest in all of these companies. Therefore, in accordance with 19 CFR 351.525(b)(6)(iii), we have attributed subsidies received by these companies to the total sales by Usinor of French-produced merchandise.

Analysis of Comments Received

All issues raised in Usinor's case brief and the petitioners' rebuttal brief filed in this administrative review are addressed in the "Issues and Decision Memorandum" from Jeffrey A. May, Deputy Assistant Secretary, to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration, dated September 8, 2003 ("*Decision Memorandum*"), which is hereby adopted by this notice. Attached to this notice as Appendix I is a list of the issues which parties have raised and to which we have responded in the *Decision Memorandum*. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit, Room B-099 of the main Department building. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Internet at <http://ia.ita.doc.gov/frn/summary/list.htm> under the heading "France." The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Final Results of Review

In accordance with 19 CFR 351.221(b)(5), we calculated an individual subsidy rate for the producer/exporter subject to this administrative review. For the period January 1, 2001 through December 31, 2001, we determine the net subsidy rate for Usinor to be 1.11 percent *ad valorem*. In a change from the *Preliminary Results* and for the reasons set forth in the *Decision Memorandum* at Comment 3, no duty deposit is required.

As a result of the injunction issued December 22, 1999, by the U.S. Court of International Trade, enjoining us from liquidating any entries of the subject merchandise after August 6, 1999, we will not order liquidation of entries of stainless steel sheet and strip in coil from France at this time. Liquidation will occur at the rates described in this

notice at such time as the injunction is lifted.

The cash deposit rates for all companies not covered by this review are not changed by the results of this review. Thus, we will instruct the United States Bureau of Customs and Border Protection to continue to collect cash deposits for non-reviewed companies at the most recent rate applicable to the company. These rates shall apply to all non-reviewed companies until a review of the companies assigned these rates is completed. In addition, for the POR, the assessment rates applicable to all non-reviewed companies covered by this order are the cash deposit rates in effect at the time of entry.

This notice serves as a reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely written notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: September 8, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

APPENDIX I

List of Comments and Issues in the Decision Memorandum

Comment 1: Treatment of Usinor's Pre-Privatization Benefits

Comment 2: Appropriate AUL for 1988 FIS Bonds Conversion

Comment 3: Cash Deposit Rate

[FR Doc. 03-23455 Filed 9-12-03; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

ENVIRONMENTAL PROTECTION AGENCY

Coastal Nonpoint Pollution Control Program: Approval Decision on Connecticut Coastal Nonpoint Pollution Control Program

AGENCY: National Oceanic and Atmospheric Administration, U.S. Department of Commerce and the U.S. Environmental Protection Agency.

ACTION: Notice of intent to approve the Connecticut Coastal Nonpoint Program.

SUMMARY: Notice is hereby given of the intent to fully approve the Connecticut Coastal Nonpoint Pollution Control Program (coastal nonpoint program) and of the availability of the draft Approval Decisions on conditions for the Connecticut coastal nonpoint program. Section 6217 of the Coastal Zone Act Reauthorization Amendments (CZARA), 16 U.S.C. 1455b, requires States and Territories with coastal zone management programs that have received approval under section 306 of the Coastal Zone Management Act to develop and implement coastal nonpoint programs. Coastal States and Territories were required to submit their coastal nonpoint programs to the National Oceanic and Atmospheric Administration (NOAA) and the U.S. Environmental Protection Agency (EPA) for approval in July 1995. NOAA and EPA conditionally approved the Connecticut coastal nonpoint program on June 3, 1998. NOAA and EPA have drafted approval decisions describing how Connecticut has satisfied the conditions placed on its program and therefore has a fully approved coastal nonpoint program.

NOAA and EPA are making the draft decisions for the Connecticut coastal nonpoint program available for a 30-day public comment period. If comments are received, NOAA and EPA will consider whether such comments are significant enough to affect the decision to fully approve the program.

Copies of the draft Approval Decisions can be found on the NOAA Web site at <http://www.ocrm.nos.noaa.gov/czm/> or may be obtained upon request from: Helen Farr, Coastal Programs Division (N/ORM3), Office of Ocean and Coastal Resource Management, NOS, NOAA, 1305 East-West Highway, Silver Spring, Maryland, 20910, phone (301) 713-3155, x150, e-mail helen.farr@noaa.gov.

DATES: Individuals or organizations wishing to submit comments on the draft Approval Decisions should do so by October 15, 2003.

ADDRESSES: Comments should be made to: John King, Acting Chief, Coastal Programs Division (N/ORM3), Office of Ocean and Coastal Resource Management, NOS, NOAA, 1305 East-West Highway, Silver Spring, Maryland, 20910, phone (301) 713-3155, x188, e-mail john.king@noaa.gov.

FOR FURTHER INFORMATION CONTACT: Helen Farr, Coastal Programs Division (N/ORM3), Office of Ocean and Coastal Resource Management, NOS, NOAA,

1305 East-West Highway, Silver Spring, Maryland, 20910, phone (301) 713-3155, x150, e-mail helen.farr@noaa.gov.

(Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration)

Dated: September 10, 2003.

Alan Neuschatz,

Associate Assistant Administrator, Management and Budget Office, National Ocean Service, National Oceanic and Atmospheric Administration.

G. Tracy Mehan, III,

Assistant Administrator, Office of Water, Environmental Protection Agency.

[FR Doc. 03-23453 Filed 9-12-03; 8:45 am]

BILLING CODE 3510-08-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 090403E]

North Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Pacific Northwest Crab Industry Advisory Committee (PNCIAC) will meet in Seattle, WA.

DATES: The meeting will be held on September 29, 2003, 9am, Building 9, Conference Rooms A & B.

ADDRESSES: The meeting will be held at the Alaska Fisheries Science Center, 7600 Sand Point Way NE, Seattle, WA.
Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501-2252.

FOR FURTHER INFORMATION CONTACT: Diana Stram, Council staff, telephone: 907-271-2809.

SUPPLEMENTARY INFORMATION: The committee will meet to: (1) Update PNCIAC bylaws; (2) Discuss recent meeting of the North Pacific Fishery Management Council (NPFMC) Crab Plan Team; (3) Presentation of current *opilio* crab modeling; (4) Discuss industry partnership with NMFS to improve confidence in the Bering Sea Crab Survey.

NOTE: Because of heightened security measures, NMFS must have a list of non-federal attendees. If you plan to attend this meeting, please contact Committee Chair, Gary Painter: gpainter@actionnet.net to be added to the list.

Although non-emergency issues not contained in this agenda may come

before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the NPFMC's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen at 907-271-2809 at least 7 working days prior to the meeting date. Dated: September 9, 2003. Richard W. Surdi, Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03-23435 Filed 9-12-03; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 090403D]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Highly Migratory Species Management Team (HMSMT) will hold a work session, which is open to the public.

DATES: The work session will be Wednesday, October 1, 2003 from 1 p.m. until 5 p.m. and Thursday, October 2 from 9 a.m. until business for the day is completed.

ADDRESSES: The work session will be held at the Hubbs-Sea World Research Institute, 2595 Ingraham Street, San Diego, CA 92109, telephone: (619) 226-3870.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220-1384.

FOR FURTHER INFORMATION CONTACT: Mr. Dan Waldeck, Pacific Fishery Management Council; telephone: (503) 820-2280.

SUPPLEMENTARY INFORMATION: The main purpose of this work session is for the

HMSMT to begin development of initial recommendations for a limited entry program for the high seas longline fishery, including a control date, qualifying period, qualifying landing amounts, capacity goal, and permit transferability. This work is in response to a request from the Council at the June 2003 meeting. The HMSMT will report their initial recommendations to the Council at the November 2003 meeting in San Diego, CA. Other matters related to the HMS Fishery Management Plan (FMP) may be discussed and included in the HMSMT report to the Council. However, formal action on limited entry or other HMS FMP-related issues will not occur at this work session.

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 820-2280 at least 5 days prior to the meeting date.

Dated: September 9, 2003.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03-23433 Filed 9-12-03; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 090403F]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council (Council) will convene a meeting of the Ad Hoc Vessel Monitoring System (VMS) Committee, which is open to the public.

DATES: The Ad Hoc VMS Committee will meet Tuesday, October 7, 2003 beginning at 8:30 a.m. and continuing until business for the day is completed.

ADDRESSES: The meeting will be held in the West Conference Room at the Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220-1384; telephone: (503) 820-2280.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Burner, Pacific Fishery Management Council Groundfish Staff Officer; telephone: (503) 820-2280.

SUPPLEMENTARY INFORMATION: The primary purpose of the meeting is to review the Council recommendation to expand the VMS program for West Coast groundfish fisheries to additional fishery sectors. The Council approved a pilot program for the limited entry trawl and limited entry fixed gear sectors and recommended implementation on January 1, 2004. The committee needs to consider expanding the VMS program to ensure effective monitoring and enforcement of area closures in commercial and recreational groundfish fisheries. The composition of the committee was revised by the Council at the June 2003 meeting to include representatives of limited entry, recreational charter vessel, and open access fishery sectors as well as representatives of the Enforcement Consultants, National Marine Fisheries Service, and fish processors.

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 820-2280 at least 5 days prior to the meeting date.

Dated: September 9, 2003.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03-23436 Filed 9-12-03; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D 081403A]

Marine Mammals; File No. 782-1708-00

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

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that the National Marine Mammal Laboratory (NMML), National Marine Fisheries Service, NOAA, 7600 Sand Point Way, NE, BIN C15700, Bldg. 1, Seattle, WA 98115-0070 (PI: Dr. Thomas Loughlin) has been issued a permit to take Northern fur seals (*Callorhinus ursinus*) for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713-2289; fax (301)713-0376; and

Assistant Regional Administrator for Protected Resources, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802-1668; phone (907)586-7235; fax (907)586-7012.

FOR FURTHER INFORMATION CONTACT:

Ruth Johnson or Carrie Hubard (301)713-2289.

SUPPLEMENTARY INFORMATION: On June 4, 2003, notice was published in the **Federal Register** (68 FR 33477) that a request for a scientific research permit to take the species identified above had been submitted by the above-named organization. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

The Permit authorizes NMML to take Northern fur seals during scientific research. Seals will be captured, tagged, sampled and incidentally harassed during annual censuses on the Pribilof Islands. All of this work is essential for: (1) monitoring the status and trends of the northern fur seal population, (2) evaluating the condition of animals from each cohort (health and strength of year-class), (3) monitoring the diet, and (4) documenting the movement patterns, foraging behavior, and essential foraging

habitat of various age and sex classes of fur seals. The information collected under this permit will be important for assessing the recovery of this depleted species and for evaluating management actions.

Dated: September 3, 2003.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03-23437 Filed 9-12-03; 8:45 am]

BILLING CODE 3510-22-S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Determination Under the African Growth and Opportunity Act

September 10, 2003.

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Directive to the Commissioner of Customs.

SUMMARY: The Committee for the Implementation of Textile Agreements (CITA) has determined that certain textile and apparel goods from Ghana shall be treated as "handloomed, handmade, or folklore articles" and qualify for preferential treatment under the African Growth and Opportunity Act. Imports of eligible products from Ghana with an appropriate visa will qualify for duty-free treatment.

EFFECTIVE DATE: September 15, 2003.

FOR FURTHER INFORMATION CONTACT: Anna Flaaten, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 782-3400.

SUPPLEMENTARY INFORMATION: The African Growth and Opportunity Act (Title I of the Trade and Development Act of 2000, Public Law 106-200) (AGOA) provides preferential tariff treatment for imports of certain textile and apparel products of beneficiary sub-Saharan African countries, including handloomed, handmade, or folklore articles of a beneficiary country that are certified as such by the competent authority in the beneficiary country. In Executive Order 13191, the President authorized CITA to consult with beneficiary sub-Saharan African countries and to determine which, if any, particular textile and apparel goods shall be treated as being handloomed, handmade, or folklore articles. (66 FR 7272)

In a letter to the Commissioner of Customs dated January 18, 2001, the

United States Trade Representative directed Customs to require that importers provide an appropriate export visa from a beneficiary sub-Saharan African country to obtain preferential treatment under section 112(a) of the AGOA (66 FR 7837). The first digit of the visa number corresponds to one of nine groupings of textile and apparel products that are eligible for preferential tariff treatment. Grouping "9" is reserved for handmade, handloomed, or folklore articles.

CITA has consulted with Ghanaian authorities, and has determined that handloomed fabrics, handloomed articles (e.g., handloomed rugs, scarves, place mats, and tablecloths), handmade articles made from handloomed fabrics, and the folklore articles described in the annex to this notice, if produced in and exported from Ghana, are eligible for preferential tariff treatment under section 112(a) of the AGOA. In the letter published below, CITA directs the Commissioner of Customs and Border Protection to allow duty-free entry of such products under U.S. Harmonized Tariff Schedule subheading 9819.11.27 if accompanied by an appropriate AGOA visa in grouping "9".

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

Commissioner of Customs and Border Protection,
Department of Homeland Security,
Washington, DC 20229.

Dear Commissioner: The Committee for the Implementation of Textiles Agreements (CITA), pursuant to Sections 112(a) of the African Growth and Opportunity Act (Title I of Pub. L. No. 106-200) (AGOA) and Executive Order 13191 of January 17, 2001, has determined, effective on September 15, 2003, that the following articles shall be treated as "handloomed, handmade, and folklore articles" under the AGOA: (a) handloomed fabrics, handloomed articles (e.g., handloomed rugs, scarves, placemats, and tablecloths), and hand-made articles made from handloomed fabrics, if made in Ghana from fabric handloomed in Ghana; and (b) the folklore articles described in the attachment to this letter if made in Ghana. Such articles are eligible for duty-free treatment only if entered under subheading 9819.11.27 and accompanied by a properly completed visa for product grouping "9", in accordance with the provisions of the Visa Arrangement between the Government of Ghana and the Government of the United States Concerning Textile and Apparel Articles Claiming Preferential Tariff Treatment under Section 112 of the Trade and Development Act of 2000. After additional consultations with Ghanaian authorities, CITA may determine that other

textile and apparel goods shall be treated as handloomed, handmade, or folklore articles.

Sincerely,

D. Michael Hutchinson,
Acting Chairman, Committee for the Implementation of Textile Agreements.
Attachment

Annex

CITA has determined that the following textile and apparel goods shall be treated as folklore articles for purposes of the AGOA. Articles must be ornamented in characteristic Ghanaian or regional folk style. An article may not include modern features such as zippers, elastic, elasticized fabrics, or hook-and-pile fasteners (such as velcro or similar holding fabric). An article may not incorporate patterns that are not traditional or historical to Ghana, such as airplanes, buses, cowboys, or cartoon characters and may not incorporate designs referencing holidays or festivals not common to traditional Ghanaian culture, such as Halloween and Thanksgiving.

1. Kente Stole

Kente is a thin strip of handloomed fabric, usually about 4 to 6 inches wide and 3 yards long. This stole can either be composed of a single strip of such kente fabric or multiple strips of kente fabric sewn together to make a wider stole to a standard length of 6 yards for women or 12 yards for men. Designs vary from colorful to plain, intricate to simple, can be done in a patchwork style (alternating blocks), contain decorative metallic threads, and have an elaborate border. Patterns vary and are usually colorful. The handloomed kente fabric used in a stole can also be a single color, traditionally dyed with vegetable dyes.

The kente stole that consists of multiple strips of such handloomed kente strips sewn together are either hand-stitched or machine sewn.

2. Adinkra

Made of handloomed fabric, usually about 4 to 6 inches wide and 3 yards long. The cotton fabric is usually plain white or brown and woven on a traditional handloom, an adinkra is a fabric that is draped around the body. The standard length is 6 yards for women and 12 yards for men. Adinkra is usually traditionally dyed a single color with vegetable dyes.

3. Agbada

Agbadas are loose fitting garments traditionally worn by men for more formal occasions, in either 2-piece, 3-piece or 4-piece sets, consisting of some or all of the following: (a) inner tunic

gown, (b) trousers, (c) outer gown, (d) cap. This garment can be made from woven fabric of any weight and vary in color and design.

(a) Loose fitting, three-quarter length, embroidered tunic inner gown. Sleeves may or may not be present, and may vary in length. Patterns and colors vary, but there is usually intricate embroidery around the neckline. The neckline can be round or have a slit down the center front. May or may not have pockets.

(b) The trousers may be long or three-quarter length and are secured at the waist by a drawstring, are loose-fitting with extra-fullness at the thighs and may contain side seam pockets.

(c) Loose flowing, non-tailored, embroidered outer gown is full length, and may have pockets, oftentimes located mid-way down the garment under the embroidery on the neckline. The neckline can be round, v-shaped, be asymmetrically v-shaped, or have a slit down the center front.

(d) The matching cap can be cylindrical or cone-shaped, with or without tassel, fitted or floppy.

4. Batakari/Fugu

Generally from the culture in the north of Ghana, 2-piece, 3-piece or 4-piece sets consisting of some or all of the following: (a) inner smock (b) trousers, (c) outer smock (d) and cap. The batakari is made of handloomed strips of kente fabric, approximately 4 inches in width, sewn together, either by machine or hand-stitched. The handloomed strips of fabric tend to be plaid-patterned. A "batakari" is also called a "fugu" or a "smock" depending on the region in which it originates in the northern part of Ghana.

(a) Loose fitting, three-quarter length, embroidered inner smock. Sleeves may or may not be present, and may vary in length. Patterns and colors vary, but there is usually intricate embroidery around the neckline. The neckline can be round, v-shaped, or have a slit down the center front. May or may not have pockets. Tends to be pleated and flare halfway down the garment.

(b) The trousers may be long or three-quarter length and are secured at the waist by a drawstring, are loose-fitting with extra-fullness at the thighs and may have side seam pockets.

(c) Loose flowing, non-tailored, embroidered outer smock is three-quarter to full length, can have pockets, oftentimes located mid-way down the garment under the embroidery on the neckline, may be pleated and flare halfway down the garment. The neckline can be round, v-shaped, be asymmetrically v-shape, or have a slit down the center front. Tends to be

pleated and flare halfway down the garment.

(d) The matching cap can be cylindrical or cone-shaped, with or without tassel, fitted or floppy.

5. *Kaftan*

One-piece, loose-fitting, straight-seamed, long or three-quarter length garment is ornamented, such as embroidered at the neckline, traditionally worn by women. The neckline can be round, v-shaped, or have a slit down the center front. Sleeves vary in length. The garment may or may not have slits on each side (from the bottom hem upwards). Can include matching strip of fabric to be worn in hair or as a shawl. This garment can be made from woven fabric of any weight and vary in color and design. May or may not have pockets.

6. *Joromi (Men's shirt)*

Loose fitting, straight-seamed shirt. Sleeves may or may not be present and may vary in length. Patterns and colors vary, usually with intricate ornamentation, such as embroidery, around the neckline. The neckline can be round or have a slit down the center front, but does not have a collar. May or may not have pockets. May have wooden button fastenings below the neckline.

[FR Doc. 03-23454 Filed 9-12-03; 8:45 am]

BILLING CODE 3510-DR-U

DEPARTMENT OF DEFENSE

Office of the Secretary

Notice of Availability of the Ground-Based Midcourse Defense Initial Defensive Operations Capability at Vandenberg Air Force Base Environmental Assessment and Draft Finding of No Significant Impact

AGENCY: Missile Defense Agency, Department of Defense.

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of the Missile Defense Agency's (MDA) Ground-Based Midcourse Defense (GMD) Initial Defensive Operations Capability (IDOC) at Vandenberg Air Force Base (AFB) Environmental Assessment (EA) and Draft Finding of No Significant Impact (FONSI). The EA analyzes the potential environmental consequences of establishing the capability to launch defensive ground-based interceptors (GBIs) from Vandenberg AFB, California. The Proposed Action would use and/or modify four existing missile

silos and other support facilities as part of the GMD IDOC. The GMD IDOC activities would be operational and not test in nature. Operational launches would only occur in an emergency as an initial defense against a limited long-range ballistic missile threat. Based on this analysis, the MDA has determined that the proposed activities are not expected to result in significant impacts to the environment. The EA and Draft FONSI are available at the following locations:

- Lompoc Public Library;
- Santa Barbara Public Library (Main);
- Santa Maria Public Library; and
- University of California, Santa Barbara Library Government Publications Department.

DATES: A FONSI will be issued no earlier than October 16, 2003.

ADDRESSES: Requests for copies of the document or to provide comments on the EA should be addressed to: U.S. Army Space and Missile Defense Command, Attn: SMDC-EN-V (Mr. David Hasley), P.O. Box 1500, Huntsville, AL 35807-3801, or by phone at 1-800-823-8823.

FOR FURTHER INFORMATION CONTACT: Please call Mr. Rick Lehner, MDA Director of Communications at (703) 697-8997.

Dated: September 9, 2003.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03-23340 Filed 9-12-03; 8:45 am]

BILLING CODE 5001-08-M

DEPARTMENT OF ENERGY

National Energy Technology Laboratory; Notice of Availability of a Financial Assistance Solicitation

AGENCY: National Energy Technology Laboratory, Department of Energy (DOE).

ACTION: Notice of availability of a Financial Assistance Solicitation.

SUMMARY: Notice is hereby given of the intent to issue Financial Assistance Solicitation No. DE-PS26-03NT15392-0 entitled "Microhole Technology Development." The Department of Energy (DOE), National Energy Technology Laboratory's (NETL) National Petroleum Technology Office (NPTO) is seeking applications for cost-shared development and demonstration projects using microhole technologies in the United States.

DATES: The solicitation will be available on the "Industry Interactive

Procurement System" (IIPS) webpage located at <http://e-center.doe.gov> on or about September 30, 2003. Applicants can obtain access to the solicitation from the address above or through DOE/NETL's website at <http://www.netl.doe.gov/business>.

FOR FURTHER INFORMATION CONTACT:

Keith R. Miles, MS 921-166, U.S. Department of Energy, National Energy Technology Laboratory, 626 Cochran's Mill Road, PO Box 10940, Pittsburgh, PA 15236-0940. *E-mail Address:* miles@netl.doe.gov. *Telephone Number:* 412-386-5984.

SUPPLEMENTARY INFORMATION: The goal of this Microhole Technology (MHT) solicitation is to support Reservoir Life Extension/Domestic Resource Conservation by facilitating exploration and production companies in the effort to find, characterize and develop shallow domestic oil and natural gas resources inexpensively. The purpose of this solicitation is to demonstrate present MHT capabilities and development of missing key MHT components. Microhole Technology will consist of the techniques and tools used to drill, complete and characterize reservoirs 5,000 feet deep in a 3½" diameter borehole. Microhole drilling will use a coiled tubing drilling rig and appropriate Logging While Drilling (LWD), Measurement While Drilling (MWD), Directional Assembly (DA) and Positive Displacement Motor (PDM) to eventually drill a 3½" borehole to a minimum of 5,000 feet True Vertical Depth (TVD) and a minimum 1,000 feet directional displacement from the surface well location. Microhole completion equipment are those items necessary to run, set and cement casing and the associated downhole tubulars (packers, sleeves, nipples, screens, etc.), surface wellhead, perforation tools and stimulation tools. Microhole reservoir characterization equipment includes Vertical Seismic Profiling (VSP) and downhole reservoir sensors. Some of the Microhole Technology parts exist and are now in use in coiled tubing and slimhole drilling. The program is open to any business, educational institution or state agency and is for the benefit of the domestic oil industry.

The two solicitation Areas of Interest are described below.

Area of Interest 1: DE-PS26-03NT15392-1: Field Demonstration

Projects in Area 1 promote the National Energy Policy goal of enhanced oil and gas recovery with advanced technology. Applications in Area 1 will be drilling programs that demonstrate current microhole technologies in

different geographic regions of the United States. Area 1 will accept drilling program applications with a minimum 50% cost share for drilling new or extending existing wells using a coiled tubing drilling system. Each drilling program must have a minimum of three wells. Approximately three applications will be funded. The successful awards will be with different E&P companies in diverse geographic locations. A coiled tubing drilling system must be used to drill the last length of hole. This hole will be no more than 4 $\frac{3}{4}$ " diameter and no less than 1,000 feet long. Applications must include an economic analysis of coiled tubing drilling versus rotary drilling and overall economics of the drilling program. Technology transfer of the drilling program results will be a requirement.

Area of Interest 2: DE-PS26-03NT15392-2: Technology Development

Applications submitted under Area 2 must target one (1) of four (4) specific technical topics (shown below) for the development and manufacture of equipment required to fulfill the Microhole Technology goal. This equipment will be an evolutionary advance over existing designs. Applications must include conceptual drawings, basic engineering design specifications, Quality Control standards, corporate history, product test capabilities and proposed test standards. Proposed equipment will complement the Microhole Technology goal of drilling, completing and characterizing reservoirs a minimum of 5,000 feet TVD and 1,000 feet directional displacement in a 3 $\frac{1}{2}$ " borehole. All component applications must be compatible with the Microhole Coiled Tubing Rig. DOE personnel will coordinate compatibility issues between manufacturers. A 20% cost share is required for any Area 2 application.

Applications for Area 2 must target only one (1) of the following four (4) topics:

1. *Built for purpose Microhole Coiled Tubing Rig (MCTR)*. The MCTR will handle 1" through 2 $\frac{3}{8}$ " coiled tubing. The rig will be able to drill and case surface, intermediate, production and liner hole intervals. The rig will be able to drill with coiled tubing and conventional rotary or top drive. The rig will be able to run at a minimum 7 $\frac{5}{8}$ " range 2 casing. The MCTR may be truck, trailer or skid mounted and meet USDOT limitations. The MCTR may be more than one load. If skid mounted the rig must be helitransportable. The MCTR must be readily adaptable to

support low-cost directional drilling and through-tubing micro-lateral drilling from existing wells. The MCTR must be able to drill with low density, compressible drilling fluids. The MCTR design will facilitate quick reel or coiled tubing changes in the field.

2. *Self contained "zero discharge" drilling mud system*. The mud system may be truck, trailer or skid mounted and meet USDOT limitations. If skid mounted it will be helitransportable. The mud system may be more than one load. The mud system will be compatible with the MCTR. The mud system will be able to mix, circulate downhole, clean and hold diesel or water based drilling mud. The mud system will have a minimum 200 bbl total capacity with active, reserve and trip tanks. The mud pump will be from a standard oilfield equipment manufacturer and be capable of circulating 15 gpm at 5,000 psi and 500 gpm at 1,000 psi. The mud system will have a solids control system capable of continuously separating the drill solids and "fine" low gravity drill solids. The mud system must be compatible with an underbalanced drilling system.

3. *Microhole Coiled Tubing Bottom Hole Assemblies*. MWD, LWD, DA and PDM suitable for drilling 3 $\frac{1}{2}$ " boreholes. Applications may be for all or any portion of these Bottom Hole Assemblies.

4. *Microhole Cementing Equipment*. Cementing float shoe, collar, wiper plugs and cement head/plug launcher for 2 $\frac{7}{8}$ ", 2 $\frac{3}{8}$ ", 2" and 1 $\frac{3}{4}$ " coiled tubing.

Once released, the solicitation will be available for downloading from the IIPS Internet page. At this Internet site you will also be able to register with IIPS, enabling you to submit an application. If you need technical assistance in registering or for any other IIPS function, call the IIPS Help Desk at (800) 683-0751 or E-mail the Help Desk personnel at IIPS_HelpDesk@e-center.doe.gov. The solicitation will only be made available in IIPS, no hard (paper) copies of the solicitation and related documents will be made available. Telephone requests, written requests, E-mail requests, or facsimile requests for a copy of the solicitation package will not be accepted and/or honored. Applications must be prepared and submitted in accordance with the instructions and forms contained in the solicitation. The actual solicitation document will allow for requests for explanation and/or interpretation.

Issued in Pittsburgh, PA on September 3, 2003.

Dale A. Siciliano,

Director, Acquisition and Assistance Division.
[FR Doc. 03-23419 Filed 9-12-03; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP01-217-004, CP01-76-008 & CP01-77-008]

Dominion Cove Point LNG, LP; Notice of Tariff Filing

September 5, 2003.

Take notice that on August 29, 2003, Dominion Cove Point LNG, LP (Cove Point) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Fourth Revised Sheet No. 11, with an effective date of October 1, 2003.

Cove Point states that the purpose of this filing is to correct the daily rates for capacity release for Rate Schedules FPS-1, FPS-2, FPS-3, and LTD-1.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the eLibrary (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at (866) 208-3676, or TTY, contact (202) 502-8659. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Protest Date: September 10, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03-23378 Filed 9-12-03; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket No. RP03-545-001]

Dominion Cove Point LNG, LP; Notice of Compliance Filing

September 5, 2003.

Take notice that on September 2, 2003, Dominion Cove Point LNG, LP (Cove Point) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, with an effective date of September 10, 2003:

Substitute Second Revised Sheet No. 240.
Substitute First Revised Sheet No. 241.
Substitute First Revised Sheet No. 243.

Cove Point states that the purpose of this filing is to comply with the Commission's "Order Accepting Tariff Revisions Subject to Modification" issued on August 1, 2003. Cove Point states it has filed to modify its capacity release provisions in Section 10 (Release and Assignment of Service Rights) of the General Terms and Conditions (GT&C) of its FERC Gas Tariff consistent with the Commission's August 1, Order.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the eLibrary (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at (866) 208-3676, or TTY, contact (202) 502-8659. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Protest Date: September 15, 2003.

Magalie R. Salas,
Secretary.

[FR Doc. 03-23382 Filed 9-12-03; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket No. RP02-449-003]

Eastern Shore Natural Gas Company; Notice of Compliance Filing

September 5, 2003.

Take notice that on September 2, 2003, Eastern Shore Natural Gas Company (Eastern Shore) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, with a proposed effective date of October 1, 2003.

Eastern Shore states that on August 1, 2002, it filed revised tariff sheets to comply with the Commission's Order 587-O. Along with the revised tariff sheets, Eastern Shore requested a one-year extension of time to fully implement certain Web site requirements that mandated the use of electronic data interchange data sets and electronic delivery mechanisms for nominations, flowing gas, invoicing, and capacity release. Eastern Shore states that by letter order dated September 30, 2002, FERC granted Eastern Shore a one-year extension of time to comply with the North American Energy Standards Board (NAESB) Web site standards and data sets.

Eastern Shore states that the revised tariff sheets as filed on September 2, 2003 contain the required revisions necessary to comply with the Commission's September 30, 2002 and subsequent July 17, 2003 letter orders.

Eastern Shore also states that copies of its filing have been mailed to its customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the eLibrary (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact

FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at (866) 208-3676, or TTY, contact (202) 502-8659. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Protest Date: September 15, 2003.

Magalie R. Salas,
Secretary.

[FR Doc. 03-23381 Filed 9-12-03; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket No. RP03-553-001]

Equitrans, L.P.; Notice of Compliance Filing

September 5, 2003.

Take notice that on August 29, 2003, Equitrans, L.P., (Equitrans) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following revised tariff sheets to become effective on July 1, 2003:

First Revised Sheet No. 276-C.
Substitute Second Revised Sheet No. 309

Equitrans states that the purpose of this tariff filing is to comply with Commission Order No. 587-R, issued March 12, 2003, and the Commission's letter order issued August 22, 2003.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the eLibrary (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at (866) 208-3676, or TTY, contact (202) 502-8659. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Protest Date: September 10, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03-23383 Filed 9-12-03; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02-361-012]

Gulfstream Natural Gas System, L.L.C.; Notice of Negotiated Rates

September 5, 2003.

Take notice that on August 28, 2003, Gulfstream Natural Gas System, L.L.C. (Gulfstream) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Original Sheet No. 8K, with an effective date of August 1, 2003.

Gulfstream states that it is making this filing to implement a Park negotiated rate transaction under Rate Schedule PALS pursuant to Section 31 of the General Terms and Conditions of Gulfstream's FERC Gas Tariff. Gulfstream also states that the tariff sheet being filed herewith identifies and describes the negotiated rate agreement, including the exact legal name of the relevant shipper, the negotiated rate, the rate schedule, the contract term, and the Maximum Park Quantity. In addition, Gulfstream states that the proposed tariff sheet includes footnotes where necessary to provide further details on the agreement listed thereon.

Gulfstream states that copies of its filing have been mailed to all affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "eLibrary*" (FERRIS). Enter the docket number excluding the last three digits in the docket number field to access the

document. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at (866) 208-3676, or TTY, contact (202) 502-8659. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: September 10, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03-23380 Filed 9-12-03; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02-118-007]

High Island Offshore System, L.L.C.; Notice of Negotiated Rate Filing

September 5, 2003.

Take notice that on September 2, 2003, High Island Offshore System, L.L.C. (HIOS), tendered for filing (1) a Gas Transportation Agreement between HIOS and Superior Natural Gas Corporation (Superior) pursuant to HIOS* Rate Schedule IT (IT Service Agreement); (2) a Negotiated Rate Letter Agreement between HIOS and Superior dated September 15, 2003 (Negotiated Rate Letter Agreement), and a Reserve Commitment Agreement between HIOS and Walter Oil & Gas Corporation (Walter) dated August 22, 2003 (Reserve Commitment Agreement).

HIOS states that the filed IT Service Agreement, and Negotiated Rate Letter Agreement and Reserve Commitment Agreement reflect a negotiated rate arrangement between HIOS and Superior that will become effective on September 15, 2003 (Negotiated Rate Arrangement).

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on

the Commission's Web site at <http://www.ferc.gov> using the "eLibrary*" (FERRIS). Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at (866) 208-3676, or TTY, contact (202) 502-8659. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: September 15, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03-23379 Filed 9-12-03; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03-589-000]

Iroquois Gas Transmission System, L.P.; Notice of Proposed Changes in FERC Gas Tariff and of Offer of Settlement

September 9, 2003.

Take notice that on August 29, 2003, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Twenty-Ninth Revised Sheet No. 4, proposed to become effective October 28, 2003.

Iroquois states that the purpose of its filing is to implement the terms of a Stipulation and Settlement Agreement (Settlement) filed concurrently with, and as a part of, the instant tariff filing. In accordance with the Settlement, the revised tariff sheet establishes four annual reductions to Iroquois' rates in the years 2004, 2005, 2006, and 2007, which over the term of the Settlement will reduce Iroquois' transportation rates by approximately 13% (e.g., the 100% load factor interzone rate will be reduced from the existing level of \$0.4234, to the January 1, 2007, level of \$0.3700, for a total cumulative reduction of \$0.0534).

Iroquois states that copies of its filing were served on all jurisdictional customers and interested state regulatory agencies and all parties to the proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections

385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before the date as indicated below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "eLibrary" (FERRIS). Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at (866) 208-3676, or TTY, contact (202) 502-8659. We are also providing below dates for filing initial comments and reply comments on the offer of settlement. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Interventions, Protest and Initial Comments are due by: September 18, 2003.

Reply Comments are due by: September 29, 2003.

Magalie R. Salas,
Secretary.

[FR Doc. 03-23411 Filed 9-12-03; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER03-323-004]

Midwest Independent Transmission System Operator, Inc.; Notice of Filing

September 9, 2003.

Take notice that on September 5, 2003, Potomas Economics filed an answer to the Commission Staff's data request issued August 27, 2003, in Docket Nos. ER03-323-000, 001, 002 and 003.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at <http://www.ferc.gov>, using the eLibrary (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at (866) 208-3676, or for TTY, contact (202) 502-8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: September 18, 2003.

Linda Mitry,

Acting Secretary.

[FR Doc. 03-23389 Filed 9-12-03; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03-595-000]

Northern Border Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

September 5, 2003.

Take notice that on September 2, 2003, Northern Border Pipeline Company (Northern Border) tendered for filing to become part of Northern Border Pipeline Company's FERC Gas Tariff, First Revised Volume No. 1, Third Revised Sheet Number 99, to become effective October 1, 2003.

Northern Border states it proposes to make a housekeeping change to update the effective dates of the Annual Charge Adjustment (ACA) reflected in its tariff. Northern Border explains that there is no change to the ACA rate.

Northern Border states that copies of this filing have been sent to all of Northern Border's contracted shippers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections

385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "eLibrary" (FERRIS). Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at (866) 208-3676, or TTY, contact (202) 502-8659. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: September 15, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03-23385 Filed 9-12-03; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL03-227-000]

Office of the People's Counsel of the District of Columbia, Complainant, v. Mirant Americas Energy Marketing, L.P., Respondent; Notice of Complaint

September 9, 2003.

Take notice that on September 8, 2003, the Office of the People's Counsel of the District of Columbia (Office or DC PSC or Complainant) filed a Complaint Requesting Fast Track Processing pursuant to Sections 206 and 306 of the Federal Power Act and Rule 206 of the Commission's Rules (18 CFR 385.206). Complainant seeks an immediate order from the Commission holding that the rights and obligations of the Respondent and Potomac Electric Power Company (PEPCO) under PEPCO FERC Electric Tariff First Revised Volume No. 5, Substitute Service Agreement No. 20, the Back-to-Back Agreement, cannot be modified or terminated without an appropriate filing with, and approval by, this Commission. Complainant requests in the alternative that if the Commission considers itself disabled by Bankruptcy Court's "Ex Parte

Temporary Retraining Order Against Potomac Electric Power Company and the Federal Energy Regulatory Commission," issued on August 28, 2003, or any subsequent injunction, from acting on this complaint consistent with the Commission's statutory obligations under the Federal Power Act, the Commission promptly issue an order informing the Office of that disability.

Any person desiring to be heard or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. The answer to the complaint and all comments, interventions or protests must be filed on or before the comment date. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at or toll-free at (866)208-3676, or for TTY, contact (202)502-8659. The answer to the complaint, comments, protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: September 18, 2003

Magalie R. Salas,

Secretary.

[FR Doc. 03-23410 Filed 9-12-03; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99-518-049]

PG&E Gas Transmission, Northwest Corporation; Notice of Negotiated Rates

September 5, 2003.

Take notice that on August 29, 2003, PG&E Gas Transmission, Northwest Corporation (GTN) tendered for filing to

be part of its FERC Gas Tariff, Second Revised Volume No. 1-A, Seventeenth Revised Sheet No. 15.

GTN states that this sheet is being filed to reflect the continuation of a negotiated rate agreement pursuant to evergreen provisions contained in the agreement. GTN requests that the Commission accept the proposed tariff sheet to become effective September 1, 2003.

GTN further states that a copy of this filing has been served on GTN's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "eLibrary" (FERRIS). Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at (866) 208-3676, or TTY, contact (202) 502-8659. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: September 10, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03-23388 Filed 9-12-03; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99-513-030]

Questar Pipeline Company; Notice of Negotiated Rates

September 5, 2003.

Take notice that on August 29, 2003, Questar Pipeline Company's (Questar) tendered for filing a tariff filing to reflect

a new negotiated-rate contract with BP Energy Company. Questar states that its negotiated-rate contract provisions were authorized by Commission Orders issued October 27, 1999, and December 14, 1999, in Docket Nos. RP99-513, *et al.* Questar notes that the Commission approved its request to implement a negotiated-rate option for Rate Schedules T-1, NNT, T-2, PKS, FSS and ISS shippers.

Questar states that it submitted its negotiated-rate filing in accordance with the Commission's Policy Statement in Docket Nos. RM95-6-000 and RM96-7-000 issued January 31, 1996.

Questar states that copies of this filing has been served upon all parties to this proceeding, Questar's customers, the Public Service Commission of Utah and the Public Service Commission of Wyoming.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "eLibrary" (FERRIS). Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at (866) 208-3676, or TTY, contact (202) 502-8659. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: September 10, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03-23387 Filed 9-12-03; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket No. CP03-307-001]

Southern Natural Gas Company; Notice of Compliance Filing

September 5, 2003.

Take notice that on August 14, 2003, Southern Natural Gas Company, (Southern) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 2, the following tariff sheets with an effective date of May 14, 2003:

First Revised Sheet No. 142.
 First Revised Sheet No. 204.
 First Revised Sheet No. 227.
 First Revised Sheet No. 612.
 First Revised Sheet No. 680.
 First Revised Sheet No. 729.
 First Revised Sheet No. 745.

Southern states that the tariff sheets are being filed to cancel Rate Schedules X-20, X-27, X-60, X-64, X-67, and X-68 to its FERC Gas Tariff, Original Volume No. 2.

Southern also states that these Rate Schedules contain individually certificated transportation services performed by Southern on behalf of Florida Gas Transmission Company.

Southern states that copies of the filing have been served on all affected customers.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before the protest date as shown below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the *eLibrary* (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at (866) 208-3676, or TTY, contact (202) 502-8659. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Protest Date: September 19, 2003.

Magalie R. Salas,
Secretary.

[FR Doc. 03-23374 Filed 9-12-03; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket No. OR03-7-000]

Tesoro Refining and Marketing Company v. Frontier Pipeline Company; Notice of Complaint

September 9, 2003.

Take notice that on September 5, 2003, Tesoro Refining and Marketing Company (Tesoro) tendered for filing a Complaint against Frontier Pipeline Company (Frontier).

Tesoro states that it is an interstate shipper of crude oil on a pipeline that Frontier owns and operates between Casper, Wyoming and Ranch Station, Utah. Tesoro states that Frontier has been charging unjust and unreasonable rates for the shipment of crude oil on that pipeline as evidenced by the FERC Form 6 that Frontier filed with the Commission for 2001 and 2002. Tesoro further maintains that the additional analysis of Frontier's revenues and costs as contained in the Complaint further evidences Frontier's overcharges on its crude oil pipeline.

Any person desiring to be heard or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. The answer to the complaint and all comments, interventions or protests must be filed on or before the comment date. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at (866) 208-3676, or for TTY, contact (202) 502-8659. The answer to

the complaint, comments, protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: September 25, 2003.

Linda Mitry,

Acting Secretary.

[FR Doc. 03-23390 Filed 9-12-03; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket No. RP03-596-000]

Texas Eastern Transmission, LP; Notice of Compliance Report

September 5, 2003.

Take notice that on September 2, 2003, Texas Eastern Transmission, LP (Texas Eastern) tendered for filing pursuant to Section 9.1 of the General Terms and Conditions of its FERC Gas Tariff, Seventh Revised Volume No. 1, its report of recalculated Operational Segment Capacity Entitlements to become effective November 1, 2003.

Texas Eastern states that the purpose of the filing is to make its report pursuant to Section 9.1 of the General Terms and Conditions of its FERC Gas Tariff, Seventh Revised Volume No. 1 of recalculated November 1, 2003 Operational Segment Capacity Entitlements, along with supporting documentation explaining the basis for changes.

Texas Eastern states that copies of the filing were served on all affected customers of Texas Eastern and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov>

www.ferc.gov using the “eLibrary” (FERRIS). Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at (866) 208-3676, or TTY, contact (202) 502-8659. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission’s Web site under the “e-Filing” link.

Comment Date: September 15, 2003.

Magalie R. Salas,
Secretary.

[FR Doc. 03-23386 Filed 9-12-03; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03-590-000]

Williston Basin Interstate Pipeline Company; Notice of Tariff Filing

September 5, 2003.

Take notice that on August 29, 2003, Williston Basin Interstate Pipeline Company (Williston) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1 and Original Volume No. 2, the tariff sheets listed in Appendix A to the filing, with an effective date of October 1, 2003.

Williston Basin states that the tariff sheets are being filed to reflect revisions to the fuel reimbursement current percentage component of the Company’s total fuel reimbursement percentages for gathering, storage and transportation services, and to the electric power reimbursement current rate component of the Company’s total electric power reimbursement rates for storage and transportation services, pursuant to Williston Basin’s Fuel and Electric Power Reimbursement Adjustment Provisions contained in Section 38 of the General Terms and Conditions of its FERC Gas Tariff, Second Revised Volume No. 1.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission’s Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission’s Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will

not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission’s Web site at <http://www.ferc.gov> using the “eLibrary” (FERRIS). Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at (866) 208-3676, or TTY, contact (202) 502-8659. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission’s Web site under the “e-Filing” link.

Comment Date: September 10, 2003.

Magalie R. Salas,
Secretary.

[FR Doc. 03-23384 Filed 9-12-03; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Transfer of License and Soliciting Comments, Motions To Intervene, and Protests

September 8, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

- a. *Application Type:* Transfer of License.
- b. *Project No.:* 6951-011.
- c. *Date Filed:* September 4, 2003.
- d. *Applicants:* Oglethorpe Power Corporation (Transferor) and Fall Line Hydro Company, Inc. (Transferee).
- e. *Name of Project:* Tallassee Shoals Hydroelectric Project.
- f. *Location:* Located on the Middle Oconee River, in Clarke and Jackson Counties, Georgia.
- g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a-825r.
- h. *Applicants Contacts:* Michael Swiger, Esq., Van Ness Feldman, P.C., 1050 Thomas Jefferson Street, NW., Washington, DC 20007-3877 and Mr. W. Clay Robbins, Oglethorpe Power Corporation, 2100 East Exchange Place, Tucker, Georgia 30085 (Transferor); Mr. Robert A. Davis III, Fall Line Hydro Co., Inc., 390 Timber Laurel Lane, Lawrenceville, Georgia 30043 (Transferee).
- i. *FERC Contact:* Regina Saizan, (202) 502-8765.

j. *Deadline for filing comments and or motions:* September 22, 2003.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission’s Web site under the “e-Filing” link. The Commission strongly encourages electronic filings. Please include the project number (P-6951-011) on any comments or motions filed.

The Commission’s Rules of Practice and Procedure require all interveners filing a document with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Transfer:* Oglethorpe Power Corporation (OPC) and Fall Line Hydro Company, Inc. (FLHC) seek Commission approval to transfer the license for the Tallassee Shoals Hydroelectric Project from OPC to FLHC.

l. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission’s Web site at <http://www.ferc.gov> using the “eLibrary” link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1-866-208-3676 or e-mail FERCOnlineSupport@ferc.gov. For TTY, call (202) 502-8659. A copy is also available for inspection and reproduction at the addresses in item h.

m. Individuals desiring to be included on the Commission’s mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission’s Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified

comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title “COMMENTS”, “RECOMMENDATIONS FOR TERMS AND CONDITIONS”, “PROTEST”, or “MOTION TO INTERVENE”, as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency’s comments must also be sent to the Applicant’s representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–23375 Filed 9–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Regulations Governing Off-the-Record Communications; Public Notice

September 5, 2003.

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of exempt and prohibited off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive an exempt or prohibited off-the-record communication relevant to the merit’s of a contested on-the-record proceeding, to deliver a copy of the communication, if written, or a summary of the substance of any oral communication, to the Secretary.

Prohibited communications will be included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record

communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications will be included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of prohibited and exempt communications recently received in the Office of the Secretary. The communications listed are grouped by docket numbers. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission’s Web site at <http://www.ferc.gov> using the eLibrary (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC, Online Support at FERCOnlineSupport@ferc.gov or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

EXEMPT

Docket No.	Date filed	Presenter or requester
1. Project No. 2042–013	9–3–03	Hon. George R. Nethercutt, Jr.
2. CP01–409–000	9–4–03	Wayne Kicklighter.
3. CP01–409–000	9–4–03	Wayne Kicklighter.
4. CP03–75–000	9–4–03	J.H. Rumpff.

Magalie R. Salas,

Secretary.

[FR Doc. 03–23377 Filed 9–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM00–12–000]

Electronic Filing of Documents; Notice of New Release for Electronic Filing

September 5, 2003.

Take notice that on Wednesday, September 10, 2003, at 7 pm, the Commission will upgrade its Electronic Filing System to Version 5.0. The new release is a major rewrite of the existing

system and is now part of the Commission’s FERC Online suite of applications.

User names and passwords for the existing system are not valid in Version 5.0. Current and prospective users of the e-Filing System must create an account using the Commission’s eRegistration system, unless they have previously eRegistered. Document signers are also encouraged to eRegister. The instructions for creating an account, or editing an existing account so that it can be used for e-Filing, are attached to this notice. All eRegistrants will be able to logon to FERC Online using their e-mail address and password. The User Guide for Version 5.0 is also attached to this notice.

The functionality of Version 5.0 is similar to earlier versions, but there are modifications in the appearance and operation of the screens. Due to the magnitude of these changes, there are no new filing types for e-Filing in this release.

The e-Filing screens are consistent with the Commission’s new Web design template. The on-screen Help links are specific to each screen.

The number of unzipped files that may be submitted in one session has been increased from five files to ten files. The size limit for each file remains 10 Mb.

Finally, documents submitted via e-Filing are still limited to those in the public domain. Do not submit Privileged, Protected, Critical Energy

Infrastructure (CEII) or Non-Internet Public (NIP) information through the e-Filing system.

Questions about this notice may be directed to Brooks Carter at 202-502-8145, or by e-mail to brooks.carter@ferc.gov. If you need assistance using Version 5.0, e-mail FERCOnlineSupport@ferc.gov or call 1-866-208-3676 (toll free), 202-502-6652 (local).

Magalie R. Salas,
Secretary.

[FR Doc. 03-23376 Filed 9-12-03; 8:45 am]

BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-7558-6]

Gulf of Mexico Program Management Committee Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Under the Federal Advisory Committee Act (Pub. L. 92-463), EPA gives notice of a meeting of the Gulf of Mexico Program (GMP) Management Committee (MC).

DATES: The meeting will be held on Wednesday, October 8, 2003, 10 a.m. to 5 p.m., and on Thursday, October 9, 2003, from 8:30 a.m. to 3 p.m..

ADDRESSES: The meeting will be held at the Homewood Suites Hotel, 901 Poydras Street, New Orleans, Louisiana. (1-504-581-5599).

FOR FURTHER INFORMATION CONTACT:

Gloria D. Car, Designated Federal Officer, Gulf of Mexico Program Office, Mail Code EPA/GMPO, Stennis Space Center, MS 39529-6000 at (228) 688-2421.

SUPPLEMENTARY INFORMATION: Agenda items include Gulf of Mexico Program Workplan Review FY2000-2003.

The meeting is open to the public.

Dated: September 8, 2003.

Gloria D. Car,

Designated Federal Officer.

[FR Doc. 03-23425 Filed 9-12-03; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Approved by Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collection pursuant to the Paperwork Reduction Act of 1995, Pub. L. 104-13.

DATES: Written comments should be submitted on or before October 15, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts listed below as soon as possible.

ADDRESSES: Kim A. Johnson, Office of Management and Budget, Room 10236 NEOB, Washington, DC 20503, (202) 395-7232 or

Kim_A_Johnson@omb.eop.gov; or Les Smith, Federal Communications Commission, 445 12th Street, Room 1-A804, Washington DC, 20554, (202) 418-0217 or Leslie.Smith@fcc.gov.

Paperwork Reduction

OMB Control No: 3060-0095.

Expiration Date: 01/31/2004.

Title: Cable Television Annual Employment Report, FCC Form 395-A.

Form No: 395-A.

Respondents: Operators of cable/television units.

Number of Respondents: 1,950.

Total Annual Burden: 3,128 hours.

Total Annual Cost: 0.

Description: FCC Form 395-A collects information on full-time and part-time paid employees.

In order to reduce reporting and recordkeeping burdens, it is intentionally the same as the workforce profile collected by the U.S. Equal Employment Opportunity Commission, Employer Report Form (EEO-1). EEOC has proposed modifications to the EEO-1 Form (68 FR 34965, June 11, 2003). Any changes to the EEO-1 Form should be reflected in changes to FCC Form 395-A.

OMB Control No: 3060-0390.

Expiration Date: 01/31/2004.

Title: Broadcast Station Annual Employment Report, FCC Form 395-B.

Form No: 395-B.

Respondents: Licensees and permittees of broadcast stations.

Number of Respondents: 14,400.

Total Annual Burden: 12,320 hours.

Total Annual Cost: 0.

Description: FCC Form 395-B collects information on full-time and part-time paid employees. In order to reduce reporting and recordkeeping burdens, it is intentionally the same as the workforce profile collected by the U.S. Equal Employment Opportunity

Commission, Employer Report Form (EEO-1). EEOC has proposed modifications to the EEO-1 Form (68 FR 34965, June 11, 2003). Any changes to the EEO-1 Form should be reflected in changes to FCC Form 395-B.

Federal Communications Commission.

Marlene H. Dortch,
Secretary.

[FR Doc. 03-23402 Filed 9-12-03; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 29, 2003.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. *Jason Christopher Nicholas*, Atlantic, Iowa; to retain voting shares of Whitney Corporation of Iowa, Atlantic, Iowa, and thereby indirectly retain voting shares of First Whitney Bank and Trust, Atlantic, Iowa.

2. *Alfred H. Peterson, III and Jane E. Peterson*, Brighton, Michigan; to retain voting shares of FNB Financial Corporation, Three Rivers, Michigan, and thereby indirectly retain voting shares of The First National Bank of Three Rivers, Three Rivers, Michigan.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. *Wafik William Malek*, Manchester, Missouri; to retain voting shares of Gateway Bancshares, Inc., St. Louis, Missouri, and thereby indirectly retain voting shares of Gateway National Bank of St. Louis, St. Louis, Missouri.

2. *William L. Wilson Trust and its trustee William Lee Wilson*, both of Ava,

Illinois; to acquire additional voting shares of Headquarters Holding Company, Ava, Illinois, and thereby indirectly acquire additional voting shares The First National Bank of Ava, Ava, Illinois.

Board of Governors of the Federal Reserve System, September 9, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03-23338 Filed 9-12-03; 8:45 am]

BILLING CODE 6210-01-S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 9, 2003.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. *Wintrust Financial Corporation*, Lake Forest, Illinois; to acquire 100 percent of the voting shares of Village Bancorp, Inc., Arlington Heights, Illinois, and thereby indirectly acquire Village Bank and Trust of Arlington Heights, Arlington Heights, Illinois.

Board of Governors of the Federal Reserve System, September 9, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03-23339 Filed 9-12-03; 8:45 am]

BILLING CODE 6210-01-S

GENERAL SERVICES ADMINISTRATION

Office of Governmentwide Policy; Cancellation of an Optional Form by the Department of Defense

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: The Department of Defense is cancelling the following Optional Form because of low demand in the Federal Supply Service:

OF 84, Not Mission Capable Supply (3" x 5") (Label).

FOR FURTHER INFORMATION CONTACT: Ms. Glynda Hughes, Department of Defense, 703-604-4578.

DATES: Effective September 15, 2003.

Dated: September 8, 2003.

Barbara M. Williams,

Deputy Standard and Optional Forms Management Officer, General Services Administration.

[FR Doc. 03-23423 Filed 9-12-03; 8:45 am]

BILLING CODE 6820-34-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: LIHEAP Household Report.

OMB No.: 0970-0060.

Description: The report is an annual activity which is required by law of Low Income Home Energy Assistance Program (LIHEAP) grantees for receipt of federal LIHEAP block grant funds. States, the District of Columbia, and the Commonwealth of Puerto Rico are required to use the report's Long Format to provide statistics for the previous federal fiscal year on the number and income levels of LIHEAP applicant and assisted households, and the number of LIHEAP assisted households with at least one member who is elderly, disabled or a young child. Insular areas receiving less than \$200,000 annually in LIHEAP funds and Indian Tribal Grantees are required to use the report's Short Format to provide statistics for the previous fiscal year only on the number of households receiving heating, cooling, energy crisis, or weatherization benefits. The information is being collected for the Department's annual LIHEAP report to Congress. The data also provide information about the need for LIHEAP funds. Finally, the data are being used in the calculation of LIHEAP performance measures under the Government Performance and Results Act of 1993.

Respondents: State Governments, Tribal Governments and Territories.

Annual Burden Estimates

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Recommended Long Format for LIHEAP Assisted Household	52	1	25	1,300
Recommended Short Format for LIHEAP Assisted Household	132	1	1	132
Recommended Long Format for LIHEAP Applicant Households	52	1	13	676
Estimated Total Annual Burden Hours .....	.....	.....	2,108	.....

Additional Information

Copies of the proposed collection may be obtained by writing to The

Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW.,

Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the

information collection: E-mail address: *rsargis@acf.hhs.gov*.

OMB Comment

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Attn: Desk Officer for ACF, E-mail address: *lauren_wittenberg@omb.eop.gov*.

Dated: September 4, 2003.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 03-23335 Filed 9-12-03; 8:45 am]

BILLING CODE 4184-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Low Income Home Energy Assistance Program (LIHEAP) Leveraging Report.

OMB.: 0970-0121.

Description: The LIHEAP leveraging incentive program rewards LIHEAP grantees that have leveraged nonfederal home energy resources for low income households. The LIHEAP leveraging report is the application for leveraging incentive funds that these LIHEAP grantees submit to the Department of Health and Human Services (HHS) for each fiscal year in which they leverage countable resources. Participation in the leveraging incentive program is voluntary and is described at 45 CFR 96.87.

The LIHEAP leveraging report obtains information on the resources leveraged by LIHEAP grantees each fiscal year (as cash, discounts, waivers, and in-kind); the benefits provided to low income households by these resources (for example, as fuel and payments for fuel, as home heating and cooling equipment, and as weatherization materials and installation); and the fair market value of these resources/benefits. HHS needs this information in order to carry out statutory requirements for administering the LIHEAP leveraging incentive program, to determine countability and valuation of grantees' leveraged nonfederal home energy resources, and to determine grantees' shares of leveraging incentive funds. HHS proposes to request a 3-year extension of OMB approval for the currently approved LIHEAP leveraging report information collection.

Respondents: State, Local or Tribal Governments.

Annual Burden Estimates

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Detailed Model Plan	70	1	38	2,660
Estimated Total Annual Burden Hours				2,660

Additional Information

Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *rsargis@acf.hhs.gov*.

OMB Comment

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Attn: Desk Officer for ACF. E-mail address *lauren_wittenberg@omb.eop.gov*.

Dated: September 9, 2003.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 03-23336 Filed 9-12-03; 8:45 am]

BILLING CODE 4184-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003N-0222]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Product Jurisdiction Assignment of Agency Component for Review of Premarket Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995. **DATES:** Fax written comments on the collection of information by October 15, 2003.

ADDRESSES: OMB is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on

the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Fumie Yokota, Desk Officer for FDA, FAX: 202-395-6974.

FOR FURTHER INFORMATION CONTACT: Karen Nelson, Office of Management Programs (HFA-250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-1482.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Product Jurisdiction Assignment of Agency Component for Review of Premarket Applications

This regulation relates to agency management and organization and has two purposes. The first is to implement section 503(g) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 353(g)), as added by the Safe Medical Devices Act of 1990 (Public Law 101-629), and amended by the Medical Device User Fee and Modernization Act of 2002 (Public Law 107-250), by specifying how FDA will determine the organizational component within FDA assigned to have primary jurisdiction for

the premarket review and regulation of products that are comprised of any combination of these components: (1) A drug and a device, (2) a device and a biological, (3) a biological and a drug, or (4) a drug, a device, and a biological. The second purpose of this regulation is to enhance the efficiency of agency management and operations by providing procedures for classifying and determining which agency component is designed to have primary jurisdiction for any drug, device, or biological

product where such jurisdiction is unclear or in dispute.

The regulation establishes a procedure by which an applicant may obtain an assignment or designation determination. The regulation requires that the request include the identity of the applicant, a comprehensive description of the product and its proposed use, and the applicant's recommendation as to which agency component should have primary jurisdiction, with an accompanying

statement of reasons. The information submitted would be used by FDA as one of the bases for making the assignment or designation decision. Most information required by the proposed regulation is already required for premarket applications affecting drugs, devices, biological, and combination products. The respondents will be businesses or other for-profit organizations.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN ¹

21 CFR Part	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
3	28	1	28	24	672
Total					672

¹ There are no capital costs or operating and maintenance costs associated with this collection of information.

In the **Federal Register** of Monday, June 23, 2003 (68 FR 37160), FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received.

Dated: September 9, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–23509 Filed 9–12–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 1984F–0095]

Genencor International, Inc.; Withdrawal of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal, without prejudice to a future filing, of a food additive petition (FAP 4A3806) proposing that the food additive regulations be amended to provide for the safe use of a polyamine-epichlorohydrin resin and glutaraldehyde, together, as fixing agents in the immobilization of glucose isomerase enzyme preparations for use in the manufacture of high fructose corn syrup.

FOR FURTHER INFORMATION CONTACT: Blondell Anderson, Center for Food Safety and Applied Nutrition (HFS–265), Food and Drug Administration,

5100 Paint Branch Pkwy., College Park, MD 20740, 202–418–3106.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of April 26, 1985 (50 FR 16558), FDA announced that a food additive petition (FAP 4B3806 (which was later redesignated as FAP 4A3806)) had been filed by Miles Laboratories, Inc., Elkhart, IN 46515. The petition proposed to amend the food additive regulations in §173.357 *Materials used as fixing agents in the immobilization of enzyme preparations* (21 CFR 173.357) to provide for the safe use of a polyamine-epichlorohydrin resin and glutaraldehyde, together, as fixing agents in the immobilization of glucose isomerase enzyme preparations for use in the manufacture of high fructose corn syrup. On May 24, 2000, Genencor International, Inc., 925 Page Mill Rd., Palo Alto, CA 94304, informed FDA in writing that they had acquired the rights to FAP 4A3806. Genencor International, Inc., has now withdrawn the petition without prejudice to a future filing (21 CFR 171.7).

Dated: August 27, 2003.

Laura M. Tarantino,

Acting Director, Office of Food Additive Safety, Center for Food Safety and Applied Nutrition.

[FR Doc. 03–23332 Filed 9–12–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Endocrinologic and Metabolic Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Endocrinologic and Metabolic Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on October 7, 2003, from 8 a.m. to 5 p.m.

Location: Holiday Inn, Versailles Ballrooms, 8120 Wisconsin Ave., Bethesda, MD.

Contact Person: Dornette Spell-LeSane, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, FAX: 301–827–6776, e-mail: spellesaned@cder.fda.gov, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12536. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss the Women's Health Initiative study

results: Implications for the use of hormone therapy with estrogen/progestin, as a second-line drug, in the prevention and treatment of postmenopausal osteoporosis in women.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by September 30, 2003. Oral presentations from the public will be scheduled between approximately 8:15 a.m. and 9:15 a.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before September 30, 2003, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Dornette Spell-LeSane at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: September 8, 2003.

Peter J. Pitts,

Associate Commissioner for External Relations.

[FR Doc. 03-23334 Filed 9-12-03; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Circulatory System Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Circulatory System Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on October 2, 2003, from 9 a.m. to 5 p.m.

Location: Hilton Washington DC North/Gaithersburg, Salons C, D, and E, 620 Perry Pkwy., Gaithersburg, MD.

Contact Person: Geretta Wood, Center for Devices and Radiological Health (HFZ-450), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301-443-8320, ext. 143, or FDA Advisory Committee Information Line, 1-800-741-8138 (301-443-0572 in the Washington, DC area), code 12625. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss, make recommendations, and vote on a premarket approval application for an excimer laser and laser catheters used for treatment of chronic critical limb ischemia (associated with Rutherford Categories 4, 5, and 6). The device is intended for use in patients with angiographically evident culprit stenoses and/or occlusions in the superficial femoral artery, popliteal and/or infrapopliteal arteries, who are poor surgical candidates and who are acceptable candidates for revascularization. Background information for the topic, including the agenda and questions for the committee, will be available to the public 1 business day before the meeting on the Internet at <http://www.fda.gov/cdrh/panelmtg.html>. Material will be posted on October 1, 2003.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by September 22, 2003. Oral presentations from the public will be scheduled for approximately 30 minutes at the beginning of committee deliberations and for approximately 30 minutes near the end of the deliberations. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before September 22, 2003, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact AnnMarie Williams, Conference Management Staff, at 301-594-1283, ext. 113, at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: September 8, 2003.

Peter J. Pitts,

Associate Commissioner for External Relations.

[FR Doc. 03-23331 Filed 9-12-03; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Peripheral and Central Nervous System Drugs Advisory Committee; Amendment of Notice

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an amendment to the notice of meeting of the Peripheral and Central Nervous System Drugs Advisory Committee. This meeting was announced in the **Federal Register** of August 4, 2003, (68 FR 45827). The amendment is being made to reflect a change in the *Agenda* portion of the document. There are no other changes.

FOR FURTHER INFORMATION CONTACT:

Anuja Patel, Center for Drug Evaluation and Research (HFD-21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301-827-7001, FAX: 301-827-6776, or e-mail: patela@cder.fda.gov, or FDA Advisory Committee Information Line, 1-800-741-8138 (301-443-0572 in the Washington, DC area), code 12543. Please call the Information Line for up-to-date information on this meeting.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 4, 2003, FDA announced that a meeting of the Peripheral and Central Nervous System Drugs Advisory Committee will be held on September 24 and 25, 2003. On page 45827, in the third column, the *Agenda* portion of the meeting is amended to read as follows:

Agenda: On September 24, 2003, the committee will discuss new drug

application (NDA) 21-487, memantine hydrochloride, Forest Laboratories, Inc., indicated for the treatment of moderate to severe dementia of the Alzheimer's type. On September 25, 2003, the committee will discuss supplementary new drug application 20-717 /S-008 Provigil (modafinil) Tablets, Cephalon, Inc., indicated for use to improve wakefulness in patients with excessive sleepiness associated with disorders of sleep and wakefulness.

This notice is given under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to advisory committees.

Dated: September 8, 2003.

Peter J. Pitts,

Associate Commissioner for External Relations.

[FR Doc. 03-23333 Filed 9-12-03; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003D-0412]

International Conference on Harmonisation; Draft Guidance on E2D Postapproval Safety Data Management: Definitions and Standards for Expedited Reporting; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance entitled "E2D Postapproval Safety Data Management: Definitions and Standards for Expedited Reporting." The draft guidance was prepared under the auspices of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). The draft guidance provides definitions associated with postapproval product safety information and standards for collecting and expedited reporting of safety information to the regulatory authorities. The draft guidance is intended to harmonize internationally the collection and management of postapproval product safety data.

DATES: Submit written or electronic comments on the draft guidance by October 20, 2003.

ADDRESSES: Submit electronic comments to <http://www.fda.gov/dockets/ecomments>. Submit written requests for single copies of the draft

guidance to the Division of Drug Information (HFD-240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857; or the Office of Communication, Training and Manufacturers Assistance (HFM-40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852-1448, 301-827-3844, FAX: 888-CBERFAX. Send two self-addressed adhesive labels to assist the office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document. Submit written comments on the draft guidance to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT:

Regarding the guidance: Susan Lu, Center for Drug Evaluation and Research (HFD-430), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-1514; or Tim Cote, Center for Biologics Evaluation and Research (HFM-224), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301-827-6088.

Regarding the ICH: Janet Showalter, Office of International Programs (HFG-1), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-0865.

SUPPLEMENTARY INFORMATION:

I. Background

In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies.

ICH was organized to provide an opportunity for tripartite harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three

regions: The European Union, Japan, and the United States. The six ICH sponsors are: The European Commission; the European Federation of Pharmaceutical Industries Associations; the Japanese Ministry of Health, Labour, and Welfare; the Japanese Pharmaceutical Manufacturers Association; the Centers for Drug Evaluation and Research and Biologics Evaluation and Research; FDA; and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA). The ICH Steering Committee includes representatives from each of the ICH sponsors and the IFPMA, as well as observers from the World Health Organization, Health Canada's Health Products and Food Branch, and the European Free Trade Area.

In July 2003, the ICH Steering Committee agreed that a draft guidance entitled "E2D Postapproval Safety Data Management: Definitions and Standards for Expedited Reporting" should be made available for public comment. The draft guidance is the product of the Efficacy Expert Working Group of the ICH. Comments about this draft guidance will be considered by FDA and the Efficacy Expert Working Group.

In the **Federal Register** of March 1, 1995 (60 FR 11284), FDA published the ICH guidance entitled "E2A Clinical Safety Data Management: Definitions and Standards for Expedited Reporting," which provides guidance on preapproval safety data management. This ICH E2D draft guidance is based on the content of ICH E2A and provides further guidance on definitions associated with postapproval product safety information and standards for collecting and expedited reporting of safety information to the regulatory authorities.

This draft guidance, when finalized, will represent the agency's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments on the draft guidance. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be

identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at <http://www.fda.gov/ohrms/dockets/default.htm>, <http://www.fda.gov/cder/guidance/index.htm>, or <http://www.fda.gov/cber/publications.htm>.

Dated: September 9, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03-23508 Filed 9-12-03; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2002D-0094]

Guidance for Industry on Investigational New Drug Application Exemptions for Studies of Lawfully Marketed Drug or Biological Products for the Treatment of Cancer; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled "IND Exemptions for Studies of Lawfully Marketed Drug or Biological Products for the Treatment of Cancer." This guidance clarifies FDA's policy on exemption from investigational new drug application (IND) requirements for studies of marketed cancer drug or biological products. This guidance is intended to decrease the submission of unnecessary IND exemptions.

DATES: Submit written or electronic comments on agency guidances at any time.

ADDRESSES: Submit written requests for single copies of this guidance to the Division of Drug Information (HFD-240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, or the Office of Communication, Training and Manufacturers Assistance (HFM-40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852-1448. Send one

self-addressed adhesive label to assist that office in processing your requests. This guidance document may also be obtained by mail by calling the CBER Voice Information System at 1-800-835-4709 or 301-827-1800. Submit written comments on the guidance to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to <http://www.fda.gov/dockets/ecomments>. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT:

Grant A. Williams, Center for Drug Evaluation and Research (HFD-150), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-594-5758, or

Patricia Keegan, Center for Biologics Evaluation and Research (HFM-573), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301-827-5093.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled "IND Exemptions for Studies of Lawfully Marketed Drug or Biological Products for the Treatment of Cancer." Exemption from IND regulation of certain studies of marketed drugs is allowed under 21 CFR 312.2(b)(1). Along with other criteria outlined in the regulation, investigations that involve a route of administration or dosage level or use in a patient population or other factor that significantly increases the risks (or decreases the acceptability of the risks) associated with the use of the drug product are not exempt from the requirements for an IND. This guidance discusses the pertinent regulations relating to exemption of INDs, the risk/benefit determination in the practice of oncology, FDA's policy for determining exemption status based on risk, and specific examples of studies generally considered exempt.

In the **Federal Register** of April 9, 2002 (67 FR 17078), FDA announced the availability of a draft version of this guidance and gave interested persons an opportunity to submit comments through June 10, 2002. The agency received comments from investigators at two institutions and took the comments into consideration when finalizing the guidance. However, the final guidance includes no substantive changes, only editorial and clarifying changes.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on IND exemptions based on risk for studies of lawfully marketed cancer drug or biological products. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments on the guidance at any time. Two copies of mailed comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance and received comments are available for public examination in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at either <http://www.fda.gov/cder/guidance/index.htm>, <http://www.fda.gov/cber/guidelines.htm>, or <http://www.fda.gov/ohrms/dockets/default.htm>.

Dated: September 5, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03-23510 Filed 9-12-03; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003D-0399]

Guidance for Industry on Pentetate Calcium Trisodium and Pentetate Zinc Trisodium for Treatment of Internal Contamination with Plutonium, Americium, or Curium; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that we (FDA) have concluded that pentetate calcium trisodium (Ca-DTPA) and pentetate zinc trisodium (Zn-DTPA), when produced under conditions specified in approved new drug applications (NDAs), can be found

to be safe and effective for the treatment of internal contamination with plutonium, americium, or curium to increase the rates of elimination. We encourage the submission of NDAs for Ca-DTPA and Zn-DTPA drug products. We are also announcing the availability of a guidance for industry entitled "Calcium-DTPA and Zinc-DTPA Drug Products—Submitting a New Drug Application." This guidance is intended to assist manufacturers who plan to submit NDAs for Ca-DTPA and Zn-DTPA.

ADDRESSES: Submit NDAs to the Food and Drug Administration, Center for Drug Evaluation and Research, Central Document Room, 12229 Wilkins Ave., Rockville, MD 20857. Submit requests for copies of draft labeling to the Division of Medical Imaging and Radiopharmaceutical Drug Products (HFD-160), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-7510. Copies of the reports referred to in this document will be on display at the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit written requests for single copies of the guidance to the Division of Drug Information (HFD-240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the guidance to the Division of Dockets Management (address given previously). Submit electronic comments to <http://www.fda.gov/dockets/ecomments>. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Kyong Kang, Center for Drug Evaluation and Research (HFD-160), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-7510.

SUPPLEMENTARY INFORMATION:

I. Background

A. Plutonium, Americium, and Curium

Plutonium, americium, and curium are transuranium radioactive elements of the actinide series. They are products of nuclear bombardment and are found in the fallout from the detonation of nuclear weapons and the waste from nuclear power plants. These elements are used in various types of research.

All isotopes of plutonium, americium, and curium are radioactive.

Contamination with plutonium, americium, or curium can occur through a variety of routes including ingestion, inhalation, and/or wounds. Contamination can cause serious illness or death when high radiation absorbed doses are delivered to critical organs. Lower doses have been associated with the development of cancer long after exposure. In addition to concerns about exposure to plutonium, americium, or curium in industrial and research environments, contamination by radioactive elements such as these, is of particular concern because of their potential use in a radiological dispersal device (RDD), commonly called a "dirty bomb." An RDD is a conventional explosive or bomb containing radioactive material. The conventional bomb is used as a means to spread radioactive material. An RDD is not a nuclear weapon and does not involve a nuclear explosion. Significant amounts of radioactive material, particularly plutonium, could also be spread by the detonation of an improvised nuclear device by terrorists. The extemporized design and construction of such a terrorist weapon could lead to an incident where only a small portion of the weapon's plutonium is consumed in the atomic reaction, and the rest of the plutonium is spread through the air by the explosion of the device. There are currently no approved treatments for internal contamination with plutonium, americium, or curium.

B. Ca-DTPA and Zn-DTPA

Diethylenetriaminepentaacetate (DTPA) is a ligand that acts as a chelator with a very high affinity for plutonium, americium, and curium. The calcium salt of DTPA is known as pentetate calcium trisodium and is referred to as Ca-DTPA. The zinc salt of DTPA is known as pentetate zinc trisodium and is referred to as Zn-DTPA.¹

For several decades, Ca-DTPA and Zn-DTPA have been used investigational to enhance the excretion of plutonium, americium, and curium from the body by means of ion exchange, chelation, and, ultimately, excretion through the urine. Because DTPA has a very high affinity for these transuranium elements, when it comes in contact with such elements, the

¹ For purposes of this document Ca-DTPA refers only to pentetate calcium trisodium, which has an empirical formula of $\text{Na}_3\text{CaC}_{14}\text{H}_{18}\text{N}_3\text{O}_{10}$ and the Chemical Abstracts Service (CAS), registry number 12111-24-9. Zn-DTPA refers only to pentetate zinc trisodium, which has an empirical formula of $\text{Na}_3\text{ZnC}_{14}\text{H}_{18}\text{N}_3\text{O}_{10}$ and the CAS registry number 125833-02-5.

calcium or zinc ions of Ca-DTPA and Zn-DTPA drugs are readily exchanged for the transuranium elements. The transuranium-DTPA complex is then rapidly excreted in the urine. There are currently no approved NDAs for drug products containing Ca-DTPA or Zn-DTPA.

Ca-DTPA and Zn-DTPA in sterile aqueous solution have been used under investigational new drug applications (INDs) held by the Radiation Emergency Assistance Center/Training Site (REAC/TS). REAC/TS is part of the Oak Ridge Associated Universities (ORAU). ORAU operates the Oak Ridge Institute for Science and Education under a contract with the Department of Energy. The INDs are for treatment of contamination resulting from nuclear power or other industrial accidents.

Traditional clinical trials have not been conducted because it would be unethical to deliberately expose patients to radiation; it would also be unethical to withhold potential beneficial medications from patients who have been accidentally exposed. Instead, under these INDs, accidentally exposed patients were treated empirically and the findings were reported in the literature as observational studies.

REAC/TS has retained the medical case reports on 646 patients treated with Ca-DTPA and Zn-DTPA for radiation contamination during the last 40 years. To facilitate the development and ultimate approval of Ca-DTPA and Zn-DTPA drug products, we have reviewed the medical reports on the patients in the REAC/TS database and reviewed the available published literature. This notice announces our conclusions about the safety and effectiveness of Ca-DTPA and Zn-DTPA drug products, and it is addressed primarily to persons interested in submitting NDAs for Ca-DTPA or Zn-DTPA drug products.

II. Safety and Effectiveness of Ca-DTPA and Zn-DTPA Drug Products

We have concluded that Ca-DTPA and Zn-DTPA drug products, when produced under conditions specified in approved NDAs, can be found to be safe and effective for the treatment of patients with known or suspected internal contamination with plutonium, americium, or curium to increase the rates of elimination. As described in section II.A of this document, our conclusion is based on our review of medical reports in the REAC/TS database.

We encourage the submission of NDAs for both Ca-DTPA and Zn-DTPA drug products. If you are interested in submitting NDAs for these products, please contact the Center for Drug

Evaluation and Research's (CDER's) Division of Medical Imaging and Radiopharmaceutical Drug Products for a copy of the draft labeling (see ADDRESSES). We also recommend that you consult the guidance entitled "Calcium-DTPA and Zinc-DTPA Drug Products—Submitting a New Drug Application," which is being made available with this notice (see section V of this document).

A. Basis for Finding of Safety and Effectiveness

We have reviewed medical reports in the REAC/TS database and have determined that Ca-DTPA and Zn-DTPA drug products, when produced under conditions specified in an approved NDA, can be found to be safe and effective for treatment of patients with known or suspected internal contamination with plutonium, americium, or curium to increase the rates of elimination. Our conclusion is supported by our review of reports in the literature, which provided information consistent with that in the REAC/TS database.

Administration of a loading dose of Ca-DTPA followed by maintenance treatment with Zn-DTPA increases the rate of elimination of these radioactive elements from the body and is expected to decrease the risk of death and major morbidity from radiation complications.

In reaching our determination on the effectiveness of Ca-DTPA and Zn-DTPA, we evaluated reports from the REAC/TS database on 646 patients who received one or more doses of these drugs during the last 40 years. Ca-DTPA was administered either by inhalation or by intravenous injection. Zn-DTPA was administered by intravenous injection. Data on the type of transuranium element and amount of urine elimination were available for detailed analysis from 18 patients. In these patients, administration of Ca-DTPA by inhalation or intravenous injection of a 1-gram (g) dose of Ca-DTPA in a 5 milliliter (mL)-sterile aqueous solution increased the rate of radiation elimination in the urine an average of 39-fold. Maintenance doses of Zn-DTPA administered once daily resulted in continued elimination of radiation.

Some adverse effects were identified as resulting from Ca-DTPA and Zn-DTPA administration. The primary adverse effects of Ca-DTPA administration were the elimination from the body of endogenous essential trace metals, particularly zinc, but also including magnesium and manganese. The endogenous trace metal decreases occurred after treatment for several days and appeared to increase when the

drugs were given in divided doses over 1 day. Although Zn-DTPA is also believed to decrease serum magnesium and manganese, no serious toxicity has been observed with the administration of Zn-DTPA in humans or animals. In patients undergoing administration of Ca-DTPA or Zn-DTPA drug products, blood levels of these endogenous trace metals should be followed closely and can be treated with nutritional supplements.

In pregnant animals, multiple doses of Ca-DTPA are associated with fetal malformations and fetal death. Similar effects on animal fetuses were not seen with Zn-DTPA. As a result, Zn-DTPA should be used to begin treatment in pregnant patients. However, if Zn-DTPA is not available, the risks related to radiation contamination should be weighed against the risks of Ca-DTPA to the mother and fetus.

Intravenous administration of Ca-DTPA is recommended and should be used if the route of radioactive contamination is not known or if multiple routes of contamination are possible. In patients whose contamination is only by inhalation within the preceding 24 hours, Ca-DTPA administered as a single loading dose by nebulized inhalation is an alternative route of administration. However, administration of Ca-DTPA by inhalation may irritate some patients, especially those with a history of respiratory disorders. In these patients, the intravenous route can be used. Other rare adverse events are discussed in the published literature and in the draft labeling we have prepared.

B. Labeling for Ca-DTPA and Zn-DTPA

We have prepared draft labeling for Ca-DTPA supplied as 1 g in a 5 mL-sterile aqueous solution for administration either by inhalation (with a 1:1 dilution with saline and delivered by nebulization) or intravenous injection. We have also prepared draft labeling for Zn-DTPA supplied as 1 g in a 5-mL sterile aqueous solution for intravenous injection. You can submit this draft labeling as part of an NDA for Ca-DTPA or Zn-DTPA drug product that relies on our findings of safety and effectiveness. The draft labeling reflects our conclusion on the potential safety and effectiveness of Ca-DTPA and Zn-DTPA for treatment of patients with known or suspected internal contamination with plutonium, americium, or curium to increase the rates of elimination. The draft labeling may need to be modified if you submit an NDA for either Ca-DTPA or Zn-DTPA and there is not an approved NDA for the other DTPA drug

product, or the other drug product is otherwise unavailable. If you wish to change the labeling to include a different or broader indication or different dosage, or if you wish to make any other significant changes to the draft labeling, you should provide, as part of your NDA, additional literature or other studies to support your requested changes. If you submit an NDA for either a Ca-DTPA or Zn-DTPA drug product that is not based on our findings of the safety and effectiveness of Ca-DTPA and Zn-DTPA, you cannot use the draft labeling because it is based on our review of the REAC/TS database and published literature. If you submit such an NDA, your labeling must be based on the safety and effectiveness data contained in your NDA.

The draft labeling for NDAs based on our review of the REAC/TS database and published literature is available on the Internet at <http://www.fda.gov/cder/drug/infopage/dtpa/default.htm>. You may also contact CDER's Division of Medical Imaging and Radiopharmaceutical Drug Products for a copy of the draft labeling (see ADDRESSES).

III. Conclusions

We have determined that Ca-DTPA and Zn-DTPA can be safe and effective for treatment of patients with known or suspected internal contamination with plutonium, americium, or curium to increase the rates of elimination. We encourage the submission of NDAs for Ca-DTPA and Zn-DTPA drug products. The requirement under 21 U.S.C. 355(b)(1) for full reports of investigations to support these NDAs may be met by citing this notice and the published literature we relied on in preparing this notice. For a list of this published literature see section V of this document. A list of the published literature and reprints of the reports will be available for public inspection in the Division of Dockets Management (see ADDRESSES). It is unnecessary to submit copies and reprints of the reports from the listed published literature. We invite applicants to submit any other pertinent studies and literature of which they are aware.

IV. Availability of a Guidance

A. Notice of Availability

In this document, we are also announcing the availability of a guidance for industry entitled "Ca-DTPA and Zn-DTPA Drug Products—Submitting a New Drug Application." The guidance is intended to assist manufacturers who plan to submit NDAs for Ca-DTPA and Zn-DTPA.

This guidance is being issued as a level 1 guidance consistent with our good guidance practices regulation (21 CFR 10.115). It is being implemented immediately without prior public comment because we believe it is in the interest of the public health to communicate this information to the public as quickly as possible. However, we welcome comments on the guidance, and if comments are submitted, we will review them and revise the guidance if appropriate. The guidance represents our current thinking on issues associated with the submission of NDAs for Ca-DTPA and Zn-DTPA drug products. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

B. Comments

Interested persons may, at any time, submit written comments on the guidance to the Division of Dockets Management (see **ADDRESSES**). Two copies of any mailed comments are to be submitted except that individuals may submit one copy. Comments are to be identified with the docket number found in the brackets in the heading of this document. The document and received comments are available for public examination in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

C. Electronic Access

Persons with access to the Internet may obtain the guidance at either <http://www.fda.gov/cder/guidance/index.htm> or <http://www.fda.gov/ohrms/dockets/default.htm>.

V. Published Literature on the Safety and Effectiveness of Ca-DTPA and Zn-DTPA

The published literature we have relied on in making the determinations regarding Ca-DTPA and Zn-DTPA contained in this notice is listed in this section of this document. Copies of the published literature will be on display in the Division of Dockets Management (see **ADDRESSES**) and can be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday. (FDA has verified the Web site address, but we are not responsible for subsequent changes to the Web site after this document publishes in the **Federal Register**.)

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Dated: September 8, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03-23489 Filed 9-12-03; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Open Meeting, Board of Visitors for the National Fire Academy

AGENCY: U.S. Fire Administration (USFA), FEMA, Emergency Preparedness and Response, Homeland Security.

ACTION: Notice of open meeting.

SUMMARY: In accordance with section 10 (a) (2) of the Federal Advisory Committee Act, 5 U.S.C. App. 2, FEMA announces the following committee meeting:

Name: Board of Visitors (BOV) for the National Fire Academy.

Dates of Meeting: October 2-4, 2003.

Place: Building H, Room 300, National Emergency Training Center, Emmitsburg, Maryland.

Time: October 2, 2003, 10:30 a.m.-5 p.m.

October 3, 2003, 8:30 a.m.-5 p.m.

October 4, 2003, 9 a.m.-12 noon.

Proposed Agenda: October 2-4, Review National Fire Academy Program Activities.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public with seating available on a first-come, first-served basis. Members of the general public who plan to attend the meeting should contact the Office of the Superintendent, National Fire Academy, U.S. Fire Administration, 16825 South Seton Avenue, Emmitsburg, MD 21727, (301) 447-1117, on or before September 26, 2003.

Minutes of the meeting will be prepared and will be available for public viewing in the Office of the U.S. Fire Administrator, U.S. Fire Administration, Federal Emergency Management Agency, Emmitsburg, Maryland 21727. Copies of the minutes will be available upon request within 60 days after the meeting.

Dated: September 5, 2003.

R. David Paulison,

U.S. Fire Administrator, Director of the Preparedness Division.

[FR Doc. 03-23412 Filed 9-12-03; 8:45 am]

BILLING CODE 6718-08-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-4728-N-03]

Notice of Certain Operating Cost Adjustment Factors for 2004

AGENCY: Office of the Secretary, HUD.

ACTION: Publication of the 2004 Operating Cost Adjustment Factors (OCAFs) for Section 8 rent adjustments at contract renewal under section 524 of the Multifamily Assisted Housing Reform and Affordability Act of 1997 (MAHRA), as amended by the Preserving Affordable Housing for Senior Citizens and Families into the 21st Century Act of 1999, and under the Low-Income Housing Preservation and Resident Homeownership Act of 1990 (LIHPRHA) Projects assisted with Section 8 Housing Assistance Payments.

SUMMARY: This notice establishes annual factors used in calculating rent adjustments under section 524 of MAHRA as amended by the Preserving Affordable Housing for Senior Citizens and Families into the 21st Century Act of 1999, and under LIHPRHA.

EFFECTIVE DATE: February 11, 2004.

FOR FURTHER INFORMATION CONTACT:

Regina Aleksiewicz, Housing Project Manager, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, Office of Multifamily Housing, 451 Seventh Street, SW., Washington, DC 20410-8000; telephone (202) 708-3000; extension 2600 (This is not a toll-free number). Hearing-or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

I. Operating Cost Adjustment Factors (OCAFs)

Section 514(e)(2) of the FY 1998 HUD Appropriations Act, requires HUD to establish guidelines for rent adjustments based on an operating cost adjustment factor (OCAF). The legislation requiring HUD to establish OCAFs for LIHPRHA projects and projects with contract renewals under section 524 of MAHRA is similar in wording and intent. HUD has therefore developed a single factor to be applied uniformly to all projects utilizing OCAFs as the method by which rents are adjusted.

Additionally, section 524 of the Act gives HUD broad discretion in setting OCAFs—referring simply to “operating cost factors established by the Secretary.” The sole exception to this grant of authority is a specific

requirement that application of an OCAF shall not result in a negative rent adjustment. OCAFs are to be applied uniformly to all projects utilizing OCAFs as the method by which rents are adjusted upon expiration of the term of the contract. OCAFs are applied to project contract rent less debt service.

An analysis of cost data for FHA-insured projects showed that their operating expenses could be grouped into nine categories: wages, employee benefits, property taxes, insurance, supplies and equipment, fuel oil, electricity, natural gas, and water and sewer. Based on an analysis of these data, HUD derived estimates of the percentage of routine operating costs that were attributable to each of these nine expense categories. Data for projects with unusually high or low expenses due to unusual circumstances were deleted from analysis.

States are the lowest level of geographical aggregation at which there are enough projects to permit statistical analysis. Additionally, no data were available for the Western Pacific Islands. Data for Hawaii was therefore used to generate OCAFs for these areas.

The best current measures of cost changes for the nine cost categories were selected. The only categories for which current data are available at the state level are for fuel oil, electricity, and natural gas. Current price change indices for the other six categories are only available at the national level. The Department had the choice of using dated state-level data or relatively current national data. It opted to use national data rather than data that would be two or more years older (*e.g.*, the most current local wage data are for 1996). The data sources for the nine cost indicators selected were as follows:

Labor Costs—3/02 to 3/03 Bureau of Labor Statistics (BLS), Employment Cost Index, Private Sector Wages and Salaries Component at the National Level.

Employment Benefit Costs—3/02 to 3/03 BLS Employment Cost Index, Employee Benefits at the National Level.

Property Taxes—3/02 to 3/03 BLS Consumer Price Index, All Items Index.

Goods, Supplies, Equipment—3/02 to 3/03 BLS Producer Price Index, Finished Goods Less Food and Energy.

Insurance—3/02 to 3/03 BLS Consumer Price Index, Tenant and Household Residential Insurance Index.

Fuel Oil—Energy Information Agency, 2000 to 2001 annual average state prices for #2 distillate residential fuel oil (U.S. average change was used for states with too little fuel oil consumption to have values).

Electricity—Energy Information Agency, 2000 to 2001 annual average

residential electric prices per Kilowatt-hour.

Natural Gas—Energy Information Agency, 2000 to 2001 annual average natural gas prices.

Water and Sewer—3/02 to 3/03 BLS Consumer Price Index Detailed Report.

The sum of the nine cost components equals 100 percent of operating costs for purposes of OCAF calculations. To calculate the OCAFs, the selected inflation factors are multiplied by the relevant state-level operating cost percentages derived from the previously referenced analysis of FHA insured projects. For instance, if wages in Virginia comprised 50 percent of total operating cost expenses and wages increased by 4 percent from June 2002 to June 2003, the wage increase component of the Virginia OCAF for 2004 would be 2.0 percent (4% X 50%). This 2.0 percent would then be added to the increases for the other eight expense categories to calculate the 2004 OCAF for Virginia. These types of calculations were made for each state for each of the nine cost components, and are included as the Appendix to this notice.

II. MAHRA and LIHPRHA OCAF Procedures

MAHRA (Title V of Pub. L. 105-65, approved October 7, 1997; 42 U.S.C. 1437f note) as amended by the Preserving Affordable Housing for Senior Citizens and Families into the 21st Century Act of 1999, created the Mark-to-Market Program to reduce the cost of federal housing assistance, enhance HUD's administration of such assistance, and ensure the continued affordability of units in certain multifamily housing projects. Section 524 of MAHRA authorizes renewal of Section 8 project-based assistance contracts for projects without Restructuring Plans under the Mark-to-Market Program, including renewals that are not eligible for Plans and those for which the owner does not request Plans. Renewals must be at rents not exceeding comparable market rents except for certain projects. For Section 8 Moderate Rehabilitation projects, other than single room occupancy projects (SROs) under the Stewart B. McKinney Homeless Assistance Act (McKinney Act, 42 U.S.C. 11301 *et seq.*), that are eligible for renewal under section 524(b)(3) of MAHRA, the renewal rents are required to be set at the lesser of: (1) The existing rents under the expiring contract, as adjusted by the OCAF; (2) fair market rents (less any amounts allowed for tenant-purchased utilities); or (3) comparable market rents for the market area.

LIHPRHA (see, in particular, section 222(a)(2)(G)(i) of LIHPRHA, 12 U.S.C. 4112 (a)(2)(G)(i) and the regulations at 24 CFR 248.145(a)(9)(i)) requires that future rent adjustments for LIHPRHA projects be made by applying an annual factor to be determined by the Secretary to the portion of project rent attributable to operating expenses for the project and, where the owner is a priority purchaser, to the portion of project rent attributable to project oversight costs.

III. Findings and Certifications

Environmental Impact

This issuance sets forth rate determinations and related external administrative requirements and procedures that do not constitute a development decision affecting the physical condition of specific project areas or building sites. Accordingly, under 24 CFR 50.19(c)(6), this notice is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number for this program is 14.187.

Dated: September 9, 2003.

Mel Martinez,
Secretary.

OPERATING COST ADJUSTMENT FACTORS FOR 2004

	Percent
ALABAMA	4.9
ALASKA	3.6
ARIZONA	5.6
ARKANSAS	3.7
CALIFORNIA	3.8
COLORADO	4.8
CONNECTICUT	3.0
DELAWARE	4.0
DIST. OF COLUMBIA	5.3
FLORIDA	4.5
GEORGIA	4.0
HAWAII	4.3
IDAHO	5.6
ILLINOIS	2.7
INDIANA	3.9
IOWA	2.9
KANSAS	3.9
KENTUCKY	3.9
LOUISIANA	4.0
MAINE	3.4
MARYLAND	4.1
MASSACHUSETTS	2.0
MICHIGAN	5.3
MINNESOTA	3.1
MISSISSIPPI	4.4
MISSOURI	4.1
MONTANA	3.4
NEBRASKA	3.4
NEVADA	5.8

OPERATING COST ADJUSTMENT FACTORS FOR 2004—Continued

	Percent
NEW HAMPSHIRE	1.2
NEW JERSEY	3.9
NEW MEXICO	4.0
NEW YORK	2.6
N. CAROLINA	5.0
N. DAKOTA	2.9
OHIO	3.1
OKLAHOMA	3.0
OREGON	6.2
PENNSYLVANIA	3.6
RHODE ISLAND	1.7
S. CAROLINA	5.2
S. DAKOTA	2.7
TENNESSEE	4.7
TEXAS	3.2
UTAH	4.0
VERMONT	4.2
VIRGINIA	4.1
WASHINGTON	5.5
W. VIRGINIA	4.5
WISCONSIN	4.0
WYOMING	3.2
PACIFIC ISLANDS	4.2
PUERTO RICO	5.1
VIRGIN ISLANDS	5.3
U.S. AVERAGE	3.7

[FR Doc. 03-23353 Filed 9-12-03; 8:45 am]

BILLING CODE 4210-32-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-4513-N-13]

Credit Watch Termination Initiative

AGENCY: Office of Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This notice advises of the cause and effect of termination of Origination Approval Agreements taken by the Department of Housing and Urban Development's (HUD) Federal Housing Administration against HUD-approved mortgagees through its Credit Watch Termination Initiative. This notice includes a list of mortgagees which have had their Origination Approval Agreements (Agreements) terminated.

FOR FURTHER INFORMATION CONTACT: The Quality Assurance Division, Office of Housing, Department of Housing and Urban Development, 451 Seventh St., SW., Room B133-P3214, Washington, DC 20410; telephone (202) 708-2830 (this is not a toll free number). Persons with hearing or speech impairments may access that number via TTY by calling the Federal Information Relay Service at (800) 877-8339.

SUPPLEMENTARY INFORMATION: HUD has the authority to address deficiencies in the performance of lenders' loans as provided in the HUD mortgagee approval regulations at 24 CFR 202.3. On May 17, 1999 (64 FR 26769), HUD published a notice on its procedures for terminating origination approval agreements with FHA lenders and placement of FHA lenders on Credit Watch status (an evaluation period). In the May 17, 1999 notice, HUD advised that it would publish in the **Federal Register** a list of mortgagees which have had their Origination Approval Agreements terminated.

Termination of Origination Approval Agreement: Approval of a mortgagee by HUD/FHA to participate in FHA mortgage insurance programs includes an Agreement between HUD and the mortgagee. Under the Agreement, the mortgagee is authorized to originate single-family mortgage loans and submit them to FHA for insurance endorsement. The Agreement may be terminated on the basis of poor performance of FHA-insured mortgage loans originated by the mortgagee. The Termination of a mortgagee's Agreement is separate and apart from any action taken by HUD's Mortgage Review Board under HUD's regulations at 24 CFR part 25.

Cause: HUD's regulations permit HUD to terminate the Agreement with any mortgagee having a default and claim rate for loans endorsed within the preceding 24 months that exceeds 200 percent of the default and claim rate within the geographic area served by a HUD field office, and also exceeds the

national default and claim rate. For the fifteenth review period, HUD is only terminating the Agreement of mortgagees whose default and claim rate exceeds both the national rate and 250 percent of the field office rate.

Effect: Termination of the Agreement precludes that branch(s) of the mortgagee from originating FHA-insured single family mortgages within the area of the HUD field office(s) listed in this notice. Mortgagees authorized to purchase, hold, or service FHA insured mortgages may continue to do so.

Loans that closed or were approved before the Termination became effective may be submitted for insurance endorsement. Approved loans are (1) those already underwritten and approved by a Direct Endorsement (DE) underwriter employed by an unconditionally approved DE lender and (2) cases covered by a firm commitment issued by HUD. Cases at earlier stages of processing cannot be submitted for insurance by the terminated branch; however, they may be transferred for completion of processing and underwriting to another mortgagee or branch authorized to originate FHA insured mortgages in that area. Mortgagees are obligated to continue to pay existing insurance premiums and meet all other obligations associated with insured mortgages.

A terminated mortgagee may apply for a new Origination Approval Agreement if the mortgagee continues to be an approved mortgagee meeting the requirements of 24 CFR 202.5, 202.6, 202.7, 202.8 or 202.10 and 202.12, if there has been no Origination Approval

Agreement for at least six months, and if the Secretary determines that the underlying causes for termination have been remedied. To enable the Secretary to ascertain whether the underlying causes for termination have been remedied, a mortgagee applying for a new Origination Approval Agreement must obtain an independent review of the terminated office's operations as well as its mortgage production, specifically including the FHA-insured mortgages cited in its termination notice. This independent analysis shall identify the underlying cause for the mortgagee's high default and claim rate. The review must be conducted and issued by an independent Certified Public Accountant (CPA) qualified to perform audits under Government Auditing Standards as set forth by the General Accounting Office. The mortgagee must also submit a written corrective action plan to address each of the issues identified in the CPA's report, along with evidence that the plan has been implemented. The application for a new Agreement should be in the form of a letter, accompanied by the CPA's report and corrective action plan. The request should be sent to the Director, Office of Lender Activities and Program Compliance, 451 Seventh Street, SW., Room B133-P3214, Washington, DC 20410 or by courier to 490 L'Enfant Plaza, East, SW., Suite 3214, Washington, DC 20024.

Action: The following mortgagees have had their Agreements terminated by HUD:

Mortgagee name	Mortgagee branch address	HUD office jurisdictions	Termination effective date	Home ownership centers
American Home Mortgage Company.	951 Eastgate Loop Ste. 1300 Chattanooga, TN 37411.	Knoxville, TN	06/23/2003	Atlanta
American Mortgage Service, Inc	8086 Highway 51 North Millington, TN 38053.	Memphis, TN	06/23/2003	Atlanta
Approved Mortgage Corp	107 N. State Rd. 135, Ste. 301 Greenwood, IN 46142.	Indianapolis, IN	06/23/2003	Atlanta
Capital Mortgage Finance Corp	2200 Defense Highway Ste. 100 Crofton, MD 21114.	Washington, DC	05/19/2003	Philadelphia
Citizens First Mortgage Solutions, Inc.	3145 Tucker Norcross Rd Tucker, GA 30084.	Atlanta, GA	06/23/2003	Atlanta
Countrywide Home Loans, Inc	4700 Hardy St., Ste. #H Hattiesburg, MS 39402.	Jackson, MS	06/23/2003	Atlanta
Crest Mortgage Company	14850 Montfort Dr Ste. 100 Dallas, TX 75254.	Dallas, TX	06/23/2003	Denver
Crest Mortgage Company	14850 Montfort Dr Ste. 100 Dallas, TX 75254.	Fort Worth, TX	06/23/2003	Denver
Decatur Mortgage Company LLC ..	6350 Westhaven Dr Ste. H Indianapolis, IN 46254.	Indianapolis, IN	06/23/2003	Atlanta
Encore Mortgage Service	1010 Laurel Oak Corp Ctr 301 Voorhees, NJ 08043.	Philadelphia, PA	05/19/2003	Philadelphia
First Community Mortgage, Inc	3049 Cleveland Ave Ste. 200 Fort Myers, FL 33901.	Coral Gables, FL	06/23/2003	Atlanta
First Security Mortgage Service	13915 Carrollwood Village Run Tampa, FL 33624.	Tampa, FL	06/23/2003	Atlanta
Golden Empire Mortgage, Inc	10535 Foothill Blvd., Ste. #460 Rancho Cucamonga, CA 91730.	Santa Ana, CA	06/23/2003	Santa Ana

Mortgagee name	Mortgagee branch address	HUD office jurisdictions	Termination effective date	Home ownership centers
Gulf Atlantic Funding Group	5400 S University Dr Ste. 603 Davie, FL 33328.	Coral Gables, FL	06/23/2003	Atlanta
K&B Capital Corporation	1950 Spectrum Cr #400 Marietta, GA 30067.	Atlanta, GA	06/23/2003	Atlanta
Key Bank & Trust	7F Gwynns Mill Court Owings Mills, MD 21117.	Baltimore, MD	06/23/2003	Philadelphia
Nally & Company	2100 Gardiner Lane Ste. 216 Louisville, KY 40205.	Louisville, KY	06/23/2003	Atlanta
New Heights Capital, LLC	2900 Chamblee Tucker Rd, NE Atlanta, GA 30341.	Atlanta, GA	06/23/2003	Atlanta
New York Mortgage Bankers	189-10 Hillside Ave. Hollis, NY 11423.	New York, NY	06/23/2003	Philadelphia
Northland Funding Group, DBA Capital Mortgage Services.	3305 Northland Dr Ste. 208 Austin, TX 78731.	San Antonio, TX	06/23/2003	Denver
Pinnacle Financial Corp	12600 World Plaza Ln Fort Myers, FL 33907.	Coral Gables, FL	05/19/2003	Atlanta
Pryme Investment & Mtg. Brokers, Inc.	491 West 5300 South Murray, UT 84123.	Salt Lake City, UT	05/19/2003	Denver
Radius Capital Corp	4871 West Avenue M Quartz Hill, CA 93536.	Los Angeles, CA	06/23/2003	Santa Ana
Saxon Equities Corp	300 Motor Parkway Hauppauge, NY 11788.	New York, NY	06/23/2003	Philadelphia
US Mortgage Finance Corp	901 Dulaney Valley Rd Ste. 801 Towson, MD 21204.	Baltimore, MD	06/23/2003	Philadelphia

Dated: September 5, 2003.

John C. Weicher,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 03-23329 Filed 9-12-03; 8:45 am]

BILLING CODE 4210-27-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection Submitted to the Office of Management and Budget (OMB) for Approval Under the Paperwork Reduction Act; Annual Certification of Hunting and Sport Fishing Licenses Issued, 50 CFR 80.10

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: The U.S. Fish and Wildlife Service (We) has submitted the collection of information listed below to OMB for approval under the provisions of the Paperwork Reduction Act. A copy of the information collection requirement is included in this notice. If you wish to obtain copies of the proposed information collection requirement, related forms, or explanatory material, contact the Service Information Collection Clearance Officer at the address listed below.

DATES: You must submit comments by October 15, 2003.

ADDRESSES: Submit your comments on this information collection renewal to the Desk Officer for the Department of the Interior at OMB-OIRA via facsimile or e-mail using the following fax number or e-mail address: (202) 395-6566 (fax); OIRA_DOCKET@omb.eop.gov (e-mail). Please provide a copy of your comments to the Fish and Wildlife Service's Information Collection Clearance Officer, 4401 N. Fairfax Dr., MS 222 ARLSQ, Arlington, VA 22207; (703) 358-2269 (fax); or anissa_craghead@fws.gov (e-mail).

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information, or related forms, contact Anissa Craghead at (703) 358-2445, or electronically to anissa_craghead@fws.gov.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). We have submitted a request to OMB to renew its approval of the collection of information for the annual certification of hunting and sport fishing licenses issued by States and Territories. We are requesting a 3-year term of approval for this information collection activity.

Federal agencies may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this collection of information is 1018-0007.

The Service administers grant programs authorized by the Federal Aid in Wildlife Restoration Act (16 U.S.C. 669-669b, 669-669k) and the Federal Aid in Sport Fish Restoration Act (16 U.S.C. 777-777m). These Acts, and our regulations at 50 CFR 80.10, require that States annually certify their hunting and fishing license sales. The Service uses the information collected to determine apportionment and distribution of funds under these Acts. We are proposing minimal changes to the forms we use to collect this information.

Title: Annual Certification of Hunting and Sport Fishing Licenses Issued, 50 CFR 80.10.

Note: This collection consists of two parts: Part 1, Certification, and Part 2, Summary.

OMB Control Number: 1018-0007.

Service Form Numbers: 3-154a (Part 1) and 3-154b (Part 2).

Frequency of Collection: Annually.

Description of Respondents: States and Territories (the Commonwealth of Puerto Rico, the District of Columbia, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, and American Samoa).

Total Annual Burden Hours:

Form name	Completion time per form	Annual number of responses	Annual hour burden
Certification (Part 1)	½ hour	56 forms	28 hours
Summary (Part 2)	½ hour	56 forms	28 hours
Totals		112 forms	56 hours

We again invite comments on: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of our estimate of the burden of the 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 collection of information on respondents, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: September 9, 2003.

Anissa Craghead,

Information Collection Officer.

[FR Doc. 03-23424 Filed 9-12-03; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Endangered Species Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permits.

SUMMARY: The public is invited to comment on following applications to conduct certain activities with endangered species. We provide this notice pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

DATES: We must receive written data or comments on these applications at the address given below, by October 15, 2003.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta,

Georgia 30345 (*Attn:* Victoria Davis, Permit Biologist).

FOR FURTHER INFORMATION CONTACT: Victoria Davis, telephone 404/679-4176; facsimile 404/679-7081.

SUPPLEMENTARY INFORMATION: The public is invited to comment on the following applications for permits to conduct certain activities with endangered species. If you wish to comment, you may submit comments by any one of several methods. You may mail comments to the Service's Regional Office (see **ADDRESSES** section) or via electronic mail (e-mail) to *victoria.davis@fws.gov*. Please submit electronic comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include your name and return address in your e-mail message. If you do not receive a confirmation from the Service that we have received your e-mail message, contact us directly at the telephone number listed above (see **FOR FURTHER INFORMATION CONTACT** section). Finally, you may hand deliver comments to the Service office listed above (see **ADDRESSES** section).

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the administrative record. We will honor such requests to the extent allowable by law. There may also be other circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and address, you must state this prominently at the beginning of your comments. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Applicant: Anthony Joseph Savereno, Sabine & Water, Inc., Summerville, South Carolina, TE070880-0.

The applicant requests authorization to take (capture, band, release, monitor nests, and install and drill artificial cavity inserts) red-cockaded

woodpeckers (*Picoides borealis*) for the purposes of monitoring and managing populations and nest cavities. The proposed activities would take place in Florida, Georgia, South Carolina, North Carolina, Alabama, Louisiana, Tennessee, Kentucky, Arkansas, Texas, Virginia, and Mississippi.

Applicant: Griggs & Maloney, Inc., Steven Davis Maloney, Murfreesboro, Tennessee, TE074624-0

The applicant requests authorization to take (capture, relocate, and release) Nashville crayfishes (*Orconectes shoupi*) while conducting presence and absence surveys around an unnamed tributary to Owl Creek and to relocate the Nashville crayfish from the area immediately around the crossing to areas of suitable habitat within the same tributary. The proposed activities would take place in Williamson County, Tennessee on an unnamed tributary to Owl Creek (tributary to Mill Creek).

Applicant: U.S. Geological Survey, Wiley M. Kitchens, Gainesville, Florida, TE069236-0

The applicant requests authorization to take (survey, capture, band, radio-tag, release, recapture, exam, measure, take feather samples, monitor nests) the Everglade snail kite (*Rostrhamus sociabilis plumbeus*) while collecting information on the demography and movement of the species. The surveys would be performed throughout several wetlands in central and south Florida, including Lake Kissimmee, East and West Lake Tohopekaliga, Lake Okeechobee, Blue Cypress Marshes of the upper Saint Johns, West Palm Beach Water Catchment area (Grassy Water Preserve), ARM Loxahatchee National Wildlife Refuge, Water Conservation Areas 2A, 2B, 3A, and 3B, Big Cypress National Preserve, and the Everglades National Park, including Shark Valley and North East Shark River Slough, Florida.

Applicant: United States Environmental Protection Agency, Region 4, Science and Ecosystem Support Division, Athens, Georgia, TE075931-0.

The applicant requests authorization to take (capture, photograph, release) all federally listed freshwater fishes, mollusks, crustaceans, insects, amphibians, mammals, birds, and

reptiles, identified in 50 CFR 17.11 in the States of Kentucky, Tennessee, North Carolina, South Carolina, Georgia, Florida, Alabama, and Mississippi. Take may occur while sampling for aquatic bio-assessment for (1)(a) EPA Regional Environmental Monitoring and Assessment Program (R-EMAP) projects, (b) Clean Water Act (CWA) Section 303(d) listing and de-listing of impaired waters, (c) development of CWA Total Maximum Daily Loads (TMDLs), and for (2)(a) EPA human risk assessments and (b) Superfund human health and ecological risk assessments.

Applicant: United States Air Force, Julie A. Hovis, Shaw Air Force Base, South Carolina, TE075925-0

The applicant requests authorization to take (capture, band, release, track, translocate, blood sample, monitor nests and roost cavities, and construct, install and maintain artificial nest cavities) red-cockaded woodpeckers (*Picoides borealis*) while conducting presence and absence surveys and population monitoring and management. The take activities would occur at Poinsett Electronic Combat Range and Manchester State Forest in Sumter County, South Carolina.

Applicant: Timothy W. Savidge, North Carolina Heritage Program, Stephen P. Hall, Raleigh, North Carolina, TE075923-0

The applicant requests authorization to take (survey, capture, release, and retain relic shells) James spiny mussel (*Pleurobema collina*), dwarf-wedge mussel (*Alasmidonta heterodon*) tar spiny mussel (*Elliptio steinstansanna*), and Carolina heelsplitter (*Lasmigona decorata*). Take may occur while conducting presence/absence surveys. The proposed activities would take place in North Carolina, Virginia, Georgia, and Florida.

Applicant: HMB Professional Engineers, Inc., Jim H. Smith, Frankfort, Kentucky, TE075918-0

The applicant requests authorization to take (survey, capture, band, radio tag, photograph, release, and track) gray bat (*Myotis grisescens*) and Indiana bat (*Myotis sodalis*), and take (survey, capture, identify, photograph, collect relic shells, and release) the Cumberland elktoe (*Alasmidonta atropurpurea*). Take may occur while conducting presence and absence surveys for highway improvement and new roadway projects in the state of Tennessee.

Applicant: Julie L. Lockwood, Rutgers University, New Brunswick, New Jersey, TE075916

The applicant requests authorization to take (survey, capture, band, collect blood samples, monitor nest, and

release) the Cape Sable seaside sparrow (*Ammodramus maritimus mirabilis*). The take activities may take place while studying the effects of fire on the Cape Sable seaside sparrow demography. The proposed activities would occur within the Everglades National Park, Monroe County, Florida.

Applicant: Virginia Cooperative Fish and Wildlife Unit, Richard J. Neves, Blacksburg, Virginia, TE075915-0

The applicant requests authorization to take (survey, capture, collect up to 30 tissue samples, tag, and release) the James spiny mussel (*Pleurobema cillina*) and the tar spiny mussel (*Elliptio steinstansana*). The proposed take may occur while conducting genetic analyses and habitat surveys, and while studying the life history and the feasibility of culturing it in recirculating aquaculture systems with different substrata. The proposed activities would occur in Stokes and Rockingham counties, Dan and Mayo rivers, Dan River subbasin of the Roanoke River basin, North Carolina for the tar spiny mussel. The proposed activities for the James spiny mussel will occur in Patrick and Henry Counties, South Fork Mayo River, Virginia.

Applicant: Thomas S. Risch, Arkansas State University, Jonesboro, Arkansas, TE075912-0

The applicant requests authorization to take (survey, capture, mark, band, radio-tag, track, recapture, and release) the Indiana bat (*Myotis sodalis*) while conducting presence and absence surveys of caves and abandoned mines. The proposed activities would take place at Rosson Hollow, Ozark National Forest, Franklin, Arkansas.

Applicant: Thomas S. Risch, Arkansas State University, Jonesboro, Arkansas, TE075913-0

The applicant requests authorization to take (survey, capture, mark, band, radio-tag, track, recapture, and release) the Ozark big-ear bat (*Corynorhinus townsendii ingens*), gray bat (*Myotis grisescens*), and Indiana bat (*Myotis sodalis*) while conducting presence and absence surveys of caves and abandoned mines in Marion, Searcy, Baxter, and Newton Counties, Buffalo National River, Arkansas.

Applicant: Steven Ray Shattler, Florida Fish and Wildlife Conservation Commission, Venus, Florida, TE076499-0

The applicant requests authorization to take (capture, band, release, monitor nests, install and drill artificial cavity inserts, and install snake exclusion devices) red-cockaded woodpeckers (*Picoides borealis*) while conducting presence and absence surveys and management activities. The proposed activities would take place in Highlands

and Glades Counties, on the Platt Branch Mitigation Park and the Lykes Brothers Inc. Ranch, Florida.

Applicant: Roel R. Lopez, Texas A & M University, College Station, Texas, TE076447-0

The applicant requests authorization to take (trap, mark, tag, examine, recapture, release) Key Largo woodrats (*Neotoma foidana smalli*) and Key Largo cotton mice (*Peromyscus gossypinus allapaticola*) while conducting mark-recapture surveys for the Key Largo woodrat. The population estimates would be used for recovery purposes. The proposed activities would take place at the Crocodile Lake National Wildlife Refuge, Key Largo, Monroe County, Florida.

Dated: September 4, 2003.

Sam D. Hamilton,

Regional Director.

[FR Doc. 03-23392 Filed 9-12-03; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of decision and availability of decision documents.

SUMMARY: Between November 23, 2002, and July 17, 2003, the Pacific Region of the Fish and Wildlife Service (we, the Service) issued nine permits in response to applications for incidental take of threatened and endangered species, pursuant to sections 10(a)(1)(B) and 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (Act). Copies of the permits and associated decision documents are available upon request.

ADDRESSES: Documents are available from the U.S. Fish and Wildlife Service, 911 NE. 11th Avenue, Portland, Oregon 97232; facsimile (503) 231-6243. Charges for copying, shipping and handling may apply.

FOR FURTHER INFORMATION CONTACT: If you would like copies of any of the above documents, please contact Shelly McKeever, Administrative Assistant, at telephone (503) 231-6241.

SUPPLEMENTARY INFORMATION: Section 9 of the Act and Federal regulations prohibit the take of wildlife species listed as endangered or threatened. The term "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect listed wildlife, or to attempt to engage in any such conduct. The Service may, under limited

circumstances, issue permits to authorize take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Regulations governing permits for threatened and endangered species are found in 50 CFR 17.32 and 17.22.

Although not required by law or regulation, it is Service policy to notify the public of its permit application decisions. Between November 23, 2002,

and July 17, 2003, we issued the following permits within the Pacific Region of the Service for incidental take of threatened and endangered species subject to certain conditions set forth therein, pursuant to section 10(a)(1)(B) and section 10(a)(1)(A) of the Act. We issued each permit after determining that: (1) The permit application was submitted in good faith; (2) all permit issuance criteria were met, including

the requirement that granting the permit will not jeopardize the continued existence of listed species; and (3) the permit was consistent with the purposes and policy set forth in the Act and applicable regulations, including a thorough review of the environmental effects of the action and alternatives pursuant to the National Environmental Policy Act of 1969.

Approved plan or agreement	Permit No.	Issuance date
Habitat Conservation Plans:		
Gosnell Residential	TE063835-0	12/23/02
Antelope Road	TE066470-0	12/31/02
Folsom Professional Centre	TE072797-0	06/25/03
Natomas Basin (3 permits)	TE073663-0	06/27/03
	TE073665-0	.....
	TE073667-0	.....
Safe Harbor Agreements:		
The Island of Molokai	TE062124-0	04/07/03
Paramount Farms	TE048469-0	04/24/03
Robert Mondavi Winery	TE056595-0	07/17/03

Copies of these permits, the accompanying Habitat Conservation Plan or Safe Harbor Agreement, and associated documents are available upon request. Decision documents for each permit include a Findings and Recommendation; a Biological Opinion; and either a Record of Decision, Finding of No Significant Impact, or an Environmental Action Statement. Associated documents may also include an Implementing Agreement, Environmental Impact Statement, or Environmental Assessment, as applicable.

Dated: September 8, 2003.

D. Kenneth McDermond,

Deputy Manager, California/Nevada, Operations Office, Sacramento, California.

[FR Doc. 03-23356 Filed 9-12-03; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of the Holston River/Saltville National Priority List Site Natural Resource Damage Assessment Plan Which Encompasses Smyth and Washington Counties, Virginia, and Hawkins and Sullivan Counties, TN

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service), on behalf of the U.S. Department of the Interior, the Commonwealth of Virginia, the State of

Tennessee, and the Tennessee Valley Authority, jointly referred to as the Saltville National Priority List (NPL) Site Trustee Council, announces the release for public review of the Holston River/Saltville NPL Site Natural Resource Damage Assessment (NRDA) Plan (Plan) which encompasses Smyth and Washington Counties, Virginia, and Hawkins and Sullivan Counties, Tennessee. The Plan describes the Trustee's proposal to assess potential injury to natural resources as a result of a release of hazardous substances.

DATES: Written comments must be submitted within 30 days of this notice.

ADDRESSES: Requests for copies of the Plan may be made to: U.S. Fish and Wildlife Service, Virginia Field Office, 6669 Short Lane, Gloucester, Virginia 23061. Written comments regarding the Plan should be sent to the same address.

FOR FURTHER INFORMATION CONTACT: John Schmerfeld, U.S. Fish and Wildlife Service, 6669 Short Lane, Gloucester, Virginia 23061. Interested parties may also call 804-693-6694, extension 107, for further information.

SUPPLEMENTARY INFORMATION: The Saltville NPL Site (Site) is located along the North Fork Holston River (NFHR) which flows through Smyth and Washington Counties, Virginia. The NFHR joins the South Fork Holston River to form the main stem Holston River (MHR) near Virginia's southern border with Tennessee. The NFHR and MHR (hereafter jointly referred to, with associated floodplains, as the "River") flow through Sullivan and Hawkins Counties, Tennessee, before entering the John Sevier Detention Reservoir and the

Cherokee Dam. These contiguous areas and bodies of water comprise the geographical focus of this assessment. Due to hazardous substances released from industrial activities, the Site was included on the NPL in 1983 by the U.S. Environmental Protection Agency (EPA). Several operable units associated with the Site have been identified for remedial activities. Operable Unit 4 includes the Former Chlorine Plant site and the River and is the focus of this NRDA. Remedial activities for Operable Unit 4 are ongoing. The EPA is acting as the lead response agency overseeing remedial activities at the Site and Operable Unit 4.

Under subpart G of the National Oil and Hazardous Substance Pollution Contingency Plan, 40 CFR 300.600-610 and Executive Order 12580, the Federal government, States, and Indian tribes are authorized as natural resource trustees to recover damages from responsible parties for injuries to natural resources caused by the release of hazardous substances. This process is intended to compensate the public for lost natural resources and to restore services provided by those resources. The natural resource trustees for this matter include:

- The U.S. Department of the Interior
- The Commonwealth of Virginia
- The State of Tennessee
- The Tennessee Valley Authority

The Trustees have developed a Memorandum of Agreement that provides a framework for continued cooperation and coordination. The Trustees have determined through a Preassessment Screen that further investigation and assessment is

warranted. A Notice of Intent to Perform an Assessment (NOI) was issued to the Potentially Responsible Party (PRP) in July 2003, indicating that the Trustees intend to proceed with NRDA procedures for the River. The NOI invited the PRP to participate in a cooperative injury assessment.

The purpose of this Plan is to guide the actions of the Trustees through the NRDA process. Before proceeding, the Trustees must document that potentially injured resources have been exposed to hazardous substances released from the Site. This confirmation of exposure in the River focuses primarily on mercury, which is associated with past operations at the Site and continuing contamination of the River. Mercury concentrations in river sediments, groundwater, floodplain soils and biota are elevated in comparison to other areas within the Upper Tennessee River Basin. Mercury has been detected in water, sediments, soils, algae, invertebrates, fish, mammals, and birds downstream from the Site. This exposure indicates that natural resources may have been injured as a result of releases of hazardous substances from the Site. The Trustees therefore believe that further assessment of these injuries is warranted.

This Plan outlines the Trustees' proposed plans to document and evaluate potentially injured resources in the River. The Trustees intend to focus on the loss of ecological and human use services resulting from injuries to natural resources. Such lost services may include impairment of floodplain and aquatic flora and fauna, supporting habitats, and public use (*e.g.*, consumption) of fish, wildlife, and other natural resources.

The Trustees will assess suspected injuries to surface water, biological receptors, ground water, and/or geological resources using data and information currently available, as well as that proposed to be collected as part of the assessment. The Trustees will further analyze the identified natural resource injuries to evaluate the lost ecological and human use services provided by those resources. The evaluation will focus on baseline services that would have been provided had the hazardous substances not been released.

Interested members of the public are invited to review and comment on the Plan. Copies of the Plan are available for review at the Service's Virginia Field Office in Gloucester, Virginia, and at the Service's Southwestern Virginia Field Office located at 330 Cummings Street, Suite A, Abingdon, Virginia 24210.

Comments, including names and home addresses of respondents, will be available for public review during regular business hours. Individual respondents may request confidentiality. If you wish us to withhold your name and or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. We will not, however, consider anonymous comments. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

Author: The primary author of this notice, on behalf of the Trustee Council, is John Schmerfeld, U.S. Fish and Wildlife Service, Virginia Field Office, 6669 Short Lane, Gloucester, Virginia 23061.

Authority: The authority for this public review of the Plan announced by this notice is 43 CFR 11.32(c) action is the Comprehensive Environmental Response, Compensation and Liability Act of 1980 as amended, commonly known as Superfund (42 U.S.C. 9601 *et seq.*), and the Natural Resource Damage Assessment Regulations found at 43 CFR part 11.

Dated: August 14, 2003.

James G. Geiger,

Acting Regional Director, Region 5, Fish and Wildlife Service, Department of the Interior, Designated Authorized Official.

[FR Doc. 03-23391 Filed 9-12-03; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID-095-1150-CB; IDI-26978; DBG-03-0005]

Emergency Closure of Public Lands to All Public Access of Every Kind Within the Boundary of the Orchard Plant Material Research and Test Site, Ada County, ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of emergency closure.

SUMMARY: The subject lands are being closed to protect valuable vegetative projects from destruction and demise as a result of malicious vandalism, grazing trespass, and offroad travel through project sites. Access to and entering upon public lands administered by BLM on the NE¹/₄, NE¹/₄NW¹/₄, NE¹/₄SE¹/₄

Section 20; T. 1 S., R. 4 E., Ada County, Idaho is hereby prohibited. The emergency access closure is intended to protect plant research and test plots from further degradation and demise. The closure may be rescinded at anytime if in the judgment of the authorized officer it is not needed. Exceptions to this closure may include agency personnel for administrative, research and emergency purposes.

Definitions: (a) "Public lands" means any lands or interests in lands owned by the United States and administered by the Secretary of the Interior through the Bureau of Land Management. (b) "Authorized Officer" means any employee of the Bureau of Land Management who has been delegated the authority to perform the duties described in this order. (c) "Emergency purposes" means any fire or law enforcement persons entry for emergency purposes. (d) "Administrative and research purposes" refers to any employee, agent or designated representative of the federal government, or one of its contractors, in the course of their employment or agency entry for administration and research purposes.

EFFECTIVE DATE: This Emergency Access Order is effective immediately through May 7, 2008.

FOR FURTHER INFORMATION CONTACT:

Daryl Albiston, Four Rivers Field Manager, Lower Snake River District Office, 3948 Development Avenue, Boise, Idaho, 83705, (208) 384-3430.

SUPPLEMENTARY INFORMATION:

This emergency closure is being established and administered by the Bureau of Land Management. Authority for this action is found in CFR Title 43, subpart 8360.0-3 and complies with CFR Title 43, subpart 8364.1, Closure and Restriction Orders. Violation of this closure order is in accordance with CFR Title 43, subpart 4150 and CFR Title 43, subpart 8360.0-7 punishable by a fine not to exceed \$1,000 and/or imprisonment not to exceed 12 months. Such violations may also be subject to the enhanced fines provided for by Title 18 U.S.C. 3571.

Mitchell A. Jaurena,

Four Rivers Associate Field Manager.

[FR Doc. 03-23444 Filed 9-12-03; 8:45 am]

BILLING CODE 4310-GG-P

DEPARTMENT OF THE INTERIOR**Bureau of Land Management**

[UT-020-03-2821-HU-Q133]

Emergency Restriction of Public Lands: Tooele County, UT

AGENCY: Bureau of Land Management, Salt Lake Field Office, Utah.

ACTION: Emergency restriction of public land in Tooele County, Utah.

SUMMARY: The Salt Lake Field Office, Bureau of Land Management (BLM) is giving notice that we are temporarily restricting a portion of public land to all motorized vehicle use, from August 6, 2003 to August 6, 2005. The restricted area is within the Fivemile Pass proposed Special Recreation Management Area (SRMA) in Alma Young Canyon and Mitchell Canyon.

The affected public lands include:

T. 6 S., R. 3 W., SLM,
Section 17, SW¹/₂,
Section 19, E¹/₂,
Section 20, W¹/₂,
Section 29, all public lands in the W¹/₂NW¹/₄ north of the Sunshine Canyon Road,

Section 30, all public lands in section north and west of the Sunshine Canyon Road;

T. 6 S., R. 4 W.,

Section 25, all public lands east of that certain bench road running from northwest to southeast in the E¹/₂NE¹/₄.

The restricted area contains 1,280 acres, more or less.

Motorized vehicle use on the above described area will not be allowed during this temporary restriction in order to protect the watershed, allow for successful rehabilitation activities, reestablish native vegetation and prevent the spread of noxious and invasive weed species. BLM will post vehicle restriction signs at main entry points to this area and will fence the mouths of both canyons. You may obtain maps of the restriction area and information from the Salt Lake Field Office.

DATES: This restriction will be in effect from August 6, 2003 until to August 6, 2005. At the end of this period of time, BLM will evaluate the success of the rehabilitation efforts and determine if the restriction should be extended.

FOR FURTHER INFORMATION CONTACT: Britta Laub, Outdoor Recreation Planner, or Michael Nelson, Realty Specialist, 2370 S. 2300 W. Salt Lake City, Utah 84119, (801) 977-4300.

Discussion of the Rules: This restriction to public access and use will serve to protect watershed and

rehabilitation efforts as a result of the Sunshine Canyon Fire incident #Q133, a lightning caused wildfire that began on July 18, 2003 and was controlled on July 21, 2003. The area where the wildfire occurred is within a heavily used OHV (Off Highway Vehicle) area known as the Fivemile Pass proposed Special Recreation Management Area. In order to protect recently burned steep slopes and planned rehabilitation projects until the natural vegetation is able to reestablish, the area must be temporarily restricted to motorized vehicle use.

A map depicting the restricted area is available for public inspection at the Bureau of Land Management, Salt Lake Field Office.

Therefore, we find good cause to make this restriction effective immediately, notwithstanding the notice and comment requirements of the Administrative Procedure Act, 5 U.S.C. 553.

Under the authority of 43 CFR 9268.3(d)(1)(I), 43 CFR 8364.1(a), and 43 CFR 4190.1, BLM will enforce the following rule on public lands within the closed area:

You must not enter the restricted area.

Exemptions: Persons who are exempt from these rules include:

- (1) Any Federal, State, or local officer or employee in the scope of their duties;
- (2) Members of any organized rescue or fire-fighting force in performance of an official duty; and
- (3) Any person authorized in writing by the Bureau of Land Management.

Penalties: The authorities for this restriction are section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a)) and 43 CFR 8360.0-7. Any person who violates this restriction may be tried before a United States Magistrate and fined no more than \$1,000 or imprisoned for no more than 12 months, or both. Such violations may also be subject to the enhanced fines provided for by 18 U.S.C. 3571.

Dated: August 6, 2003.

Glenn A. Carpenter,
Field Office Manager, Salt Lake Field Office.
[FR Doc. 03-23448 Filed 9-12-03; 8:45 am]

BILLING CODE 4310-HC-P

DEPARTMENT OF THE INTERIOR**Bureau of Land Management**

[CO-921-03-1320-EL; COC 67112]

Notice of Invitation for Coal Exploration License Application, Oxbow Mining, LLC., COC 67112; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Invitation for Coal Exploration License Application, Oxbow Mining, LLC.

SUMMARY: Pursuant to the Mineral Leasing Act of February 25, 1920, as amended, and to Title 43, Code of Federal Regulations, subpart 3410, members of the public are hereby invited to participate with Oxbow Mining, LLC, in a program for the exploration of unleased coal deposits owned by the United States of America containing approximately 1,039.52 acres in Gunnison County, Colorado.

DATES: Written Notice of Intent to Participate should be addressed to the attention of the following persons and must be received by them October 15, 2003.

ADDRESSES: Karen Purvis, CO-921, Solid Minerals Staff, Division of Energy, Lands and Minerals, Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215; and, Kenneth Ball, Oxbow Mining, LLC, PO Box 535, 3737 Highway 133, Somerset, Colorado 81434.

SUPPLEMENTARY INFORMATION: The application for coal exploration license is available for public inspection during normal business hours under serial number COC 67112 at the Bureau of Land Management, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215, and at the Uncompahgre Field Office, 2505 South Townsend Avenue, Montrose, Colorado 81401. Any party electing to participate in this program must share all costs on a pro rata basis with Oxbow Mining, LLC, and with any other party or parties who elect to participate.

Dated: August 18, 2003.

Karen Purvis,
Solid Minerals Staff, Division of Energy, Lands and Minerals.
[FR Doc. 03-23450 Filed 9-12-03; 8:45 am]

BILLING CODE 4310-JB-P

DEPARTMENT OF THE INTERIOR**Bureau of Land Management**

[NV-910-03-0777-30]

Call for Nominations for Resource Advisory Council**AGENCY:** Bureau of Land Management, Interior.**ACTION:** Notice of Resource Advisory Council call for nominations.

SUMMARY: The purpose of this notice is to solicit public nominations for a vacant position on the Bureau of Land Management (BLM) Nevada Northeastern Great Basin Resource Advisory Council (RAC). The RAC provides advice and recommendations to BLM on land use planning and management of the public land within northeastern Nevada. Public nominations will be considered until October 30, 2003.

SUPPLEMENTARY INFORMATION: The Federal Land Policy and Management Act (FLPMA) directs the Secretary of the Interior to involve the public in planning and issues related to management of lands administered by BLM. Section 309 of FLPMA directs the Secretary to select 10 to 15 member citizen-based advisory councils that are established and authorized consistent with the requirements of the Federal Advisory Committee Act (FACA). As required by the FACA, RAC membership must be balanced and representative of the various interests concerned with the management of the public lands. The vacant position for the Northeastern Great Basin RAC is Category Two representing recreation interest groups.

Individuals may nominate themselves or others. Nominees must be residents of Nevada. Nominees will be evaluated based on their education, training, experience, and their knowledge of northeastern Nevada. Nominees should have demonstrated a commitment to collaborative resource decision-making. Letters of reference must accompany all nominations from represented interests or organizations, a completed background information nomination form, as well as any other information that speaks to the nominee's qualifications.

Simultaneous with this notice, BLM's Elko Field Office will issue a press release providing additional information for submitting nominations.

Nominations should be sent to Helen Hankins, BLM Elko Field Office, 3900 East Idaho Street, Elko, NV 89801; (775) 753-0200.

DATES: The BLM Elko Field Office should receive all nominations by October 30, 2003.

FOR FURTHER INFORMATION CONTACT:

Mike Brown, Public Affairs Officer, Elko Field Office, 3900 E. Idaho Street, Elko, NV 89801. Telephone: (775) 753-0386. E-mail: mbrown@nv.blm.gov.

Dated: August 25, 2003.

Helen M. Hankins,
Field Manager.

[FR Doc. 03-23451 Filed 9-12-03; 8:45 am]

BILLING CODE 4310-HC-P**DEPARTMENT OF THE INTERIOR****Bureau of Land Management**

[OR-027-1220-PG; G 3-0266]

Steens Mountain Advisory Council; Notice of Call for Nominations**AGENCY:** Bureau of Land Management (BLM), Burns District, Interior.**ACTION:** Call for nominations for the Steens Mountain Advisory Council (SMAC).

SUMMARY: BLM is publishing this notice under section 9(a)(2) of the Federal Advisory Committee Act. Pursuant to the Steens Mountain Cooperative Management and Protection Act of 2000 (Pub. L. 106-399), BLM gives notice that the Secretary of the Interior is calling for nominations for one vacating position to the SMAC. This notice requests the public to submit nominations for membership on the SMAC.

Any individual or organization may nominate one or more persons to serve on the SMAC. Individuals may nominate themselves for SMAC membership. Nomination forms may be obtained from the Burns District Office, Bureau of Land Management (see address below). To make a nomination, submit a completed nomination form, letters of reference from the represented interests or organizations, as well as any other information that speaks to the nominee's qualifications, to the Burns District Office. Nominations may be made for the following category of interest:

- A person who participates in what is commonly called dispersed recreation, such as hiking, camping, nature viewing, nature photography, bird watching, horseback riding or trail walking (appointed from nominees submitted by the Oregon State Director of the BLM).

The BLM will forward recommended nominations to the Secretary of the Interior, who has responsibility for making the appointment.

DATES: Nominations should be submitted to the address listed below no later than 30 days after publication of this notice.

FOR FURTHER INFORMATION CONTACT:

Rhonda Karges, Management Support Specialist, Burns District Office, 28910 Hwy 20 West, Hines, Oregon 97738, (541) 573-4433, or Rhonda_Karges@or.blm.gov or from the following Web site <http://www.or.blm.gov/steens> (Pub. L. 106-399 in its entirety can be found on the Steens Web site as previously cited).

SUPPLEMENTARY INFORMATION: The purpose of the SMAC is to advise BLM on the management of the CMPA as described in Title 1 of Public Law 106-399. The member will be a person who, as a result of training and experience, has knowledge or special expertise which qualifies them to provide advice from the category of interest listed above.

Members of the SMAC are appointed for terms of three years. The member of the Dispersed Recreation position has resigned; therefore, the newly-appointed member will complete the existing three-year term. This term will begin upon appointment and will expire August 2005.

Member serves without monetary compensation, but will be reimbursed for travel and per diem expenses at current rates for Government employees. The SMAC shall meet only at the call of the Designated Federal Official, but not less than once per year.

Dated: August 12, 2003.

Karla Bird,

Designated Federal Official, Bureau of Land Management.

[FR Doc. 03-23443 Filed 9-12-03; 8:45 am]

BILLING CODE 4310-33-P**DEPARTMENT OF THE INTERIOR****Bureau of Land Management**

[ID 075 1330 EO]

DEPARTMENT OF AGRICULTURE**Forest Service****Notice of Intent To Prepare an Environmental Impact Statement for the Smoky Canyon Mine, Panels F and G Extension, BLM Pocatello Field Office and Caribou-Targhee National Forest, Caribou County, ID****AGENCY:** Bureau of Land Management, USDI and Forest Service, USDA**ACTION:** Notice of intent to prepare an Environmental Impact Statement (EIS) for the Smoky Canyon Mine and

Reclamation Plan, Panels F and G Extension.

SUMMARY: Notice is hereby given that the Department of the Interior, Bureau of Land Management (BLM), Pocatello Field Office and the Department of Agriculture, Forest Service (FS), Caribou-Targhee National Forest, will jointly prepare an EIS to determine and analyze the effects of a proposed phosphate mine and reclamation plan on people and the environment. BLM will serve as the lead agency. Plans have been developed and submitted for agency review for an extension of open pit mining operations at the J.R. Simplot Company (Simplot) Smoky Canyon Phosphate Mine in Caribou County, Idaho, located approximately 20 miles west of Afton, Wyoming. Simplot has operated existing Smoky Canyon Mine since 1983 and within a few years will complete mining of currently permitted reserves.

Agency Decisions: The BLM Idaho State Director or delegated official will make a decision regarding approval of the proposed mine and reclamation plan and appropriate land use authorizations (including a proposed 520 acre modification to I-27512) on leased lands. Decisions will be based on the EIS and any recommendations the FS may have regarding surface management of leased National Forest System lands. The Caribou-Targhee National Forest Supervisor makes recommendations to the BLM concerning surface management and mitigation on leased lands within the Caribou-Targhee National Forest and makes decisions on mine-related activities which occur off-lease. The Army Corps of Engineers may also make decisions related to permits under Section 404 of the Clean Water Act.

DATES: Written comments concerning the scope of the analysis should be received within 30 days of the date of publication of this notice in the **Federal Register**. A draft EIS is expected to be completed by March of 2005. A final EIS is expected in September of 2005.

Scoping Procedure: The scoping procedure to be used for this EIS will involve: Notification in the **Federal Register**; a mailing to interested and potentially affected individuals, groups, Federal, State and local government entities eliciting comments, issues and concerns; local news releases or newspaper legal notices; and public scoping meetings.

ADDRESSES: Send written comments to: Panels F and G Extension EIS, Bureau of Land Management, Pocatello Field Office, 1111 N. 8th Ave., Pocatello,

Idaho 83201. Email: ID_F_and_G_Panel_EIS@blm.gov.

FOR FURTHER INFORMATION CONTACT:

James Blair, Bureau of Land Management, Pocatello Field Office, 1111 N. 8th Ave., Pocatello, Idaho 83201, phone (208) 478-6384; or Scott Gerwe, Caribou-Targhee National Forest, Soda Springs Ranger District, 410 E. Hooper Ave., Soda Springs, Idaho 83276, phone (208) 547-4356. Information is also available at: http://www.id.blm.gov/offices/pocatello/sim_fg.

SUPPLEMENTARY INFORMATION: The proposed new extension of mining operations in Panels F and G lie within the Caribou-Targhee National Forest on lands administered by the FS and Federal mineral leases administered by the BLM. Mining as proposed would take place on Panel F, including a lease modification (enlargement) of I-27512, and Panel. These existing Federal mineral leases are adjacent to the southwest portion of the existing mine and were previously issued to Simplot by competitive bid in January of 2001 and October of 1950 respectively. Environmental impacts of the proposed mining operations and reasonable alternatives will be analyzed in the EIS. Appropriate mitigation measures will also be formulated.

The proposed mining activities consist of two open pits—Panel F on Federal phosphate lease I-27512 (sometimes referred to as the Manning Creek lease) and Panel G on Federal phosphate lease I-01441 (sometimes referred to as the Deer Creek lease), topsoil stockpiles, mine equipment parking and service areas, access and haul roads, a power line extension from the existing Smoky Canyon loop, permanent external overburden storage areas, and runoff/sediment control facilities. A new haul/access road to transport ore to the existing Smoky Canyon mill is proposed to be constructed from the south end of the existing Panel E approximately 0.7 miles to the proposed Panel F. As operations move south to Panel G, another haul road is proposed to transport ore 7.7 miles from Panel G north to Panel F. Much of these activities are proposed to occur within the FS Sage Creek inventoried roadless area.

As proposed, the existing Smoky Canyon Mine, maintenance, administrative, and milling facilities would continue to be used. However, because G panel lies several miles south of the currently existing maintenance and fuel facilities, Simplot's plans propose mine support facilities at the

new panels including: equipment ready lines, electrical substations, warehouse and storage areas, lunch rooms, repair shops, restrooms, fuel and lubricant storage and dispensing facilities and blasting supplies.

Ore from the new panels would be hauled in trucks over new and existing haul/access roads to the existing Smoky Canyon mill facilities to be concentrated. Ore concentrate from the mill would be transported to the Simplot fertilizer plant in Pocatello, Idaho via the existing slurry pipeline system. Mill tailings would continue to be deposited in the currently approved and permitted tailings disposal facilities located on Simplot property east of the mill.

Initially, overburden generated from Panel F would be trucked to the existing Panel E open pit and used as backfill. Excess waste rock is proposed to be permanently placed in a 35-acre pit overfill fill on-lease. Remaining overburden from Panel F would then be placed as backfill in Panel F as soon as practical. Overburden generated from mining Panel G would be permanently placed in 132 acres of external overburden fills on-lease at Panel G as well as backfill in the Panel G open pit.

Disturbed lands directly resulting from the proposed activities total about 1,325 acres. New pits would disturb approximately 842 acres of which approximately 796 acres would be backfilled and reclaimed. Forty-six acres of highwall and pit bottoms would remain after reclamation is complete. The remaining 23 acres of the Panel E (currently approved and active) open pit would also be backfilled with overburden from Panel F. This pit is currently permitted to be left open. The rest of the disturbed acreage would consist of approximately 307 acres of roads, 167 acres of overburden disposal areas, and 9 acres of runoff management facilities, water monitoring facilities, and topsoil piles. Each would be reclaimed. The FS Sage Creek inventoried roadless area overlaps large portions of the proposed mine and haul road disturbance areas.

Potential impacts to surface resources and water quality include erosion, sediment, and dissolved contaminants such as selenium. Simplot has proposed to implement practices designed to reduce, eliminate, or mitigate these impacts. Suitable topsoil would be salvaged from disturbed areas for use in reclamation. Reclamation of mining disturbances include: removal of facilities and equipment, backfilling pits, regrading slopes, restoring drainages, spreading topsoil, stabilizing surfaces, revegetation, testing and

treatment for remaining hydrocarbon contaminants and environmental monitoring.

Simplot has applied for two lease modifications to expand Federal Phosphate Lease I-27512 for the Panel F operations. They are a smaller 120-acre lease modification on the northern edge of the lease and a larger 400-acre modification on the southern edge of the lease. The proposed northern lease modifications would be included in all action alternatives. The issuance and mining of a southern lease modification would be evaluated as a separate alternative. Environmental impacts of mining operations within the lease modifications will be analyzed in this EIS.

Issues initially identified for the proposed mining of F and G panels include potential effects on: ground water and surface water quantity and quality, wildlife and their habitats; livestock grazing, wetlands and riparian habitat, socio-economics, FS inventoried roadless areas, visual resources, and cumulative effects.

At this early stage, the BLM and FS believe that it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft EISs must structure their participation in the environmental review of the proposal to be meaningful and alerts an agency to reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519,553 (1978). Also, environmental objections that could be raised at the draft EIS stage but are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon v. Hodel*, 803 F. 2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc. v. Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Due to these court rulings, it is very important that those interested in this proposed action participate by the close of the 60-day comment period for the draft EIS. This is necessary so that substantive comments and objections are made available to the BLM and FS at a time when they can meaningfully consider them and respond to them in the final EIS.

Possible Alternatives

The EIS will analyze the Proposed Action with and without issuing a lease modification on the southern margin of Panel F operations, alternative access/haul road alignment to access the Panel G operations and the No Action Alternative. Other alternatives may include: additional access and haul road designs, use of conveyors to transport

ore to the existing mill, revising the layout or sequencing of the proposed mining facilities, different methods for reducing impacts from overburden handling, and; other alternatives that could provide mitigation for impacts.

Tentative EIS Project Schedule

The tentative project schedule is as follows:

- *Begin Public Comment Period:* September 2003.
- *Hold Public Scoping Meetings:* September 2003.
- *Estimated date for Draft EIS:* March 2005.
- *Public Comment Period on Draft EIS:* 60 days from when the Notice of Availability is published in the **Federal Register**.
- *Final EIS Publication:* September 2005.
- *Decision:* October 2005.

Public Scoping Meetings

At least two public scoping meetings will be held. Each will be the open house type. The open houses will include displays explaining the project and provide a forum for commenting on the project. Meetings are currently planned for Pocatello, Idaho and Afton, Wyoming. The dates, times, and locations of the public scoping meetings will be announced in mailings and public notices issued by the BLM or may be obtained from James Blair, Bureau of Land Management, Pocatello Field Office, 1111 N. 8th Ave., Pocatello, Idaho 83201, or http://www.id.blm.gov/offices/pocatello/sim_fg, phone (208) 478-6384.

Public Input Requested

The BLM and FS are seeking information and written comments from Federal, State and local agencies as well as individuals and organizations interested in, or affected by, the Proposed Action or Alternatives. To assist the BLM and FS in identifying issues and concerns related to the Proposed Action or Alternatives, comments for scoping, and later for the Draft EIS, should be as specific as possible.

Dated: August 14, 2003.

Phil Damon,

Manager, Pocatello Field Office, Bureau of Land Management.

Jerry B. Reese,

Forest Supervisor, Caribou-Targhee National Forest.

[FR Doc. 03-23441 Filed 9-12-03; 8:45 am]

BILLING CODE 4310-GG-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV-030-5700-ER; N-76800, N-76897]

Notice of Intent To Prepare an Environmental Impact Statement for the North Valleys Water Projects

AGENCY: Department of the Interior, Bureau of Land Management, Carson City Field Office, Nevada.

ACTION: Notice of Intent to prepare an Environmental Impact Statement (EIS) for the North Valleys Water Projects (Projects) located in Washoe County, Nevada.

SUMMARY: This document provides notice that the Bureau of Land Management (BLM), Carson City Field Office intends to prepare an EIS to address the impacts (direct, indirect, and cumulative) resulting from construction and operation of two separate water supply and transmission projects located in Washoe County, Nevada. Rights-of-way applications were submitted to the BLM from Intermountain Water Supply, LTD and Fish Springs Ranch, LLC for production wells, pump stations, transmission pipelines, terminal water storage tanks and access road rights-of-way.

DATES: This notice initiates the public scoping process. Comments can be submitted in writing to the address listed below and will be accepted throughout the preparation of the Draft EIS. All public meetings will be announced through the local news media, scoping documents, and the BLM Web site at <http://www.nv.blm.gov/carson> at least 15 days prior to the event. Public meetings will be held throughout the EIS scoping and preparation period.

In order to ensure the widest range of public participation and input, presentations will be held, at a minimum, in Reno and Stead, Nevada. Early participation is encouraged and will assist in preparation of the EIS. In addition to the ongoing public scoping process, formal opportunities for public participation will be provided through comment on the draft and final documents.

ADDRESSES: Written comments should be sent to BLM Carson City Field Office, 5665 Morgan Mill Road, Carson City, NV 89701; Fax (775) 885-6147; email address tknutson@nv.blm.gov. Comments, including names and addresses of respondents, will be available for public review at the above address during regular business hours (7:30 am-5 pm), Monday through

Friday, except holidays, and may be published as part of the EIS. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. However, we will not consider anonymous comments. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

FOR FURTHER INFORMATION: Written comments should be sent to BLM Carson City Field Office, 5665 Morgan Mill Road, Carson City, NV 89701; Fax (775) 885-6147; email address tknutson@nv.blm.gov. For additional information, write to the above address or call Terri Knutson (BLM Environmental Planner) at (775) 885-6156 or Ken Nelson (BLM Realty Specialist) at (775) 885-6114.

SUPPLEMENTARY INFORMATION: The BLM Carson City Field Office received separate water supply and transmission rights-of-way applications from the Fish Springs Ranch, LLC and Intermountain Water Supply, LTD, two independent water companies, proposing projects in Washoe County, Nevada. The BLM determined that due to the same timing, geography, and similarity of the types of actions, the two proposals would be analyzed in one EIS, together known as the North Valleys Water Projects. Each company is proposing to construct and operate water supply and transmission projects to meet present and future water demands of the Stead/Silver Lake/Lemmon Valley areas (North Valleys) in Washoe County. The proposed Projects consist of groundwater production wells, pump station(s), transmission pipeline(s) and terminal water storage tank(s) to convey water. The Fish Springs Ranch LLC proposed pipeline (carrying approximately 8000 acre-feet per year) would begin at the Fish Springs Ranch, and proceed south approximately 33 miles to the North Valleys. The Intermountain Water Supply, LTD proposed pipeline (carrying approximately 3500 acre-feet per year) would begin in Dry Valley, proceed east a short distance before tying into the same general route south to the North Valleys, a total of approximately 24 miles.

The EIS will assess the impacts of the two proposed rights-of-way actions and

the No Action alternatives and may consider alternative locations or alignments of the water project facilities, as appropriate. The EIS will address issues brought forth through scoping and will be evaluated by an interdisciplinary team of specialists. Key issues likely to be considered in analyzing each alternative include groundwater hydrology; groundwater quality; threatened and endangered species; cultural resources; land use; and socioeconomic effects of the project. Federal, state, and local agencies and other individuals or organizations who may be interested in or affected by the decisions to be made on the proposed project are invited to participate in the scoping process and, if eligible, may request, or be requested by the BLM, to participate as a cooperating agency.

Dated: July 22, 2003.

John O. Singlaub,

Manager, Carson City Field Office.

[FR Doc. 03-23447 Filed 9-12-03; 8:45 am]

BILLING CODE 4310-HC-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK-930-1310-AG]

Notice of Extension of the Scoping Period for Amending the Northeast National Petroleum Reserve-Alaska Integrated Activity Plan and Environmental Impact Statement, Request for Information, and Call for Nominations and Comments

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of extension of scoping period.

SUMMARY: The Bureau of Land Management (BLM) announces an extension of the scoping period for the Amendment of the Northeast (NE) National Petroleum Reserve-Alaska (NPR-A) Integrated Activity Plan (IAP) and Environmental Impact Statement (EIS).

DATES: Written comments on issues relating to the future land use, planning, and management of the northeast portion of NPR-A must be submitted or postmarked no later than October 31, 2003.

ADDRESSES: Comments on the document should be addressed to: NE NPR-A Amendment Planning Team, Bureau of Land Management, Alaska State Office (930), 222 West 7th Avenue, Anchorage, Alaska 99513-7599.

FOR FURTHER INFORMATION, CONTACT: Curt Wilson, (907) 271-5546;

c1wilson@ak.blm.gov or by mail at 222 W. 7th Avenue, #13, Anchorage, AK 99513-7599 or Craig McCaa (907) 271-2231; craig_mccaa@ak.blm.gov.

SUPPLEMENTARY INFORMATION: The BLM published a Notice of Intent for the Amendment to the NE NPR-AIAP on June 26, 2003 that contained a closing date of September 30 for scoping comments. Since that time the BLM has received requests from the North Slope communities nearest to the planning area that the comment period be extended. This extension responds to those requests. Scoping meetings will be held in Nuiqsut, Atkasuk, Anaktuvuk Pass, Barrow, Anchorage and Fairbanks. Times and locations of the meetings will be advertised locally.

Dated: August 12, 2003.

Peter Ditton,

Acting State Director.

[FR Doc. 03-23446 Filed 9-12-03; 8:45 am]

BILLING CODE 4310-AG-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV-050-1610-DO]

Notice of Intent To Prepare a Resource Management Plan and Associated Environmental Impact Statement for the Sloan Canyon National Conservation Area

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent (NOI) to prepare a Resource Management Plan (RMP) and associated Environmental Impact Statement (EIS) for the Sloan Canyon National Conservation Area.

SUMMARY: Notice is hereby given that the Bureau of Land Management (BLM) intends to prepare an RMP with an associated EIS for the Sloan Canyon National Conservation Area as directed in the Clark County Conservation of Public Land and Natural Resources Act of 2002 (Pub. L. 107-282). The planning area encompasses approximately 48,438 acres of public land within Clark County, Nevada. The Plan will fulfill the needs and obligations set forth by the National Environmental Policy Act (NEPA), the Federal Land Policy and Management Act (FLPMA), Public Law 107-282, and BLM policies. The public scoping process will identify planning issues and develop planning criteria, including evaluation of the existing Resource Management Plan (RMP). The BLM will work collaboratively with interested parties to develop and analyze management alternatives, taking

into account local, regional, and national needs and concerns.

DATES: This notice initiates the public scoping process. Comments and concerns on issues can be submitted in writing to the address listed below and will be most useful if BLM receives them within 30-days. All public meetings will be announced through the local news media, newsletters, and the BLM web site at <http://www.nv.blm.gov/vegas> at least 15 days prior to the event. The minutes and list of attendees for each meeting will be available to the public and open for 30 days to any participant who wishes to clarify the views they expressed.

Public Participation: Public meetings will be held throughout the scoping, plan development, and EIS process. Interested state, local, and tribal governments are invited to participate. Public scoping meetings will be held in Las Vegas, Henderson, and Boulder City, Nevada. An outreach plan, including a public mailing list will be utilized and expanded to achieve the maximum possible early awareness and participation. In addition to the scoping process and on-going public participation plan, a formal opportunity to participate will occur upon publication of the draft RMP/EIS.

ADDRESSES: Written comments should be sent to the BLM, Charles H. Carroll, Las Vegas Field Office, 4701 North Torrey Pines Drive, Las Vegas, Nevada 89130, telephone (702) 515-5291. Documents pertinent to this RMP may be examined at the Las Vegas Field Office at the address listed above.

FOR FURTHER INFORMATION CONTACT: For further information contact Charles H. Carroll, Las Vegas Field Office Environmental Protection Specialist and Team Lead for the BLM at Bureau of Land Management, Las Vegas Field Office, 4701 North Torrey Pines Drive, Las Vegas, Nevada 89130, telephone (702) 515-5291.

SUPPLEMENTARY INFORMATION: The geographic area covered by the plan includes only those lands established as the Sloan Canyon National Conservation Area by Public Law 107-282, which is approximately 48,438 acres. A map is available for review at the Las Vegas Field Office, 4701 North Torrey Pines Drive, Las Vegas, NV 89130.

An interdisciplinary approach will be used to develop the RMP and EIS in order to consider the variety of resource issues and concerns identified. Disciplines involved in the planning process will include specialists with expertise in public outreach, planning/NEPA, cultural resources, paleontology, wilderness management, desert ecology,

special status species, recreation, public interpretation, visual resource management, and urban interface. Other areas of expertise will be added as necessary.

Preliminary issues and management concerns have been identified by BLM personnel, other agencies, and in meetings with individuals and user groups. They represent the BLM's knowledge to date on the existing issues and concerns with current management. The major issue themes that will be addressed in the planning effort include:

1. How will the cultural, natural, and wilderness resources be interpreted for visitors to the planning area and non-visitors who may have an interest in learning more about the resources?
2. How will the cultural, natural, and wilderness resources of the Sloan Canyon NCA and the North McCullough Wilderness Area be preserved for the current and future generations?
3. How will the management of the Sloan Canyon NCA be integrated in a manner that is compatible with the plans and needs of Native American tribes, the City of Henderson, Clark County, and other Local, State, and Federal agencies?
4. How will the Sloan Canyon NCA Resource Management Plan be responsive to continually changing conditions, stemming primarily from an increasing urban interface?
5. How will the Sloan Canyon NCA Resource Management Plan ensure the long-term protection of the area's resources while providing appropriate scientific research opportunities?
6. How will visitors' activities and uses be managed in a manner that preserves the cultural, natural and wilderness resources while providing reasonable access to and enjoyment of the Sloan Canyon NCA?
7. What facilities and infrastructure will be needed to provide visitor services, information, and administration of the Sloan Canyon NCA?

After gathering public comments on what issues the plan should address, the suggested issues will be placed in one of three categories:

1. Issues to be resolved in the plan;
2. Issues resolved through policy or administrative action; or
3. Issues beyond the scope of this plan.

Rationale will be provided in the plan for each issue placed in category two or three. In addition to these major issues, a number of management questions and concerns will be addressed in the plan. The public is encouraged to help identify these questions and concerns during the scoping phase.

Comments, including names and street addresses of respondents, will be available for public review at the Las Vegas Field Office during regular business hours, 7:30 a.m. to 4:30 p.m., Monday through Friday, except holidays, and may be published as part of the EIS. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

Dated: August 15, 2003.

Angie Lara,

Acting Field Manager.

[FR Doc. 03-23440 Filed 9-12-03; 8:45 am]

BILLING CODE 4310-HC-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK-932-5420-EU-L024; AA-085086, AA-085087, AA-085088, & AA-085089]

Notice of Applications for Recordable Disclaimer of Interest for Lands Underlying Eight Rivers and Nine Lakes in Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The State of Alaska has submitted four applications for recordable disclaimer of interest pursuant to section 315 of the Federal Land Policy and Management Act and the regulations contained in 43 CFR part 1864. A recordable disclaimer of interest, if issued, will confirm the United States has no valid interest in the subject lands. This notice is intended to notify the public of the pending applications and the State's grounds supporting it.

DATES: Comments on these pending applications should be submitted by December 15, 2003.

ADDRESSES: Comments should be sent to the Chief, Branch of Lands and Realty, BLM Alaska State Office, 222 West 7th Avenue, No. 13, Anchorage, Alaska 99513-7599.

FOR FURTHER INFORMATION CONTACT: Mike Haskins, Branch of Lands and Realty at 907-271-3351 or visit the

recordable disclaimer of interest Web site at <http://www.ak.blm.gov/ak930/realty/>.

SUPPLEMENTARY INFORMATION: On July 18, 2003, the State of Alaska filed applications for recordable disclaimer of interest for lands underlying eight rivers and nine lakes, aggregating 400 miles in length. The State asserts the rivers and lakes listed below are navigable and under the Equal Footing Doctrine and Submerged Lands Act of 1953, ownership of these submerged lands automatically passed from the United States to the State at the time of statehood in 1959.

The applications are for lands underlying the Tazlina River and Tazlina Lake, Klutina River and Klutina Lake located in the Copper River region, Kvichak River and Lake Iliamna located in Southwest Alaska, and Wood River and the lake and river system, including Aleknagik, Nerka, Little Togiak, Beverley, Kulik, and Mikchalk Lakes, and interconnecting rivers including Wood, Agulowak, Agulukpak, Wind, and Peace Rivers. The Wood River and the lake and river system are located in the Wood-Tikchik State Park in Southwest Alaska. The State did not identify any known adverse claimant or occupant of the affected lands.

A final decision on the merits of the applications will not be made until December 15, 2003. During the 90-day period, interested parties may submit comments on the State's applications, BLM Serial Numbers AA-085086 (Tazlina River and Tazlina Lake), AA-085087 (Klutina River and Klutina Lake), AA-085088 (Kvichak River and Lake Iliamna), and AA-085089 (Wood River and Lakes System).

Comments, including names and street addresses of commenters, will be available for public review at the Alaska State Office (see address above), during regular business hours 7:30 a.m. to 4:30 p.m., Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish to hold your name or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comments. Such requests will be honored to the extent allowed by law. All submissions from organizations or business will be made available for public inspection in their entirety.

Dated: August 18, 2003.

Mike Haskins,

Chief, Branch of Lands and Realty.

[FR Doc. 03-23452 Filed 9-12-03; 8:45 am]

BILLING CODE 4310-JA-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ 020-03-1430-EU; AZA-29606]

Termination of Classification and Opening Order; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: This notice terminates a portion of a Recreation and Public Purposes Act, classification on 40.00 acres, as this classification is no longer needed.

EFFECTIVE DATE: October 15, 2003.

FOR FURTHER INFORMATION CONTACT: Jim Andersen, BLM Phoenix Field Office, 21605 North 7th Avenue, Phoenix, Arizona 85027, 623-580-5500.

SUPPLEMENTARY INFORMATION: A decision was issued on May 22, 1996, which classified the following described public lands as suitable for entry under the Recreation and Public Purposes Act of June 14, 1926, as amended (43 U.S.C. 869 *et seq.*):

Gila and Salt River Meridian, Arizona

T. 14 N., R. 1 W.

Sec 28, NE $\frac{1}{4}$ NE $\frac{1}{4}$.

The Town of Prescott Valley (Town) applied for a lease on these public lands. On September 17, 2002 a decision was issued rejecting the application, because the Town had failed to provide the BLM with an adequate Plan of Development. The Town concurred with the decision because it did not have funding to go forward with the proposal. Federal regulations require that the classification on the lands be terminated and that the lands be once again opened to the public land laws.

The lands were segregated from location and entry under the general land laws, including the mining laws, subject to valid existing rights. Both the classification and the segregation are hereby terminated.

These lands will be opened to operation of the public land laws, including the mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record and the requirements of applicable law October 15, 2003.

Teresa A. Raml,

Field Manager, Phoenix Field Office.

[FR Doc. 03-23439 Filed 9-12-03; 8:45 am]

BILLING CODE 4310-32-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID-076-1430-ES—IDI-32770]

Notice of Realty Action; Recreation and Public Purposes (R&PP) Act Classification; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The following public lands near the community of Bliss, Gooding County, Idaho have been examined and found suitable for classification for lease or conveyance to Hagerman Cemetery Maintenance District, Idaho under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*).

FOR FURTHER INFORMATION CONTACT: David Howell, on (208) 524-7559.

SUPPLEMENTARY INFORMATION: The following public lands near the community of Bliss, Gooding County, Idaho have been examined and found suitable for classification for lease or conveyance to Hagerman Cemetery Maintenance District, Idaho under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The Hagerman Cemetery Maintenance District proposes to use the lands for public cemeteries.

Boise Meridian

T. 4 S., R. 13 E.,

Sec. 32, SENWSW

T. 5 S., R. 12 E.,

Sec. 04, N2SWNWNW, S2NWNWNW

Containing 20 acres more or less.

The lands are not needed for Federal purposes. Lease or conveyance is consistent with current BLM land use planning and would be in the public interest. The lease/patent, when issued, will be subject to the following terms, conditions and reservations:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. A right-of-way for ditches and canals constructed by the authority of the United States.

3. Any other reservations that the authorized officer determines appropriate to ensure public access and proper management of Federal lands and interests therein. Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Upper Snake River District, Shoshone Field Office, and 400 West F Street, Shoshone, Idaho 83352.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws.

Until October 30, 2003, interested persons may submit comments regarding the proposed lease/ conveyance or classification of the lands to the District Manager; Upper Snake River District, 1405 Hollipark Drive, Idaho Falls, Idaho 83401-2100.

Classification Comments: Interested parties may submit comments involving the suitability of the land for a cemetery. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a cemetery.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective November 14, 2003.

Dated: August 11, 2003.

Joe Kraayenbrink,

Acting District Manager.

[FR Doc. 03-23438 Filed 9-12-03; 8:45 am]

BILLING CODE 4310-GG-P

DEPARTMENT OF THE INTERIOR

Bureau Of Land Management

[NV-930-1430-EU; N-59971]

Nye County, Nevada; Notice of Realty: Non-Competitive Sale of Public Lands

AGENCY: Bureau of Land Management.

ACTION: Non-Competitive sale of public lands in Nye County, Nevada.

SUMMARY: The following described lands near Beatty, Nye County, Nevada, have been examined and found suitable for sale utilizing non-competitive sale procedures, at the appraised fair market value of \$42,000:

Mount Diablo Meridian, Nevada,

T. 12 S., R. 47 E., sec. 18,

E $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$,

E $\frac{1}{2}$ W $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$;

Totaling 7.5 acres more or less.

The sale proponent is Fred McMillan of Beatty, Nevada. The purpose of the sale is to resolve unauthorized use and development. Authority for the sale is Section 203 and Section 209 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1701, 1713, 1719).

The above-described lands are hereby classified for disposal in accordance with Section 7 of the Taylor Grazing Act, 43 U.S.C. 315f, Act of June 28, 1934, as amended, and Executive Order 6910. The patent, when issued, will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

And will be subject to the following:

1. Those rights granted to Nye County for the purposes of an access road (Cottonwood Lane) by right-of-way number N-45241.

2. Valid existing rights.

The mineral interests have no known value and will be conveyed simultaneously with the sale of the land. Acceptance of the sale offer will constitute an application for conveyance of the mineral interests. The purchaser will be required to pay a \$50.00 non-refundable filing fee for conveyance of the mineral interests. The purchaser will have 30 days from the date of receiving the sale offer to accept the offer and to submit a deposit of 30 percent of the purchase price, the \$50.00 filing fee for conveyance of mineral interests, and payment for publication costs. The purchaser must remit the remainder of the purchase price within 90 days from the date the sale offer is received. Payments must be by certified check, postal money order, bank draft or cashiers check payable to the U.S. Department of the Interior—BLM. Failure to meet conditions established for this sale will void the sale and any monies received will be forfeited.

DATES: Comments must be submitted by October 30, 2003.

ADDRESS: Bureau of Land Management, Tonopah Field Station, 1553 South Main Street, Post Office Box 911, Tonopah, Nevada 89049.

FOR FURTHER INFORMATION CONTACT: Wendy Seley, Realty Specialist, at the above address or at (775) 482-7800.

SUPPLEMENTARY INFORMATION: This parcel of land located near Beatty,

Nevada, is being offered for sale through non-competitive sale procedures. Non-competitive sale procedures are utilized because the sale will resolve unauthorized use pursuant to Title 43 Code of Federal Regulations § 2711.3-3(a)(5). The land is not required for Federal purposes. The proposed action is consistent with the objectives, goals, and decisions of the Tonopah Resource Management Plan.

Publication of this Notice in the **Federal Register** segregates the subject lands from all appropriations under the public land laws, including the general mining laws, except sale under the Federal Land Policy and Management Act of 1976. The segregation will terminate upon issuance of the patent or June 11, 2004, which ever occurs first.

For a period until October 30, 2003, interested parties may submit comments to the Tonopah Field Station Manager at the above address. Any adverse comments will be reviewed by the State Director, who may sustain, vacate, or modify this realty action and issue a final determination. In the absence of timely filed objections this realty action will become the final determination of the Department of the Interior. The land will not be offered for sale until at least November 14, 2003.

Dated: August 12, 2003.

William S. Fisher,

Assistant Field Manager, Tonopah.

[FR Doc. 03-23442 Filed 9-12-03; 8:45 am]

BILLING CODE 4310-HC-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-070-07-1230-00: 8371]

Notice of Final Supplementary Rules for the BLM-Managed Shoreline of Lake Havasu, the Parker Strip Recreation Area, and the Craggy Wash Area, in Mohave and La Paz Counties, AZ and in San Bernardino County, CA

AGENCY: Lake Havasu Field Office, Bureau of Land Management (BLM), Interior.

SUMMARY: This notice contains Supplementary Rules for the BLM-managed shoreline of Lake Havasu, a manmade lake on the Colorado River located in Arizona and California, including the boat-access campsites; supplementary rules for the Parker Strip Recreation Area, located along the Colorado River downstream from Lake Havasu; and supplementary rules for the Craggy Wash area, located north of the Lake Havasu City Municipal Airport (AZ). These supplementary rules are

part of the implementation of the ongoing management of the Lake Havasu Shoreline Program. The supplementary rules replace existing rules for the Parker Strip Recreation Area and for the Crossroads and Empire Landing Campgrounds. Heavy visitation during the fall, winter and spring makes new supplementary rules for Craggy Wash necessary. The supplementary rules will help reduce conflicts among a wide variety of multiple users.

EFFECTIVE DATE: October 15, 2003.

FOR FURTHER INFORMATION CONTACT:

Mike Henderson, Assistant Field Manager, or Bryan Pittman, Field Staff Law Enforcement Ranger, Bureau of Land Management, Lake Havasu Field Office, 2610 Sweetwater Avenue, Lake Havasu City, Arizona 86406, telephone (928) 505-1200.

SUPPLEMENTARY INFORMATION:

- I. Background
- II. Discussion of Supplementary Rules
- III. Procedural Matters

I. Background

The supplementary rules for the Lake Havasu Shoreline areas are part of the ongoing management of the Lake Havasu Shoreline Program. The program, initiated in 1997, manages the shoreline riparian area. It includes the pre-existing shoreline campsites as Federal fee recreation sites under the authorities described in 36 CFR part 71. The sites had been developed as designated fee sites by the Arizona State Parks Department while these lands were under a lease administered by the Bureau of Land Management. The lease was voluntarily terminated, leaving the sites to return to the jurisdiction of BLM.

The primary purpose of the Lake Havasu Shoreline Program is to provide areas for boating, camping and day use. The recreation sites, designated as camp or day use sites, are in most cases the traditional use areas of boat camping visitors. Arizona State Parks selected designated sites using criteria based on visitor use patterns, availability of shoreline access, and a need to establish sanitation facilities along heavily used shoreline areas. This program was established to accommodate the increasing demand for boat accessible site safety and property, to provide natural resource protection through improved management of the camping use and the riparian area. The designation of fee campsites assures that specific locations are available for such use year after year.

The Parker Strip Recreation Area is a heavily used area that contains campgrounds, day use areas, boat

ramps, picnic areas, concession operated resorts, and a National Backcountry Byway. Authority for the designation of fee campsites is contained in Title 43, Code of Federal Regulations, part 8360, subpart 8365, sections 2 and 2-3. Authority for the payment of fees is in 36 CFR, subpart 71. Authority for including this program in the Fee Demonstration Pilot Program was contained in the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103-66) and the FY 1996 Appropriations Act (Pub. L. 104-134).

The Craggy Wash area is located north of the Lake Havasu City Municipal Airport and east of State Route 95. It is a heavily used dispersed camping area during the cooler part of the year. The area is also frequented by target shooters, off-road vehicle operators, sightseers, bicyclists and hikers. More than 300 people may be present at the same time on frequent occasions.

The Proposed Supplementary Rules for the BLM-Managed Shoreline of Lake Havasu, the Parker Strip Recreation Area, and the Craggy Wash Area, in Mohave and LaPaz Counties, AZ, and San Bernardino County, CA, were published in the **Federal Register** on June 16, 2003. Changes in the proposed rules to the final rules resulted from internal review of comments received from the Arizona Game and Fish Department. These changes related to the distance (one-quarter mile) from occupied recreation sites that firearms may be discharged (Rules 14 and 27); and that except in designated OHV Open areas, vehicles must be operated on existing roads, trails, and washes (Rule 31).

II. Discussion of Supplementary Rules

The final supplementary rules for Lake Havasu Shoreline supercede the Rules for Lake Havasu Shoreline, published on May 21, 1998 (63 FR 27995). The shoreline supplementary rules would apply to the BLM-managed lands located within 1,000 linear feet of the high water mark (450 foot elevation line) of Lake Havasu, located in Mohave and La Paz Counties, Arizona and in San Bernardino County, California.

These rules also apply to the portions of Lake Havasu located within 500 linear feet of designated campsites, day use sites, boat ramps, fishing docks, boat docks and swimming beaches. Included in this are the following currently designated campsites listed generally from North to South:

Bluebird 1, 2
Wren Cove 1,2,3
Mallard Cove 1,2,3,4,5,6
Teal Point 1,2
Widgeon Key 1,2,4

Road Runner 2,3,4
Solitude Cove
Balance Rock Cove
Friendly Island 1,2,3,4
Goose Bay 1,2
Pilot Rock 1,2,3
Steamboat Cove 1,2,3,4
Buzzard Cove
Eagle Cove
Eagle Point
Ewe Camp
Rachel's Camp
Burned Camp
Linda's Camp
Sand Isle 1,2,3,4
Standard Wash 1,2,3,4,5,6
Echo Cove 1,2,3,4
Coyote Cove 1,2
BLM 1,2
Whyte's Retreat 1,2
Rocky Landing 1,2,3,4
Satellite Cove 1,2,3
Hum Hum Cove 1,2
Cove of the Little Foxes
Disneyland 1,2,3,4
Gnat Keys 1,2,3,4
Hi Isle 2,4,5,6,7,8,10,11,12,14,15
Big Horn 1,3,4
Bass Bay 1,2
Larned Landing 1,2,3,4,5
Bill Williams 1,2,3,4,5

The final supplementary rules for the Parker Strip Recreation Area supercede Rules for Parker Strip Recreation Area, published on October 12, 1995 (60 FR 53194), and rules for Empire Landing and Crossroads Campgrounds, published on May 18, 1998 (63 FR 27316). The Parker Strip rules apply to the Parker Strip Recreation Area, which is defined as follows:

Gila and Salt River Meridian, Arizona

T11N, R18W, Sec. 15, 16, 22, 28 and 34.
T10N, R18W, Sec. 5 (W¹/₂, NW¹/₄, SW¹/₄),
Sec. 6, Sec. 7, Lots 1-4, (NE¹/₄, N¹/₂,
SE¹/₄, SW¹/₄, SE¹/₄), Sec. 18 (Lot 1, NW¹/₄,
NE¹/₄).
T10N, R19W, Sec. 12, Sec. 13 (N¹/₂, N¹/₂, N¹/₂,
SW¹/₄, NE¹/₄, NW¹/₄, SE¹/₄, NE¹/₄, N¹/₂,
SE¹/₄, NW¹/₄, SW¹/₄, NW¹/₄, W¹/₂, SW¹/₄),
Sec. 14, 22 and 23. Section 24 (W¹/₂,
NW¹/₄).

San Bernardino Meridian, California

T2N, R27E, all.
T2N, R26E, Sec. 1, 11-15, 21-27 and 34-36.
T1N, R26E, Sec. 2,3, 10 and 11.

The final supplementary rules for Craggy Wash dispersed camping area would be new, made necessary by heavy visitation during the fall, winter and spring. The Craggy Wash area is defined as public lands located with the following legal description.

T14N, R20W, sec. 4 (N¹/₂), sec. 3 (N¹/₂), sec.
2 (N¹/₂).
T15N, R20W, sec. 33, 34, 35, 36.

BLM has developed the shoreline, Parker Strip, and Craggy Wash

supplementary rules to manage continued multiple use of the sites. These rules will be available in the Lake Havasu Field Office and BLM will post them at the sites affected. Most of the shoreline supplementary rules that follow were first published in 1998. We have expanded the area of applicability to include all of the BLM-managed shoreline of Lake Havasu in Arizona and California. The previous supplementary rules applicable to the lake shoreline were limited to the areas in the vicinity of the shoreline campsites. The term "recreation site" includes any developed campsite or day use site or similar recreational development. The supplementary rules that follow also apply to the surface of Lake Havasu located within 500 linear feet of designated campsites. Acts occurring in that portion of the lake have a direct impact on, and connection with, public safety and resource protection of the campsite areas.

III. Procedural Matters

The principal author of these supplementary rules is Bryan Pittman, Field Staff Law Enforcement Ranger, BLM Lake Havasu Field Office.

Regulatory Planning and Review (E.O. 12866)

These supplementary rules are not significant and are not subject to review by the Office of Management and Budget under Executive Order 12866.

(1) These supplementary rules will not have an effect of \$100 million or more on the economy. They will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities.

(2) These supplementary rules will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

(3) These supplementary rules do not alter the budgetary effects or entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

(4) These supplementary rules do not raise novel legal or policy issues.

The supplementary rules will not affect legal commercial activity, but merely contain rules of conduct for public use of a limited selection of public lands.

Regulatory Flexibility Act

The Department of the Interior certifies that these supplementary rules will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility

Act (5 U.S.C. 601 *et seq.*). The supplementary rules will not affect legal commercial activity, but will govern conduct for public use of a limited selection of public lands.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

These supplementary rules do not constitute a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. These supplementary rules:

Do not have an annual effect on the economy of \$100 million or more. (*See the discussion under Regulatory Planning and Review, above.*)

Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. *See the discussion above under Regulatory Flexibility Act.*

Do not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

These supplementary rules do not impose an unfunded mandate on state, local, or tribal governments or the private sector of more than \$100 million per year. The supplementary rules do not have a significant or unique effect on state, local, or tribal governments or the private sector. The supplementary rules have no effect on governmental or tribal entities. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Takings (E.O. 12630)

In accordance with Executive Order 12630, the supplementary rules do not have significant takings implications. The enforcement provision in the supplementary rules does not include any language requiring or authorizing forfeiture of personal property or any property rights. E.O. 12630 addresses concerns based on the Fifth Amendment dealing with private property taken for public use without compensation. The land covered by the supplementary rules is public land managed by the Bureau of Land Management; therefore no private property is affected. A takings implications assessment is not required.

Federalism (E.O. 13132)

In accordance with Executive Order 13132, BLM finds that the supplementary rules do not have sufficient federalism implications to warrant the preparation of a federalism

summary impact statement. The supplementary rules do not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. The supplementary rules do not preempt state law.

Civil Justice Reform (E.O. 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that these supplementary rules do not unduly burden the judicial system and meet the requirements of sections 3(a) and 3(b)(2) of the Order.

Consultation and Coordination With Indian Tribal Governments (E.O. 13175)

In accordance with Executive Order 13175, we have found that this final rule would not include policies that have tribal implications. The supplementary rules would not affect lands held for the benefit of Indians, Aleuts, or Eskimos.

Paperwork Reduction Act

These supplementary rules do not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

These supplementary rules do not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 is not required.

Under the authority of 43 U.S.C. 1733a and 43 CFR 8360.0-7, BLM establishes the following supplementary rules.

Dated: August 4, 2003.

Elaine Y. Zielinski,

State Director, Bureau of Land Management, Arizona.

Supplementary Rules for Lake Havasu Shoreline Area

1. You must purchase a permit in order to use a designated recreation site, including occupying a site for any use exceeding 20 minutes.

2. You must not moor any watercraft or floating platform at a recreation site or offshore in the vicinity or cove of any such site for more than 20 minutes without purchasing a permit. The fee for a use permit will be in accordance with the fee schedule, requirements, and procedures that BLM established under the Recreation Fee Demonstration Pilot

Program, and are payable in U.S. funds only.

3. You must present the appropriate use permit upon demand to any authorized BLM official inspecting the site. If you are away from the campsite, the permit must be visibly displayed in accordance with posted instructions, or in the manner directed by a BLM official.

4. You must not reassign or transfer your permit to another individual or group and/or campsite(s).

5. Any authorized BLM official may revoke your permit, without reimbursement, if you violate any BLM rule or regulation. If BLM revokes your permit, you must remove all personal property and leave the recreation site within one hour of notice.

6. A recreation site is considered occupied after you have paid the appropriate permit fee, you have taken possession of the site by placing personal property at the site, and the permit is displayed in accordance with written instructions or as directed by a BLM official. You must not occupy a site in violation of instructions from a BLM official, or when there is reason to believe that the unit is properly occupied by another person or persons.

7. Except for authorized Federal, state or local personnel, during the commission of their duties, a permitted site cannot be occupied by other visitors without the consent of the permittee.

8. You must not occupy a site designated as "day use" between sunset and sunrise.

9. A single vessel and its occupants may not occupy more than one site.

10. During the hours of 10 p.m. to 6 a.m., in accordance with applicable state time zone standards, you must maintain quiet within normal hearing range of the designated recreation sites.

11. You must not cut or collect any firewood, including dead and down wood and all other vegetative material.

12. You must not moor vessels to vegetation, signs, shade ramadas, tables, grills or fire rings, toilets, trash receptacles, or other objects or structures not designed for such use.

13. You must not beach or moor a vessel in excess of posted time limits.

14. You must not discharge or use firearms or projectile weapons inside or within a quarter-mile of any occupied recreation site.

15. You must not discharge or possess any fireworks.

16. You must keep the site free of litter and trash during the period of occupancy. You must remove all personal property, and the site must be clean, upon your departure.

17. You must keep pets on a leash no longer than six (6) feet.

18. You must not leave pets unattended, and you must remove pet waste from the site or dispose of it in available trash receptacles.

19. You must not violate any provisions of boating laws as described in Title 5, Chapter 3, of the Arizona Revised Statutes or in the California Harbors and Navigation Code (as applicable).

20. Possession of alcoholic beverages by a person under the age of 21 years is prohibited.

21. Consumption of alcoholic beverages by a person under the age of 21 years is prohibited in the portions of the affected area that are located within Arizona.

22. You must not possess glass beverage containers on land or in the water. You may possess glass beverage containers only within the confines of a vessel.

23. Reserving recreation sites in any manner, including leaving personal property unattended overnight, is prohibited.

24. Recreation sites used for camping activities must be occupied overnight by the permittee.

25. You must not leave personal property unattended for more than 24 hours. Personal property left unattended beyond such time limit is subject to disposition under the Federal Property and Administration Services Act of 1949, as amended (40 U.S.C. 484(m)).

Supplementary Rules for the Parker Strip Recreation Area

Rules number 1, 3, 4, 5, 6, 7, 8, 15, 16, 20, 21, 23, 24 and 25 of the Lake Havasu Shoreline Supplementary Rules also apply to the Parker Strip Recreation Area. In addition, the following rules apply to the Parker Strip Recreation Area.

26. You must not park or operate vehicles in violation of posted restrictions.

27. Except in designated OHV Open areas, you must operate vehicles only on existing roads, trails, and washes.

28. Vehicles operated between Parker Dam Road and the Colorado River in California must be legal for highway operation. You may operate non-highway legal golf carts in this area only within concession resorts and facilities, and within BLM-managed campgrounds.

29. Within one-half mile of Parker Dam Road, you may camp only in designated campsites.

30. Disorderly conduct is prohibited.

31. You must not discharge or use firearms in California within one mile of

Parker Dam Road. In Arizona, you must not discharge or use firearms within one quarter-mile of any occupied recreation site or residential structure.

32. In BLM-managed campgrounds, no more than 8 persons may occupy a single campsite.

Supplementary Rules for Craggy Wash

From October 1 through April 30 of each year, the following supplementary rules are in effect:

1. You must maintain your campsite free of trash and litter.

2. You must not discharge a firearm for the purpose of target practice or plinking. You may engage in legitimate hunting activities.

3. You must not operate a motor vehicle at a speed greater than 15 mph.

4. You must maintain quiet within hearing range of any other person or camp unit between 10 p.m. and 6 a.m. You must not operate a generator during these hours.

5. You must not collect firewood, including any dead and down wood, or any other vegetative material.

6. You must restrain a pet with a leash not longer than six (6) feet.

7. You must not leave a pet unattended.

8. You must not possess or discharge fireworks.

9. You must not leave personal property unattended for more than 24 hours.

Penalties

The authority for these supplementary rules is provided in 43 CFR 8365.1-6. Persons who violate these rules are subject to arrest, and upon conviction may be fined up to \$100,000 and/or imprisoned for not more than 12 months, as amended by 18 U.S.C. 3571 and 18 U.S.C. 3581.

[FR Doc. 03-23445 Filed 9-12-03; 8:45 am]

BILLING CODE 4310-32-P

DEPARTMENT OF THE INTERIOR

National Park Service

Gauley River National Recreation Area, West Virginia

AGENCY: National Park Service, Interior.

ACTION: Notice of availability of a Plan of Operations for a 30-day public review at Gauley River National Recreation Area, Fayette County, West Virginia.

SUMMARY: The National Park Service (NPS), in accordance with section 9.52(b) of Title 36 of the Code of Federal Regulations has received from Equitable Production Inc., a Plan of Operations for

plugging Flynn Lumber #A1 (API #47-067-00052), from a surface location 4 miles southeast of the village of Swiss, Nicholas County, WV, near a small drainage known as Beech Run, within the Gauley River National Recreation Area.

DATES: The above document is available for public review and comment for a period of 30 days from the publication date of this notice in the **Federal Register**.

ADDRESSES: The Plan of Operations is available for public review and comment in the Office of the Superintendent, Gauley River National Recreation Area, 104 Main Street, Glen Jean, West Virginia. Copies of the Plan of Operations are available, for a duplication fee, from the Superintendent, Gauley River National Recreation Area, P.O. Box 246, Glen Jean, West Virginia 25846.

FOR FURTHER INFORMATION CONTACT: John Perez, Biologist, Gauley River National Recreation Area, P.O. Box 246, Glen Jean, West Virginia 25846, Telephone: 304-465-6537, e-mail at john_perez@nps.gov.

SUPPLEMENTARY INFORMATION: If you wish to submit comments about this document within the 30 days, mail them to the post office address provided above, hand-deliver them to the park at the street address provided above, or electronically file them to the e-mail address provided above. Our practice is to make comments, including names and home addresses of responders, available for public review during regular business hours.

Calvin F. Hite,

Superintendent, Gauley River National Recreation Area.

[FR Doc. 03-23348 Filed 9-12-03; 8:45 am]

BILLING CODE 4312-JW-U

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent To Conduct a Special Resource Study, Environmental Impact Statement, for the Great Falls Historic District, Paterson, New Jersey, and To Hold a Public Scoping Meeting

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of Intent to prepare an Environmental Impact Statement for the Special Resource Study for the Great Falls Historic District in Paterson, New Jersey and to hold a public scoping meeting.

SUMMARY: Under the provisions of the National Environmental Policy Act of 1969, the National Park Service is preparing an Environmental Impact Statement (EIS) for the Special Resource Study (SRS) for the Great Falls Historic District in Paterson, New Jersey. This SRS was authorized in Pub. L. 107-59, including its mandate for conformance with Sec. 8(c) of Pub. L. 91-383. The purpose of an SRS is to determine the degree and kind of federal actions that may be desirable for the management and protection of an area considered to have potential for addition to the National Park System. This is an SRS of the existing Great Falls Historic District, which preserves the history of the beginnings of manufacturing and labor in the United States. All of the elements of the site are located within the City of Paterson, County of Passaic in New Jersey, adjacent to the Passaic River. The study area will include the Great Falls/SUM National Historic Landmark District in the City of Paterson. Additional sites or locations in the City of Paterson area will be considered as may be necessary during the study process.

The place and time of a public scoping meeting in the City of Paterson will be announced by the National Park Service (NPS) and noticed in local newspapers serving the area. Notice of the meeting will also be posted on the project Web site: <http://www.nps.gov/nero/greatfalls>. The NPS does not presently own land or have a direct management role relating to any resources in the City of Paterson. Instead, conservation, interpretation and other activities are managed chiefly by the City of Paterson, but may include partnerships among federal, state, and local governments and private nonprofit organizations.

The SRS/EIS will address a range of alternatives including any potential roles for the NPS in preservation and interpretation of the resources of the study area. Alternatives to be considered include: no action, the potential for congressional designation of all or part of the study area as a unit of the National Park system, and any other appropriate alternative that may arise during the study process.

In summary, the SRS will present findings on five topics:

- National significance of resources;
- Determination of the suitability of the sites for inclusion within the National Park System in comparison to other protected sites with similar resources or themes;
- Determination of feasibility for the NPS to own, manage or participate in

conservation and interpretation in the study area;

- Determination of the need for direct NPS management of the sites,
- Identification of alternatives including, but not limited to, a no action alternative.

The EIS will assess the impacts of the alternatives presented in the SRS. The public scoping meeting will include a discussion of the SRS and the EIS process including ways that the public can be involved in providing and receiving information, and reviewing and commenting upon the draft study and associated draft EIS. The purpose of the meeting is to solicit public input prior to formally undertaking the study.

Everyone interested in this study and the future protection and management of this area is encouraged to attend the public scoping meeting or to contact Patricia Iolavera, National Park Service Community Planner/Project Leader, by letter, e-mail or telephone for further information. A summary of the meeting comments will be posted on the project Web site and distributed in hard copy to anyone requesting it.

FOR FURTHER INFORMATION CONTACT: Patricia Iolavera, AICP: Community Planner/Project Leader, National Park Service, Northeast Region, 200 Chestnut Street, 3rd Floor, Philadelphia, PA 19106-2878, e-mail address: Patricia_Iolavera@nps.gov, Telephone: 215-597-2284.

If you correspond using the Internet, please include your name and home address in your e-mail message. Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Dated: August 11, 2003.

Pat Phelan,

Associate Regional Director, Northeast Region, National Park Service.

[FR Doc. 03-23347 Filed 9-12-03; 8:45 am]

BILLING CODE 4310-25-P

DEPARTMENT OF THE INTERIOR

National Park Service

Chesapeake and Ohio Canal National Historical Park Advisory Commission; Notice of Public Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Chesapeake and Ohio Canal National Historical Park Advisory Commission is scheduled for Friday, October 17, 2003, at park headquarters, 1850 Dual Highway, Suite 100, Hagerstown, Maryland. The meeting will begin at 10 a.m.

The Commission was established by Public Law 91-664 to meet and consult with the Secretary of the Interior on general policies and specific matters related to the administration and development of the Chesapeake and Ohio Canal National Historical Park.

The members of the Commission are as follows:

Mrs. Sheila Rabb Weidenfeld, Chairman
Mr. Charles J. Weir
Mr. Barry A. Passett
Mr. Terry W. Hepburn
Ms. Elise B. Heinz
Ms. JoAnn M. Spevacek
Mrs. Mary E. Woodward
Mrs. Donna Printz
Mrs. Ferial S. Bishop
Ms. Nancy C. Long
Mrs. Jo Reynolds
Dr. James H. Gilford
Brother James Kirkpatrick

Topics that will be presented during the meeting will include:

1. Major planning initiatives including the Land Protection Plan.
2. Major construction and development projects.
3. Park operational issues.

The meeting will be open to the public. Any member of the public may file with the Commission a written statement concerning the matters to be discussed. Persons wishing further information concerning this meeting, or who wish to submit written statements, may contact Douglas D. Faris, Superintendent, C&O Canal National Historical Park, 1850 Dual Highway, Suite 100, Hagerstown, Maryland 21740.

Minutes of the meeting will be available for public inspection six (6) weeks after the meeting at park headquarters, Hagerstown, Maryland.

Dated: July 8, 2003.

Doug Faris

Superintendent, C&O Canal National Historical Park.

[FR Doc. 03-23344 Filed 9-12-03; 8:45 am]

BILLING CODE 4310-70-M

DEPARTMENT OF THE INTERIOR

National Park Service

Gettysburg National Military Park Advisory Commission

AGENCY: National Park Service, Interior.

ACTION: Notice of October 16, 2003 meeting.

SUMMARY: This notice sets forth the date of the October 16, 2003 meeting of the Gettysburg National Military Park Advisory Commission.

DATES: The public meeting will be held on October 16, 2003 from 7 p.m. to 9 p.m.

Location: The meeting will be held at the Cyclorama Auditorium, 125 Taneytown Road, Gettysburg, Pennsylvania 17325.

Agenda: The October 16, 2003 meeting will consist of the Subcommittee Reports from the Historical, Executive, and Interpretive Committees; Federal Consistency Reports Within the Gettysburg Battlefield Historic District; Operational Updates on Park Activities which consists of an update on Gettysburg National Battlefield Museum Foundation and National Park Service activities related to the new Visitor Center/Museum Complex, the Gettysburg Borough Interpretive Plan which will consist of updates on the Wills House and the Train Station; Transportation which consists of the National Park Service and the Gettysburg Borough working on the shuttle system; Update on land acquisition within the park boundary or in the historic district; and the Citizens Open Forum where the public can make comments and ask questions on any park activity.

FOR FURTHER INFORMATION CONTACT: John A. Latschar, Superintendent, Gettysburg National Military Park, 97 Taneytown Road, Gettysburg, Pennsylvania 17325.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public. Any member of the public may file with the Commission a written statement concerning agenda items. The statement should be addressed to the Gettysburg National Military Park Advisory Commission, 97 Taneytown Road, Gettysburg, Pennsylvania 17325.

Dated: August 5, 2003.

John A. Latschar,

Superintendent, Gettysburg NMP/Eisenhower NHS.

[FR Doc. 03-23349 Filed 9-12-03; 8:45 am]

BILLING CODE 4310-JT-P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before August 16, 2003. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St. NW., 8th floor, Washington DC 20005; or by fax, 202-371-6447. Written or faxed comments should be submitted by September 30, 2003.

Patrick W. Andrus,

Acting Keeper of the National Register of Historic Places.

ARKANSAS**Benton County**

Craig, Charles R., Building, 113 S. Main St., Bentonville, 03000957
Mt. Hebron M.E. Church South and Cemetery, (Benton County MRA) 1079 Mt. Hebron Rd., Colville, 03000958
Royal Theatre, 111 S. Market St., Benton, 03000955

Crittenden County

Earle High School, Old, Jct. of Ruth St., and High 2nd St. (US 64B), Earle, 03000956

Howard County

Neal, Noel Owen, House, 184 Blue Bayou Rd. S, Nashville, 03000959
Tollette Shop Building, Town Hall Dr., Tollette, 03000953

Jefferson County

Parker Sr., Dr. John Walter, House, 1405 S. Alabama St., Pine Bluff, 03000947

Logan County

Arkansas Highway 22, Old, (Arkansas Highway History and Architecture MPS) Part of AR 197, AR 197 Loop, and Rainwater Loop, New Blaine, 03000950

Lonoke County

Memphis to Little Rock Road—Brownsville Segment, (Cherokee Trail of Tears MPS) Address Restricted, Brownsville, 03000954

Ouachita County

Rumph House, 717 Washington St., Camden, 03000948

Pulaski County

Hotel Freiderica, 625 W. Capitol Ave., Little Rock, 03000951

Washington County

Son's Chapel, 5480 East Mission,
Fayetteville, 03000949

Woodruff County

Revel General Store, (Arkansas Highway
History and Architecture MPS) Jct. of AR
260 and Woodruff Cty Rd. 17, Revel,
03000952

CALIFORNIA**Plumas County**

Ch'ichu'yam-bam, Address Restricted,
Crescent Mills, 03000963

COLORADO**Jackson County**

Hog Park Guard Station, Routt National
Forest, Cowdry, 03000960

Jefferson County

LoDaisKa Site, Address Restricted, Morrison,
03000962

Montezuma County

Wallace Ruin, (Great Pueblo Period of the
McElmo Drainage Unit MPS) Address
Restricted, Cortez, 03000961

INDIANA**Dubois County**

Sturm, Louis H., Hardware Store, 516 Main
St., Jasper, 03000975

Elkhart County

Fowler, Solomon, Mansion, 11505 W. Vistula
St., Bristol, 03000974

Hendricks County

Campbell, Leander, House, 498 E. Broadway
St., Danville, 03000981

Huntington County

Hawley Heights Historic District, Generally
bounded by Oak, MacGahan, Cherry, and
Collins Sts., Huntington, 03000983

Jefferson County

Hoyt, Lyman and Asenath, House, 7147 W.
IN 250, Lancaster, 03000977

Lake County

Griffith E.J. and E. Interlocking Tower, 201 S.
Broad St., Griffith, 03000980
Griffith Grand Trunk Depot, 201 S. Broad St.,
Griffith, 03000985

Marion County

Flanner House Homes, Roughly bounded by
Dr. M.L. King Jr. Dr., 12th St., Fall Creek
Parkway East Dr., and Lynn St.,
Indianapolis, 03000978
Southport High School Old, (Indiana's Public
Common and High Schools MPS) 6548
Orinoco Ave., Indianapolis, 03000982

Marshall County

Beardsley Avenue Historic District, 405 W to
441 E Beardsley Ave., 700 blk N. Riverside;
Island Park, Elkhart, 03000979

Miami County

Westleigh Farms, 2107 S. Frances Slocum
Trail, Peru, 03000976

Orange County

French Lick Springs Hotel, 8670 West IN 56,
French Lick, 03000972

Putnam County

Brick Chapel United Methodist Church, 3547
N US 231, Greencastle, 03000973

Vigo County

Bethany Congregational Church, 201 W.
Miller Ave., West Terre Haute, 03000986

Wayne County

Doddridge Chapel and Cemetery, 9465
Chapel Rd., Centerville, 03000984

MISSOURI**Jackson County**

Holy Name Catholic Church, 2800 E. 23rd
St., Kansas City, 03000964

NEW YORK**Monroe County**

Seneca Park East and West, (Municipal Park
System of Rochester, New York MPS) Saint
Paul Blvd., Maplewood Dr, Lake Ave.,
Rochester, 03000969

NORTH CAROLINA**Craven County**

New Bern Historic District (Boundary
Increase), Roughly 2 blks of N. Craven, blk
on Pasture St, roughly along Bern, West,
Cedar Sts and Trent Court, New Bern,
03000965

Wake County

Poole, Wayland E., House, (Wake County
MPS) NC 2555, 0.2 mi. S of jct. with NC
1004 (4800 Auburn-Knightdale Rd.),
Auburn, 03000967
Young, Dr. Lawrence Branch, House, (Wake
County MPS) 119 W. Young St., Rolesville,
03000966

Warren County

Williams Jr., Solomon and Kate, House, Jct.
of NC 58 and NC 1626, Inez, 03000968

TENNESSEE**Rutherford County**

Henderson, Logan, Farm, (Historic Family
Farms in Middle Tennessee MPS) 3600
Manchester Pike, Murfreesboro, 03000971

TEXAS**Fayette County**

Dubina Historic District, Roughly bounded
by FM 1383 and Cty Rd. 480, Dubina,
03000970
A request for REMOVAL has been made for
the following resources:

ARKANSAS**White County**

First Christian Church (White County MPS)
Jct. Of N. Main and E. Market Sts. Searcy,
91001198

MINNESOTA**Nicollet County**

Bridge No. 6422—Saint Peter (Reinforced-
Concrete Highway Bridges in Minnesota

MPS) MN 99 over Washington Ave. Saint
Peter, 99000933

[FR Doc. 03-23345 Filed 9-12-03; 8:45 am]

BILLING CODE 4312-51-P

**INTERNATIONAL TRADE
COMMISSION**

[Investigation No. TA-421-4]

**Certain Ductile Iron Waterworks
Fittings From China**

AGENCY: United States International
Trade Commission.

ACTION: Institution and scheduling of an
investigation under section 421(b) of the
Trade Act of 1974 (19 U.S.C. 2451(b))
(the Act).

SUMMARY: Following receipt of a
petition, on September 5, 2003, on
behalf of McWane, Inc.,¹ Birmingham,
AL, the Commission instituted
investigation No. TA-421-4, Certain
Ductile Iron Waterworks Fittings from
China, under section 421(b) of the Act
to determine whether certain ductile
iron waterworks fittings² from China
are being imported into the United
States in such increased quantities or
under such conditions as to cause or
threaten to cause market disruption to
the domestic producers of like or
directly competitive products. The
petition also alleges under section 421(i)
of the Act that critical circumstances
exist with respect to the subject
products and requests that provisional
relief be provided. Accordingly, the
Commission will determine whether
delay in taking action would cause
damage to the relevant domestic
industry which would be difficult to
repair, and if that determination is
affirmative, make a preliminary
determination of whether imports of
certain ductile iron waterworks fittings

¹ McWane operates three subsidiaries that
produce the subject products including: Clow Water
Systems Co., Coshocton, OH; Tyler Pipe Co., Tyler,
TX; and Union Foundry Co., Anniston, AL.

² The products subject to this investigation are
cast pipe or tube fittings of ductile iron (containing
2.5 percent carbon and over 0.02 percent
magnesium or magnesium and cerium, by weight)
with mechanical, push-on (rubber compression) or
flanged joints attached. Ductile iron waterworks
fittings are used to join pipes, valves, and hydrants
in straight lines or to change, divert, divide, or
direct the flow of water or sewage in municipal
utility and industrial piping systems. Included
within this definition are fittings of all nominal
diameters and of both full-bodied and compact
designs.

The imported products are provided for in
statistical reporting number 7307.19.3070 of the
Harmonized Tariff Schedule of the United States
(HTS). Although the HTS category is provided for
convenience and Customs purposes, the written
description of the merchandise under investigation
is dispositive.

from China have caused or threaten to cause market disruption.

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 206, subparts A and E (19 CFR part 206).

EFFECTIVE DATE: September 5, 2003.

FOR FURTHER INFORMATION CONTACT: Fred Ruggles (202-205-3187 or fruggles@usitc.gov), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION:

Participation in the investigation and service list.—Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. The Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited disclosure of confidential business information (CBI) under an administrative protective order (APO) and CBI service list.—Pursuant to section 206.47 of the Commission's rules, the Secretary will make CBI gathered in this investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive CBI under the APO.

Service of the petition.—The Secretary shall promptly notify a petitioner when, before the establishment of a service list under section 206.17(a)(4) of the

Commission's rules, he or she approves an application under section 206.17(a)(2) pursuant to section 206.47. When practicable, this notification shall be made by facsimile transmission. The petitioner shall then serve a copy of the petition, including all confidential business information, on the approved lead authorized applicants in accordance with section 206.17(f) within two (2) calendar days of the time notification is made by the Secretary.

Upon establishment of the service list, the petitioner shall serve the lead authorized applicants enumerated on the list established by the Secretary pursuant to section 206.17(a)(4) that have not been served pursuant to the preceding paragraph within two (2) calendar days of the establishment of the Secretary's list.

Conference.—The Commission has scheduled a conference in connection with this investigation beginning at 9:30 a.m. on September 26, 2003, at the U.S. International Trade Commission Building. Subjects related to critical circumstances and provisional remedy proposals may be addressed at the conference. Parties wishing to participate in the conference should contact Fred Ruggles (202-205-3187; e-mail: fruggles@usitc.com) not later than September 23, 2003, to arrange for their appearance. Parties in support of the imposition of provisional import relief in this investigation and parties in opposition to the imposition of such relief will each be collectively allocated one hour within which to make an oral presentation at the conference. Oral testimony and written materials to be submitted at the conference are governed by sections 201.6(b)(2) and 201.13(f) of the Commission's rules.

Hearing.—The Commission has also scheduled a hearing in connection with this investigation beginning at 9:30 a.m. on November 6, 2003, at the U.S. International Trade Commission Building. Subjects related to both market disruption or threat thereof and remedy may be addressed at the hearing. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before October 28, 2003. All persons desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on October 30, 2003, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the hearing are governed by sections 201.6(b)(2) and 201.13(f) of the Commission's rules. Parties must submit any request to present a portion of their hearing

testimony *in camera* no later than 7 days prior to the date of the hearing.

Written submissions.—Each party is encouraged to submit briefs to the Commission. The deadline for filing postconference briefs relating to critical circumstances market disruption and/or provisional remedy proposals is October 1, 2003. The deadline for filing prehearing briefs is October 28, 2003, and the deadline for posthearing briefs is November 12, 2003. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the consideration of critical circumstances market disruption and/or provisional import relief on or before October 1, 2003; and a written statement related to the consideration of market disruption or threat thereof and/or remedy on or before November 12, 2003. Parties may submit final comments on market disruption on or before November 26, 2003, and on remedy on or before December 8, 2003. Final comments shall contain no more than ten (10) double spaced and single sided pages of textual material, and shall only concern information disclosed after the filing of posthearing briefs. Comments containing new factual information shall be disregarded. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain CBI must also conform with the requirements of section 201.6 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002).

In accordance with section 201.16(c) of the Commission's rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Remedy.—Parties are reminded that no separate conference or hearing on the issues of provisional remedy or final remedy will be held. Those parties wishing to present arguments on the issues of remedy may do so orally at the conference or hearing; or in their postconference briefs, prehearing briefs, posthearing briefs, or final comments on remedy.

Authority: This investigation is being conducted under the authority of section 421 of the Trade Act of 1974; this notice is

published pursuant to section 206.3 of the Commission's rules.

Issued: September 9, 2003.
By order of the Commission.

Marilyn R. Abbott,
Secretary.

[FR Doc. 03-23420 Filed 9-12-03; 8:45 am]

BILLING CODE 7020-02-P

DEPARTMENT OF LABOR

Office of the Secretary

Privacy Act of 1974; Publication of Amendments to Existing Systems of Records

AGENCY: Office of the Secretary, Labor.
ACTION: Notice of Amendments to Existing Systems of Records.

SUMMARY: The Privacy Act of 1974 requires that each agency publish notice of all proposed and final amendments to the systems of records that it maintains. This document proposes to add two routine uses to an existing system of records, and it makes an administrative amendment to a second system of records.

DATES: Persons wishing to comment on the proposed routine uses to the existing system of records may do so by October 27, 2003.

EFFECTIVE DATE: Unless there is a further notice in the **Federal Register**, these routine uses will become effective on November 10, 2003. The amendment to DOL/CFO-2 is administrative (non-substantive) and therefore will become effective on September 15, 2003.

ADDRESSES: Written comments may be mailed or delivered to Robert A. Shapiro, Associate Solicitor, Division of Legislation and Legal Counsel, 200 Constitution Avenue, NW., Room N-2428, Washington, DC 20210 or by e-Mail to Miller.Miriam@dol.gov.

FOR FURTHER INFORMATION CONTACT: Miriam McD. Miller, Co-Counsel for Administrative Law, Office of the Solicitor, Department of Labor, 200 Constitution Avenue, NW, Room N-2428, Washington, DC 20210, telephone (202) 693-5522.

SUPPLEMENTARY INFORMATION: Pursuant to section three of the Privacy Act of 1974 (5 U.S.C. 552a(e)(4)), hereinafter referred to as the Act, the Department hereby proposes to add two routine uses to an existing system of records, and it makes an administrative amendment to another system of records.

On April 8, 2002, in Volume 67 at Page 16816 of the **Federal Register**, the Department published a notice of 147 systems of records which are

maintained under the Act. On February 6, 2003, in 68 FR 6185, a new system of records was published by the Office of the 21st Century Workforce. That system is entitled DOL/21st CENTURY-1, *Correspondents With the Office of the 21st Century Workforce*.

A. At this time, with respect to DOL/OIG-3, the Office of the Inspector General(OIG) proposes to amend the category for Routine Uses by adding two new paragraphs. The first new paragraph will allow the disclosure of information to the President's Council on Integrity and Efficiency (PCIE) for the purpose of accurate reporting to the President and Congress on the activities of the Inspectors General. The second new paragraph will allow the disclosure of information to members of the PCIE, the Department of Justice, the Federal Bureau of Investigation, or the U.S. Marshals Service, as necessary, for the purpose of investigative qualitative assessment reviews to ensure adequate internal safeguards and management procedures are maintained. This second routine use is needed to enable the OIG to comply with the recently enacted Homeland Security Act of 2002 (Pub. L. 107-296, November 25, 2002). Specifically, subsection 812(a) of that Act requires that memoranda of understanding be entered into so that an external review process be established to ensure that adequate internal safeguards and management procedures exist within each OIG Office that receives authorization under paragraph (2) of section 812 (a), which significantly expands the OIGs' police powers.

B. In a second administrative (nonsubstantive) amendment, with respect to DOL/OCFO-2, the Office of the Chief Financial Officer (CFO), hereby amends the category for Categories of Records in the System by adding three items of information, which are the "financial institution code, the bank account number, and the bank account type". Comment by the public on this addition is not necessary.

General Prefatory Statement

1. In its April 8, 2002 publication, the Department gave notice of twelve paragraphs containing routine uses which apply to all of its systems of records, except for DOL/OASAM-5 and DOL/OASAM-7. These twelve paragraphs were presented in the General Prefatory Statement for that document, and it appeared at Page 16825 of Volume 67 of the **Federal Register**. At this time we are republishing the April 8, 2002 version of the General Prefatory Statement as a convenience to the reader of this

document. This General Prefatory Statement was also republished on February 6, 2003, at 68 FR 6185-6187.

2. This republication shall include the statement that pursuant to the Flexiplace Program, the system location for all systems of records may be temporarily located at alternate worksites, including the employees' homes or at geographically convenient satellite offices for part of the workweek.

The public, the Office of Management and Budget (OMB), and the Congress are invited to submit written comments on the proposed two routine uses. A report on these proposed routine uses, and the amendment to DOL/OCFO-2, has been provided to OMB and to the Congress as required by OMB Circular A-130, Revised, and 5 U.S.C. 552a.

General Prefatory Statement

A. Universal Routine Uses of the Records

The following routine uses of the records apply to and are incorporated by reference into each system of records published below unless the text of a particular notice of a system of records indicates otherwise. These routine uses do not apply to DOL/OASAM-5, Rehabilitation and Counseling File, nor to DOL/OASAM-7, Employee Medical Records.

1. To disclose the records to the Department of Justice when:

The agency or any component thereof; or (b) any employee of the agency in his or her official capacity; or (c) the United States Government, is a party to litigation or has an interest in such litigation, and by careful review, the agency determines that the records are both relevant and necessary to the litigation, and the use of such records by the Department of Justice is for a purpose that is compatible with the purpose for which the agency collected the records.

2. To disclose the records in a proceeding before a court or adjudicative body, when: (a) The agency or any component thereof; or (b) any employee of the agency in his or her official capacity; or (c) any employee of the agency in his or her individual capacity; or (d) the United States Government, is a party to litigation or has an interest in such litigation, and by careful review, the agency determines that the records are both relevant and necessary to the litigation, and that the use of such records is a purpose that is compatible with the purpose for which the agency collected the records.

3. When a record on its face, or in conjunction with other information,

indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto, disclosure may be made to the appropriate agency, whether Federal, foreign, State, local, or tribal, or other public authority responsible for enforcing, investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation, or order issued pursuant thereto, if the agency determines by careful review that the records or information are both relevant and necessary to any enforcement, regulatory, investigative or prosecutive responsibility of the receiving entity, and that the use of such records or information is for a purpose that is compatible with the purposes for which the agency collected the records.

4. To a Member of Congress or to a Congressional staff member in response to an inquiry of the Congressional office made at the written request of the constituent about whom the record is maintained.

5. To the National Archives and Records Administration or to the General Services Administration for records management inspections conducted under 44 U.S.C. 2904 and 2906.

6. To disclose to contractors, employees of contractors, consultants, grantees, and volunteers who have been engaged to assist the agency in the performance of or working on a contract, service, grant, cooperative agreement or other activity or service for the Federal Government.

Note 1. Recipients shall be required to comply with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a; see also 5 U.S.C. 552a(m).

7. To the parent locator service of the Department of Health and Human Services or to other authorized persons defined by Public Law 93—647 the name and current address of an individual for the purpose of locating a parent who is not paying required child support.

8. To any source from which information is requested in the course of a law enforcement or grievance investigation, or in the course of an investigation concerning retention of an employee or other personnel action, the retention of a security clearance, the letting of a contract, the retention of a grant, or the retention of any other benefit, to the extent necessary to identify the individual, inform the source of the purpose(s) of the request,

and identify the type of information requested.

9. To a Federal, State, local, foreign, or tribal or other public authority of the fact that this system of records contains information relevant to the hiring or retention of an employee, the granting or retention of a security clearance, the letting of a contract, a suspension or debarment determination or the issuance or retention of a license, grant, or other benefit.

10. To the Office of Management and Budget during the coordination and clearance process in connection with legislative matters.

11. To the Department of the Treasury, and a debt collection agency with which the United States has contracted for collection services to recover debts owed to the United States.

12. To the news media and the public when (1) the matter under investigation has become public knowledge, (2) the Solicitor of Labor determines that disclosure is necessary to preserve confidence in the integrity of the Department or is necessary to demonstrate the accountability of the Department's officers, employees, or individuals covered by this system, or (3) the Solicitor of Labor determines that there exists a legitimate public interest in the disclosure of the information, except to the extent that the Solicitor of Labor determines in any of these situations that disclosure of specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

B. System Location—Flexiplace Programs

The following paragraph applies to and is incorporated by reference into all of the Department's systems of records under the Privacy Act, within the category entitled, SYSTEM LOCATION:

“Pursuant to the Department of Labor's Flexiplace Programs, copies of records may be temporarily located at alternative worksites, including employees' homes or at geographically convenient satellite offices for part of the workweek. All appropriate safeguards will be taken at these sites.”

I. Publication of a Proposed Amendment

DOL/OIG—3, is proposed to be amended by revising the category of Routine Uses to read as set forth below. For the convenience of the reader, the entire system is being republished in full. The current version of this system is published at 67 FR 16908, April 8, 2002.

DOL/OIG—3

SYSTEM NAME:

Investigative Case Files, Case Development and Intelligence Records.

SECURITY CLASSIFICATION:

Not applicable.

SYSTEM LOCATION:

Office of Inspector General, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210 and in the OIG regional and field offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals or entities known or suspected of being involved in or associated with criminal activity, labor racketeering, or other violation of law or regulation and associates of those individuals.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system of records contains materials related to criminal and civil investigations, intelligence and other background information based on reasonable suspicion of criminal activity; statements and other material from subjects and witnesses; information from government investigatory or law enforcement organizations and projects (federal, state, local or international); investigative notes and reports; summary information for indexing and cross-referencing; other evidence and background materials existing in any form (e.g. audio or video tape, photographs, computer tapes or disks).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. App 3; the Act of March 4, 1913 (37 Stat. 736) 29 U.S.C. 551; Secretary's Order 2—90, dated January 31, 1990 concerning the authorization and organization of the Office of Inspector General at the Department; and the Omnibus Crime Control Act of 1984; and 28 CFR 23.1.

PURPOSE(S):

This system of records is maintained as a repository for: (1) Records created as a result of targeting, surveys and projects for the development of cases and investigations for the Office of Investigations and for the Office of Labor Racketeering; (2) intelligence information concerning individuals identified as potential violators of criminal, labor and labor-related laws and other individuals associated with them; and (3) for other research and analysis to share with other law enforcement organizations if in compliance with 28 CFR 23.1.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A. Referral to federal, state, local and foreign investigative and/or prosecutive authorities. A record from a system of records, which indicates either by itself or in combination with other information within the agency's possession a violation or potential violation of law, whether civil, criminal or regulatory and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, may be disclosed as a routine use, to the appropriate federal, foreign, state or local agency or professional organization charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing or investigating or prosecuting such violation or charged with enforcing or implementing the statute or rule, regulation or order issued pursuant thereto.

B. Introduction to a grand jury. A record from a system of records may be disclosed, as a routine use, to a grand jury agent pursuant either to a federal or state grand jury subpoena or to a prosecution request that such record be released for the purpose of its introduction to a grand jury.

C. Referral to federal, state, local or professional licensing boards. A record from a system of records may be disclosed, as a routine use, to any governmental, professional or licensing authority when such record reflects on qualifications, either moral, educational or vocational, of an individual seeking to be licensed or to maintain a license.

D. Disclosure to contractor, grantee or other indirect recipient of federal funds to allow such entity to effect corrective action in agency's best interest. A record from a system of records may be disclosed, as a routine use, to any direct or indirect recipient of federal funds where such record reflects serious inadequacies with a recipient's personnel, and disclosure of the record is made to permit a recipient to take corrective action beneficial to the Government.

E. Disclosure to any source, either private or governmental, to the extent necessary to solicit information relevant to any investigation, audit or inspection. A record from a system of records may be disclosed, as a routine use, to any source, either private or governmental, to the extent necessary to secure from such source information relevant to and sought in furtherance of an investigation, audit, or evaluation.

F. Disclosure to any domestic or foreign governmental agencies for personnel or other action. A record from a system of records may be disclosed, as a routine use, to a federal, state, local, foreign or international agency, for their use in connection with such entity's assignment, hiring or retention of an individual, issuance of a security clearance, reporting of an investigation of an individual, letting of a contract or issuance of a license, grant or other benefit, to the extent that the information is relevant and necessary to such agency's decision on the matter.

G. Disclosure to a board of contract appeals, GAO or any other entity hearing a contractor protest or dispute. A record from a system of records may be disclosed, as a routine use, to the United States General Accounting Office, to a board of contract appeals, or to the claims court in bid protest cases or contract dispute cases involving procurement.

H. Disclosure to domestic or foreign governmental law enforcement agency in order to obtain information relevant to an OIG or DOL decision. A record from a system of records may be disclosed, as a routine use, to a domestic or foreign governmental agency maintaining civil, criminal or other relevant enforcement information, or other pertinent information, in order to obtain information relevant to an OIG or DOL decision concerning the assignment, hiring, or retention of an individual, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit, or which may be relevant to an OIG or DOL investigation, audit, or evaluation.

I. Disclosure to OMB or DOJ regarding Freedom of Information Act and Privacy Act advice. Information from a system of records may be disclosed, as a routine use, to the Office of Management and Budget or the Department of Justice in order to obtain advice regarding statutory or other requirements under the Freedom of Information Act or Privacy Act.

J. Disclosure pursuant to the receipt of a valid subpoena. A record from a system of records may be disclosed, as a routine use, in response to a facially valid subpoena for the record. Disclosure may also be made when a subpoena or order is signed by a judge from a court of competent jurisdiction.

K. Disclosure to Treasury and DOJ in pursuance of an *ex parte* court order to obtain taxpayer information from the IRS. A record from a system of records may be disclosed, as a routine use, to the Department of Treasury and the Department of Justice when the OIG

seeks an *ex parte* court order to obtain taxpayer information from the Internal Revenue Service.

L. Disclosure to a consumer reporting agency in order to obtain relevant investigatory information. A record from a system of records may be disclosed, as a routine use, to a "consumer reporting agency" as that term is defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) and the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)), for the purposes of obtaining information in the course of an investigation, audit, or evaluation.

M. Disclosure in accordance with computer matching laws, regulations and/or guidelines. A record may be disclosed to a federal, state, or local agency for use in computer matching programs to prevent and detect fraud and abuse in benefit programs administered by those agencies, to support civil and criminal law enforcement activities of those agencies and their components, and to collect debts and overpayments owed to the agencies and their components. This routine use does not provide unrestricted access to records for such law enforcement and related anti-fraud activities; each request for disclosure will be considered in light of the applicable legal and administrative requirements for the performance of a computer matching program or procedure.

N. Disclosure to members of the President's Council on Integrity and Efficiency, for the preparation of reports to the President and Congress on the activities of the Inspectors General.

O. Disclosure to members of the President's Council on Integrity and Efficiency, the Department of Justice, the Federal Bureau of Investigation, or the U.S. Marshals Service, as necessary, for the purpose of conducting qualitative assessment reviews of the investigative operations of the DOL OIG to ensure that adequate internal safeguards and management procedures are maintained.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records are stored on a variety of mediums including paper, magnetic tapes or discs, and/or optical digital data discs.

RETRIEVABILITY:

Retrievable by name of individual subject, other personal identifiers and other non-personal elements.

SAFEGUARDS:

Available on an official need-to-know basis and kept in locked storage when not in use. Offices containing records are restricted to authorized personnel only. Any automated data can only be accessed by a password from an authorized user. Computer terminals with access are away from general staff and housed in locked offices.

RETENTION AND DISPOSAL:

Closed Labor Racketeering case files are retired to the Federal Records Center and retained for 20 years. All other cases are destroyed 10 years after the files are closed. Intelligence information maintained in electronic files are reviewed every 5 years for relevance and importance. Information deemed obsolete or otherwise unreliable is deleted after 5 years. Electronic information for which accuracy of information and reliability of source cannot be confirmed is deleted after 1 year. Electronic information collected for which reliability of source and reasonable suspicion of criminal activity has been confirmed and linked to long term, known organized crime activity can be kept in excess of 5 years. All records are destroyed 20 years after cut off date.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Inspector General for Investigations, OIG/DOL, 200 Constitution Avenue, NW., Washington, DC 20210.

NOTIFICATION PROCEDURE:

Inquiries concerning this system can be directed to: Disclosure Officer, OIG, 200 Constitution Avenue, NW, Washington, DC 20210. Inquiries must comply with the requirements in 29 CFR part 71.

RECORD ACCESS PROCEDURE:

Individuals can request access to any record pertaining to him/her by mailing a request to the Disclosure Officer listed above and in accordance with 29 CFR 71.2.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the Disclosure Officer listed in 29 CFR Part 71. In addition, the request should state clearly and concisely what information is being contested, the reasons for contesting it, and the proposed

amendment sought for the information. See 29 CFR part 71.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Secretary of Labor has promulgated regulations which exempt information contained in this system of records from various provisions of the Privacy Act depending upon the purpose for which the information was gathered and for which it will be used. The various law enforcement purposes and the reasons for the exemptions are as follow:

(a) *Criminal Law Enforcement:* Information compiled for this purpose is exempt from all of the provisions of the Act except the following sections: (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), and (11), and (i). This material is exempt because the disclosure and other requirements of the Act would substantially compromise the efficacy and integrity of OIG operations in a number of ways. Indeed, disclosure of even the existence of these files would be problematic.

Disclosure could enable suspects to take action to prevent detection of criminal activities, conceal evidence, or escape prosecution. Required disclosure of information contained in this system could lead to the intimidation of, or harm to, informants, witnesses and their respective families or OIG personnel and their families.

Disclosure could invade the privacy of individuals other than subjects and disclose their identity when confidentiality was promised to them. Disclosures from these files could interfere with the integrity of other information which would otherwise be privileged, *see, e.g.*, 5 U.S.C. 552(b)(5) and which could interfere with other important law enforcement concerns, *see, e.g.*, 5 U.S.C. 552(b)(7).

The requirement that only relevant and necessary information be included in a criminal investigative file is contrary to good investigative practices which require a full and complete inquiry and exhaustion of all potential sources of information. 5 U.S.C. 552a(e)(1). Similarly, maintaining only those records which are accurate, relevant, timely and complete and which assure fairness in a determination is contrary to established investigative techniques. 5 U.S.C. 552a(e)(5). Requiring investigators to obtain information to the greatest extent practicable directly from the subject individual would be counterproductive to performance of a clandestine criminal investigation. 5 U.S.C. 552a(e)(2). Finally, providing notice to an individual interviewed of the authority

of the interviewer, the purpose to which the information provided may be used, the routine uses of that information and the effect upon the individual should he choose not to provide the information sought could discourage the free flow of information in a criminal law enforcement inquiry. 5 U.S.C. 552a(e)(3).

(b) *Other Law Enforcement:* In accordance with 5 U.S.C. 552a(k)(2), investigatory material compiled for law enforcement purposes (to the extent it is not already exempted by 5 U.S.C. 552a(j)(2)), is exempted from the following provisions of the ACT: (c)(3), (d), (e)(1), (e)(4)(G), (H), (I) and (f). This material is exempt because the disclosure and other requirements of the act could substantially compromise the efficacy and integrity of OIG operations. Disclosure could invade the privacy of other individuals and disclose their identity when they were expressly promised confidentiality.

Disclosure could interfere with the integrity of information which would otherwise be subject to privileges, *see, e.g.*, 5 U.S.C. 552(b)(5), and which could interfere with other important law enforcement concerns. *See, e.g.*, 5 U.S.C. 552(b)(7).

II. Publication of an Amendment

DOL/OCFO-2, *Department of Labor Accounting and Related Systems*, is amended by adding the following words, "financial institution code, bank account number, and bank account type", to the category entitled Categories of Records in the System. The current version of this system appears at 67 FR 16863, April 8, 2002.

Signed at Washington, DC, this 3rd day of September, 2003.

Elaine L. Chao,

Secretary of Labor.

[FR Doc. 03-23403 Filed 9-12-03; 8:45 am]

BILLING CODE 4510-23-P

LEGAL SERVICES CORPORATION**Notice of Intent To Award—Grant Awards for the Provision of Civil Legal Services to Eligible Low-Income Clients Beginning January 1, 2004**

AGENCY: Legal Services Corporation.

ACTION: Announcement of intention to make FY 2004 Competitive Grant Awards.

SUMMARY: The Legal Services Corporation (LSC) hereby announces its intention to award grants and contracts to provide economical and effective delivery of high quality civil legal

services to eligible low-income clients, beginning January 1, 2004.

DATES: All comments and recommendations must be received on or before the close of business on October 15, 2003.

ADDRESS: Legal Services Corporation—Competitive Grants, Legal Services

Corporation; 3333 K Street, NW., Third Floor; Washington, DC 20007.

FOR FURTHER INFORMATION CONTACT: Reginald Haley, Office of Program Performance, (202) 295-1545.

SUPPLEMENTARY INFORMATION: Pursuant to LSC's announcement of funding availability on April 18, 2003 (68 FR

19230), and Grant Renewal applications due on August 11, 2003, LSC intends to award funds to the following organizations to provide civil legal services in the indicated service areas. Amounts are subject to change.

Service area	Applicant name	Grant amount
Alabama:		
AL-1	Legal Services Corporation of Alabama, Inc.	4,586,934
AL-2	Legal Services of North-Central Alabama, Inc.	553,475
AL-3	Legal Services of Metro Birmingham, Inc.	919,879
MAL	Texas Rural Legal Aid, Inc.	29,572
Alaska:		
AK-1	Alaska Legal Services Corporation	668,452
NAK-1	Alaska Legal Services Corporation	486,658
American Samoa:		
AS-1	Uunai Legal Services Clinic	305,089
Arizona:		
AZ-2	DNA-Peoples Legal Services, Inc.	516,782
AZ-3	Community Legal Services, Inc.	3,501,239
AZ-5	Southern Arizona Legal Aid, Inc.	1,688,675
MAZ	Community Legal Services, Inc.	133,441
NAZ-5	DNA-Peoples Legal Services, Inc.	2,348,146
NAZ-6	Southern Arizona Legal Aid, Inc.	573,584
Arkansas:		
AR-6	Legal Aid of Arkansas, Inc.	1,435,222
AR-7	Center for Arkansas Legal Services	2,129,854
MAR	Texas Rural Legal Aid, Inc.	71,039
California:		
CA-1	California Indian Legal Services, Inc.	30,535
CA-2	Greater Bakersfield Legal Assistance, Inc.	848,324
CA-12	Inland Counties Legal Services, Inc.	3,769,285
CA-14	Legal Aid Society of San Diego, Inc.	2,635,806
CA-19	Legal Aid Society of Orange County, Inc.	3,681,511
CA-26	Central California Legal Services	2,654,071
CA-27	Legal Services of Northern California, Inc.	3,279,525
CA-28	Bay Area Legal Aid	3,866,187
CA-29	Legal Aid Foundation of Los Angeles	7,330,091
CA-30	Neighborhood Legal Svcs. of Los Angeles County	4,329,818
CA-31	California Rural Legal Assistance, Inc.	4,326,942
MCA	California Rural Legal Assistance, Inc.	2,372,598
NCA-1	California Indian Legal Services, Inc.	795,016
Colorado:		
CO-6	Colorado Legal Services	3,132,985
MCO	Colorado Legal Services	133,483
NCO-1	Colorado Legal Services	86,419
Connecticut:		
CT-1	Statewide Legal Services of Connecticut, Inc.	2,142,513
NCT-1	Pine Tree Legal Assistance, Inc.	14,088
Delaware:		
DE-1	Legal Services Corporation of Delaware, Inc.	558,813
MDE	Legal Aid Bureau, Inc.	22,314
District of Columbia:		
DC-1	Neighborhood Legal Services Program of DC	910,335
Florida:		
FL-5	Legal Services of Greater Miami, Inc.	3,211,290
FL-13	Legal Services of North Florida, Inc.	1,328,179
FL-14	Three Rivers Legal Services, Inc.	1,613,837
FL-15	Central Florida Legal Services, Inc.	2,785,758
FL-16	Bay Area Legal Services, Inc.	2,363,728
FL-17	Florida Rural Legal Services, Inc.	2,448,473
FL-18	Coast to Coast Legal Aid of South Florida, Inc.	1,673,154
MFL	Florida Rural Legal Services, Inc.	812,347
Georgia:		
GA-1	Atlanta Legal Aid Society, Inc.	2,327,539
GA-2	Georgia Legal Services Program	5,914,583
MGA	Georgia Legal Services Program	352,379
Guam:		
GU-1	Guam Legal Services Corporation	289,246
Hawaii:		
HI-1	Legal Aid Society of Hawaii	1,188,748

Service area	Applicant name	Grant amount
MHI	Legal Aid Society of Hawaii	61,936
NHI-1	Native Hawaiian Legal Corporation	206,129
Idaho:		
ID-1	Idaho Legal Aid Services, Inc.	1,068,500
MID	Idaho Legal Aid Services, Inc.	167,992
NID-1	Idaho Legal Aid Services, Inc.	58,462
Illinois:		
IL-3	Land of Lincoln Legal Assistance Foundation, Inc.	2,495,556
IL-6	Legal Assistance Foundation of Metro. Chicago	5,980,989
IL-7	Prairie State Legal Services, Inc.	2,508,135
MIL	Legal Assistance Foundation of Metro. Chicago	224,358
Indiana:		
IN-5	Indiana Legal Services, Inc.	4,747,833
MIN	Indiana Legal Services, Inc.	102,190
Iowa:		
IA-3	Iowa Legal Aid	2,394,186
MIA	Iowa Legal Aid	33,911
Kansas:		
KS-1	Kansas Legal Services, Inc.	2,270,247
MKS	Kansas Legal Services, Inc.	10,683
Kentucky:		
KY-2	Legal Aid Society	1,143,844
KY-5	Appalachian Research and Defense Fund of KY	1,991,488
KY-9	Cumberland Trace Legal Services, Inc.	1,187,982
KY-10	Legal Aid of the Blue Grass	1,223,597
MKY	Texas Rural Legal Aid, Inc.	38,251
Louisiana:		
LA-1	Capital Area Legal Services Corporation	1,381,598
LA-10	Acadiana Legal Service Corporation	2,004,069
LA-11	Legal Services of North Louisiana, Inc.	1,891,560
LA-12	Southeast Louisiana Legal Services Corporation	2,497,451
MLA	Texas Rural Legal Aid, Inc.	24,749
Maine:		
ME-1	Pine Tree Legal Assistance, Inc.	1,063,399
MMX-1	Pine Tree Legal Assistance, Inc.	112,250
NME-1	Pine Tree Legal Assistance, Inc.	58,000
Maryland:		
MD-1	Legal Aid Bureau, Inc.	3,565,245
MMD	Legal Aid Bureau, Inc.	81,714
Massachusetts:		
MA-1	Volunteer Lawyers Project of the Boston Bar Assoc.	1,635,934
MA-2	South Middlesex Legal Services, Inc.	194,238
MA-3	Legal Services for Cape Cod and Islands, Inc.	229,080
MA-4	Merrimack Valley Legal Services, Inc.	754,434
MA-5	New Center for Legal Advocacy, Inc.	591,269
MA-10	Massachusetts Justice Project, Inc.	1,355,767
Michigan:		
MI-9	Legal Services of Northern Michigan, Inc.	735,345
MI-12	Legal Services of South Central Michigan, Inc.	1,279,155
MI-13	Legal Aid and Defender Association, Inc.	3,893,504
MI-14	Legal Services of Eastern Michigan	1,446,629
MI-15	Western Michigan Legal Services	1,600,045
MMI	Legal Services of South Central Michigan, Inc.	541,005
NMI-1	Michigan Indian Legal Services, Inc.	148,132
Micronesia:		
MP-1	Micronesian Legal Services, Inc.	1,482,449
Minnesota:		
MN-1	Legal Aid Service of Northeastern Minnesota	435,316
MN-2	Judicare of Anoka County, Inc.	102,516
MN-3	Central Minnesota Legal Services, Inc.	1,188,374
MN-4	Legal Services of Northwest Minnesota Corporation	411,185
MN-5	Southern Minnesota Regional Legal Services, Inc.	1,183,004
MMN	Southern Minnesota Regional Legal Services, Inc.	179,823
NMN-1	Anishinabe Legal Services, Inc.	215,049
Mississippi:		
MS-9	North Mississippi Rural Legal Services, Inc.	2,030,565
MS-10	Southeast Mississippi Legal Services Corporation	2,977,787
NMS-1	Southeast Mississippi Legal Services Corporation	74,802
MMS	Texas Rural Legal Aid, Inc.	51,294
Missouri:		
MO-3	Legal Aid of Western Missouri	1,692,000
MO-4	Legal Services of Eastern Missouri, Inc.	1,819,872
MO-5	Mid-Missouri Legal Services Corporation	358,791
MO-7	Legal Services of Southern Missouri	1,626,256

Service area	Applicant name	Grant amount
MMO	Legal Aid of Western Missouri	73,218
Montana:		
MT-1	Montana Legal Services Association	1,033,488
MMT	Montana Legal Services Association	49,058
NMT-1	Montana Legal Services Association	143,282
Nebraska:		
NE-4	Nebraska Legal Services	1,383,524
MNE	Nebraska Legal Services	38,001
NNE-1	Nebraska Legal Services	29,745
Nevada:		
NV-1	Nevada Legal Services, Inc.	1,707,713
MNV	Nevada Legal Services, Inc.	2,261
NNV-1	Nevada Legal Services, Inc.	119,658
New Hampshire:		
NH-1	Legal Advice & Referral Center, Inc.	643,927
New Jersey:		
NJ-8	Essex-Newark Legal Services Project, Inc.	977,067
NJ-12	Ocean-Monmouth Legal Services, Inc.	598,452
NJ-15	Legal Services of Northwest New Jersey	353,077
NJ-16	South Jersey Legal Services	1,201,974
NJ-17	Central New Jersey Legal Services	981,100
NJ-18	Northeast New Jersey Legal Services Corporation	1,596,611
MNJ	South Jersey Legal Services	108,451
New Mexico:		
NM-1	DNA-Peoples Legal Services, Inc.	207,456
NM-5	New Mexico Legal Aid	2,461,013
MNM	New Mexico Legal Aid	78,496
NNM-2	DNA-Peoples Legal Services, Inc.	20,444
NNM-4	New Mexico Legal Aid	418,110
New York:		
NY-7	Nassau/Suffolk Law Services Committee, Inc.	1,250,160
NY-9	Legal Services for New York City	13,723,509
NY-20	Westchester/Putnam Legal Services, Inc.	1,608,100
NY-21	Legal Aid Society of Northeastern New York, Inc.	1,227,241
NY-22	Legal Aid Society of Mid-New York, Inc.	1,593,466
NY-23	Monroe County Legal Assistance Corporation	1,578,523
NY-24	Neighborhood Legal Services, Inc.	1,257,698
MNY	Legal Aid Society of Mid-New York, Inc.	248,783
North Carolina:		
NC-5	Legal Aid of North Carolina, Inc.	7,488,231
MNC	Legal Aid of North Carolina, Inc.	481,704
NNC-1	Legal Aid of North Carolina, Inc.	196,391
North Dakota:		
ND-3	Legal Assistance of North Dakota, Inc.	590,476
MND	Southern Minnesota Regional Legal Services, Inc.	104,177
NND-3	Legal Assistance of North Dakota, Inc.	242,398
Ohio:		
OH-5	The Legal Aid Society of Columbus	1,187,263
OH-17	Ohio State Legal Services	1,735,703
OH-18	Legal Aid Society of Greater Cincinnati	1,342,879
OH-19	Legal Services of Northwest Ohio, Inc.	1,357,472
OH-20	Community Legal Aid Services, Inc.	1,862,159
OH-21	The Legal Aid Society of Cleveland	2,052,947
OH-22	Legal Services of Northwest Ohio, Inc.	1,057,050
MOH	Legal Services of Northwest Ohio, Inc.	113,214
Oklahoma:		
OK-3	Legal Aid Services of Oklahoma, Inc.	4,229,817
MOK	Legal Aid Services of Oklahoma, Inc.	56,241
NOK-1	Oklahoma Indian Legal Services, Inc.	736,795
Oregon:		
OR-2	Lane County Legal Aid Service, Inc.	319,790
OR-4	Marion-Polk Legal Aid Service, Inc.	315,217
OR-5	Legal Aid Services of Oregon	2,096,165
MOR	Legal Aid Services of Oregon	500,643
NOR-1	Legal Aid Services of Oregon	166,115
Pennsylvania:		
PA-1	Philadelphia Legal Assistance Center	2,758,464
PA-5	Laurel Legal Services, Inc.	773,633
PA-8	Neighborhood Legal Services Association	1,625,007
PA-11	Southwestern Pennsylvania Legal Services, Inc.	573,924
PA-23	Legal Aid of Southeastern Pennsylvania	1,012,891
PA-24	North Penn Legal Services, Inc.	1,615,791
PA-25	MidPenn Legal Services, Inc.	1,976,732
PA-26	Northwestern Legal Services	710,221

Service area	Applicant name	Grant amount
MPA	Philadelphia Legal Assistance Center	148,962
Puerto Rico:		
PR-1	Puerto Rico Legal Services, Inc.	16,044,957
PR-2	Community Law Office, Inc.	319,868
MPR	Puerto Rico Legal Services, Inc.	261,311
Rhode Island:		
RI-1	Rhode Island Legal Services, Inc.	1,000,596
South Carolina:		
SC-8	The South Carolina Centers for Equal Justice	4,376,965
MSC	The South Carolina Centers for Equal Justice	177,777
South Dakota:		
SD-2	East River Legal Services	410,118
SD-4	Dakota Plains Legal Services, Inc.	453,277
MSD	Dakota Plains Legal Services, Inc.	3,567
NSD-1	Dakota Plains Legal Services, Inc.	840,201
Tennessee:		
TN-4	Memphis Area Legal Services, Inc.	1,360,682
TN-7	West Tennessee Legal Services, Inc.	641,435
TN-9	Legal Aid of East Tennessee	1,994,954
TN-10	LAS of Middle Tennessee and the Cumberlands	2,327,075
MTN	Texas Rural Legal Aid, Inc.	57,006
Texas:		
TX-13	Lone Star Legal Aid	8,643,377
TX-14	Legal Aid of NorthWest Texas	6,801,091
TX-15	Texas Rural Legal Aid, Inc.	9,459,304
MTX	Texas Rural Legal Aid, Inc.	1,248,431
NTX-1	Texas Rural Legal Aid, Inc.	28,163
Utah:		
UT-1	Utah Legal Services, Inc.	1,654,356
MUT	Utah Legal Services, Inc.	60,963
NUT-1	Utah Legal Services, Inc.	74,032
Vermont:		
VT-1	Legal Services Law Line of Vermont, Inc.	458,078
Virgin Islands:		
VI-1	Legal Services of the Virgin Islands, Inc.	293,332
Virginia:		
VA-15	Southwest Virginia Legal Aid Society, Inc.	807,192
VA-16	Legal Services of Eastern Virginia, Inc.	1,297,725
VA-17	Virginia Legal Aid Society, Inc.	787,802
VA-18	Central Virginia Legal Aid Society, Inc.	905,056
VA-19	Blue Ridge Legal Services, Inc.	638,573
VA-20	Potomac Legal Aid Society, Inc.	994,376
MVA	Central Virginia Legal Aid Society, Inc.	141,755
Washington:		
WA-1	Northwest Justice Project	4,434,943
MWA	Northwest Justice Project	656,031
NWA-1	Northwest Justice Project	256,341
West Virginia:		
WV-5	Legal Aid of West Virginia, Inc.	2,799,844
MWV	Legal Aid of West Virginia, Inc.	32,855
Wisconsin:		
WI-2	Wisconsin Judicare, Inc.	928,858
WI-5	Legal Action of Wisconsin, Inc.	3,107,131
MWI	Legal Action of Wisconsin, Inc.	81,831
NWI-1	Wisconsin Judicare, Inc.	139,588
Wyoming:		
WY-4	Wyoming Legal Services, Inc.	447,104
MWY	Wyoming Legal Services, Inc.	11,182
NWY-1	Wyoming Legal Services, Inc.	155,499

These grants and contracts will be awarded under the authority conferred on LSC by the Legal Services Corporation Act, as amended (42 U.S.C. 2996e(a)(1)). Awards will be made so that each service area is served, although none of the listed organizations are guaranteed an award or contract. This public notice is issued pursuant to the LSC Act (42 U.S.C.

2996f(f)), with a request for comments and recommendations concerning the potential grantees within a period of thirty (30) days from the date of publication of this notice. Grants will become effective and grant funds will be distributed on or about January 1, 2004.

Dated: September 8, 2003.

Michael A. Genz,

*Director, Office of Program Performance,
Legal Services Corporation.*

[FR Doc. 03-23305 Filed 9-12-03; 8:45 am]

BILLING CODE 7050-01-P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 03-103]

Government-Owned Inventions, Available for Licensing**ACTION:** Notice of availability of inventions for licensing.**SUMMARY:** The inventions listed below are assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.**DATES:** September 15, 2003.**FOR FURTHER INFORMATION CONTACT:** Rob M. Padilla, Patent Counsel, Ames Research Center, Mail Code 202A-4, Moffett Field, CA 94035-1000; telephone (650) 604-5104; fax (650) 604-2767.*NASA Case No. ARC-15040-1:* Sub Auditory Speech Recognition Based On Electromyographic Signals;*NASA Case No. ARC-15088-1:* Provision of Carbon Nanotube Bucky Paper Cages for Immune Shielding of Cells, Tissues, and Medical Devices.

Dated: September 8, 2003.

Robert M. Stephens,*Deputy General Counsel.*

[FR Doc. 03-23490 Filed 9-12-03; 8:45 am]

BILLING CODE 7510-01-P**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

[Notice 03-104]

Government-Owned Inventions, Available for Licensing**ACTION:** Notice of availability of inventions for licensing.**SUMMARY:** The invention listed below is assigned to the National Aeronautics and Space Administration, has been filed in the United States Patent and Trademark Office, and is available for licensing.**DATES:** September 15, 2003.**FOR FURTHER INFORMATION CONTACT:** Diana Cox, Patent Counsel, Goddard Space Flight Center, Mail Code 503, Greenbelt, MD 20771; telephone (301) 286-7351; fax (301) 286-9502.*NASA Case No. GSC-14633-1:* Method and Apparatus for Optical Encoding With Compressible Imaging.

Dated: September 8, 2003.

Robert M. Stephens,*Deputy General Counsel.*

[FR Doc. 03-23491 Filed 9-12-03; 8:45 am]

BILLING CODE 7510-01-P**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

[Notice 03-105]

Government-Owned Inventions, Available for Licensing**ACTION:** Notice of availability of inventions for licensing.**SUMMARY:** The inventions listed below are assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.**DATES:** September 15, 2003.**FOR FURTHER INFORMATION CONTACT:** Randy Heald, Patent Counsel, Kennedy Space Center, Mail Code CC-A, Kennedy Space Flight Center, FL 32899; telephone (321) 867-7214; fax (321) 867-1817.*NASA Case No. KSC-12133:* A Method and System for Decomposing Hydrazine Waste (Combined with KSC-12492);*NASA Case No. KSC-12399:* Contaminant Removal From Natural Resources; *NASA Case No. KSC-12458:* UV Induced Oxidation Of Mitric Oxide.

Dated: September 8, 2003.

Robert M. Stephens,*Deputy General Counsel.*

[FR Doc. 03-23492 Filed 9-12-03; 8:45 am]

BILLING CODE 7510-01-P**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

[Notice 03-106]

Government-Owned Inventions, Available for Licensing**ACTION:** Notice of availability of inventions for licensing.**SUMMARY:** The inventions listed below are assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.**DATES:** September 15, 2003.**FOR FURTHER INFORMATION CONTACT:** Linda Blackburn, Patent Counsel, Langley Research Center, Mail Code 212, Hampton, VA 23681-2199; telephone (757) 864-9260; ax (757) 864-9190.*NASA Case No. LAR-15361-3-CU:* Gas Sensor Detector Balancing;*NASA Case No. LAR-15712-2-CU:* Optical Path Switching Based Differential Absorption Radiometry For Substance Detection;*NASA Case No. LAR-15818-3:* Optical Path Switching Based Differential Absorption Radiometry For Substance Detection;*NASA Case No. LAR-16327-1:* Method For Anticipating Problems With Electrical Wiring;*NASA Case No. LAR-16430-1-NP:* Polyimides From 2,3,3',4'-Biphenyltetracarboxylic Dianhydride And Aromatic Diamines;*NASA Case No. LAR-16576-1:* Marking Electrical Wiring With Condition Indicators.

Dated: September 18, 2003.

Robert M. Stephens,*Deputy General Counsel.*

[FR Doc. 03-23493 Filed 9-12-03; 8:45 am]

BILLING CODE 7510-01-M**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

[Notice 03-107]

Government-Owned Inventions, Available for Licensing**ACTION:** Notice of availability of inventions for licensing.**SUMMARY:** The inventions listed below are assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.**DATES:** September 15, 2003.**FOR FURTHER INFORMATION CONTACT:** James McGroary, Patent Counsel, Marshall Space Flight Center, Code LS01, Huntsville, AL 35812; telephone (256) 544-0013; fax (256) 544-0258.*NASA Case No. MFS-31647-1:* Auto-Adjustable Tool For Self-Retracting And Conventional Friction Stir Welding;*NASA Case No. MFS-31705-1:* Laser Range With Bearing Measurement Output;*NASA Case No. MFS-31887-1:* Cylindrical Asymmetrical Capacitor Devices For Space Applications.

Dated: September 8, 2003.

Robert M. Stephens,*Deputy General Counsel.*

[FR Doc. 03-23494 Filed 9-12-03; 8:45 am]

BILLING CODE 7510-01-P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 03-108]

Government-Owned Inventions, Available for Licensing**ACTION:** Notice of availability of inventions for licensing.**SUMMARY:** The inventions listed below are assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.**DATES:** September 15, 2003.**FOR FURTHER INFORMATION CONTACT:**

Edward Fein, Patent Counsel, Johnson Space Center, Mail Code HA, Houston, TX 77058-3696; telephone (281) 483-4871; fax (281) 244-8452.

NASA Case No. MSC-23303-1: Downlink Data Multiplexer;*NASA Case No. MSC-23326-1:* Inorganic Process For Formation Of Magnetite;*NASA Case No. MSC-23510-1:* Portable Catapult Launcher For Small Aircraft;*NASA Case No. MSC-23538-1:* Practical Active Capacitor Filter;*NASA Case No. MSC-23539-1:* Auto-Routable, Configurable, Daisy Chainable Data Acquisition System;*NASA Case No. MSC-23549-1:* Novel Feed Structure For Antennas.

Dated: September 8, 2003.

Robert M. Stephens,*Deputy General Counsel.*

[FR Doc. 03-23495 Filed 9-12-03; 8:45 am]

BILLING CODE 7510-01-P**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

[Notice 03-109]

Government-Owned Inventions, Available for Licensing**ACTION:** Notice of availability of inventions for licensing.**SUMMARY:** The inventions listed below are assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.**DATES:** September 15, 2003.**FOR FURTHER INFORMATION CONTACT:** Kent

N. Stone, Patent Counsel, Glenn Research Center at Lewis Field, Code 500-118, Cleveland, OH 44135; telephone (216) 433-8855; fax (216) 433-6790.

NASA Case No. LEW-17238-1: Optimization Of Training Sets For Neural-Net Processing Of Characteristic Patterns From Vibrating Solids;*NASA Case No. LEW-17240-1:* Improved Interphase For Ceramic Matrix Composites Reinforced By Non-Oxide Ceramic Fibers;*NASA Case No. LEW-17269-1:* Reverse-Bias Protected Solar Array With Integrated Bypass Battery;*NASA Case No. LEW-17309-1:* Carbon Materials-Metal/Metal Oxide Nanoparticle Composite And Battery Anode;*NASA Case No. LEW-17357-1:* Blanch Resistant And Thermal Barrier NiAl Coating Systems For Advanced Copper Alloys;*NASA Case No. LEW-17383-1:* Charging Of Devices By Microwave Beaming Power;*NASA Case No. LEW-17391-1:* MEMS Closed Chamber Heat Engine And Electric Generator;*NASA Case No. LEW-17435-1:* Light Power Beaming System For Charging Consumer Devices.

Dated: September 8, 2003.

Robert M. Stephens,*Deputy General Counsel.*

[FR Doc. 03-23496 Filed 9-12-03; 8:45 am]

BILLING CODE 7510-01-P**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

[Notice 03-110]

Notice of Prospective Patent License**AGENCY:** National Aeronautics and Space Administration.**ACTION:** Notice of prospective patent license.**SUMMARY:** NASA hereby gives notice that Carbon Therapeutics, Inc., of Palo Alto, CA has applied for an exclusive license to practice the invention contained in the pending patent application corresponding to NASA Case Number ARC-15088-1, entitled "Provision of Carbon Nanotube Bucky Paper Cages for Immune Shielding of Cells, Tissues, and Medical Devices," which is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Ames Research Center.**DATES:** Responses to this notice must be received by October 15, 2003.**FOR FURTHER INFORMATION CONTACT:** Robert Padilla, Chief Patent Counsel, NASA Ames Research Center, M/S

202A-4, Moffett Field, CA 94035-1000, 650-604-5104.

Dated: September 8, 2003.

Robert M. Stephens,*Deputy General Counsel.*

[FR Doc. 03-23497 Filed 9-12-03; 8:45 am]

BILLING CODE 7510-01-P**NATIONAL CREDIT UNION ADMINISTRATION****Sunshine Act Meeting****TIME AND DATE:** 10 a.m., Thursday, September 18, 2003.**PLACE:** Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314-3428.**STATUS:** Open.**MATTERS TO BE CONSIDERED:**

1. Requests from two (2) Federal Credit Unions to Convert to Community Charters.

2. Proposed Rule: Part 708a of NCUA's Rules and Regulations, Conversion of Insured Credit Unions to Mutual Savings Banks.

3. Proposed Rule: Sections 701.20 and 741.2 of NCUA's Rules and Regulations, Suretyship and Guaranty; Maximum Borrowing Authority.

4. Final Rule: Parts 723, 702, 704, 712, and 742 of NCUA's Rules and Regulations, Member Business Loans.

RECESS: 11:15 a.m.**TIME AND DATE:** 11:30 a.m., Thursday, September 18, 2003.**PLACE:** Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314-3428.**STATUS:** Closed.**MATTERS TO BE CONSIDERED:**

1. Administrative Action under section 207 of the Federal Credit Union Act. Closed pursuant to Exemptions (8), (9)(A)(ii), and (9)(B).

FOR FURTHER INFORMATION CONTACT:

Becky Baker, Secretary of the Board, Telephone: 703-518-6304.

Becky Baker,*Secretary of the Board.*

[FR Doc. 03-23595 Filed 9-11-03; 8:45 am]

BILLING CODE 7535-01-M**NATIONAL SCIENCE FOUNDATION****Advisory Committee for Engineering; Notice of Meeting**

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended) the National Science Foundation announces the following meeting.

Name and Committee Code: Advisory Committee for Engineering (#1170).

Date and Time: Thursday, October 9, 2003/1–5 p.m. Friday, October 10, 2003/8:30 a.m.–12 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Stafford I, Room 1235.

Type of Meeting: Open.

FOR FURTHER INFORMATION CONTACT:

Deborah B. Young, Administrative Officer, Office of the Assistant Director for Engineering, National Science Foundation, Suite 505, 4201 Wilson Boulevard, Arlington, VA 22230; Telephone: (703) 292–4611. If you are attending the meeting and need access to the NSF building, please contact Maxine Byrd at 703–292–4601 or at mbyrd@nsf.gov so that your name can be added to the building access list.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To provide advice, recommendations, and counsel on major goals and policies pertaining to Engineering programs and activities.

Agenda: The principal focus of the forthcoming meeting will be on strategic issues, both for the Directorate and the Foundation as a whole. The Committee will also address matters relating to the future of the engineering profession, and engineering education.

Dated: September 10, 2003.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 03–23500 Filed 9–12–03; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Polar Programs; Notice of Meeting

In accordance with Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Office of Polar Programs Advisory Committee (1130).

Date/Time: October 2, 2003; 8 a.m. to 5 p.m., October 3, 2003; 8:30 a.m. to 2 p.m.

Place: National Science Foundation, 4201 Wilson Blvd.,—Room: 1235, Arlington, VA.

Type of Meeting: Open.

Contact Person: Brenda Williams, Office of Polar Programs (OPP), National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. (703) 292–8030.

Minutes: May be obtained from the contact person list above.

Purpose of Meeting: To advise NSF on the impact of its policies, programs and activities on the polar research community; to provide advice to the Director of OPP on issues related to long range planning, and to form ad hoc subcommittees to carry out needed studies and tasks.

Agenda: October 2: Staff presentations on programs. Discussion on polar activities (IPY, long range planning). Arctic/Antarctic Sciences Committee of Visitors.

October 3: Continuation of discussion on polar activities and committee of visitors.

Dated: September 9, 2003.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 03–23368 Filed 9–12–03; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection

Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. *Type of submission, new, revision, or extension:* Extension.

2. *The title of the information collection:* NRC Form 790, “Classification Record”.

3. *The form number if applicable:* NRC Form 790.

4. *How often the collection is required:* On occasion.

5. *Who will be required or asked to report:* NRC employees, NRC contractors, NRC licensees, and its only certificate holder who classify NRC information.

6. *An estimate of the number of annual responses:* 600.

7. *The estimated number of annual respondents:* 324.

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* 40.

9. *An indication of whether Section 3507(d), Public Law 104–13 applies:* Not applicable.

10. *Abstract:* Completion of the NRC Form 790 is a mandatory requirement for licensees, contractors, and only certificate holders who classify and declassify NRC information in accordance with Executive Order 12958,

as amended, “Classified National Security Information, “the Atomic Energy Act, and implementing directives.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC Worldwide Web site: <http://www.nrc.gov/public-involve/doc-comment/omb/index.html>. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by October 15, 2003. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

OMB Desk Officer, Office of Information and Regulatory Affairs (3150–0052), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 9th day of September, 2003.

For the Nuclear Regulatory Commission.

Beth C. St. Mary,

Acting NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 03–23400 Filed 9–12–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–35090; License No. 34–24872–02; EA–03–081]

Testmaster Inspection Company, Perrysburg, OH; Order Imposing Civil Monetary Penalty

Testmaster Inspection Company (Licensee) is the holder of Materials License No. 34–24872–02 issued by the Nuclear Regulatory Commission (NRC or Commission) August 31, 1999. The license authorizes the Licensee to perform industrial radiography using NRC-licensed materials (not to exceed 150 curies of iridium-192 and not to exceed 50 curies of cobalt-60), store NRC-licensed materials, and calibrate radiation survey instruments in accordance with the conditions specified therein.

The NRC Office of Investigations (OI) conducted an investigation of the Licensee’s activities from July 8, 2002,

to March 24, 2003. The results of this investigation indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the Licensee by letter dated July 2, 2003. The Notice states the nature of the violation, the provision of the NRC's requirements that the Licensee had violated, and the amount of the civil penalty proposed for the violation.

The Licensee responded to the Notice in a letter dated July 22, 2003. In its response, the Licensee contended the violation may have been based on false information; therefore, the violation may not have occurred. The Licensee also requested full mitigation of the proposed civil penalty.

After consideration of the Licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the NRC staff has determined that the violation occurred as stated and that the penalty proposed for the violation designated in the Notice should be imposed.

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, *it is hereby ordered that:*

The Licensee pay a civil penalty in the amount of \$5,500 within 30 days of the date of this Order, in accordance with NUREG/BR-0254. In addition, at the time of making the payment, the licensee shall submit a statement indicating when and by what method payment was made, to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738.

The Licensee may request a hearing within 30 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, and to the Regional

Administrator, NRC Region III, 801 Warrenville Road, Lisle, IL 60532-4351. Because of continuing disruptions in delivery of mail to United States Government offices, it is requested that requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301-415-1101 or by e-mail to hearingdocket@nrc.gov and also to the Office of the General Counsel either by means of facsimile transmission to 301-415-3725 or by e-mail to OGCMailCenter@nrc.gov.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order (or if written approval of an extension of time in which to request a hearing has not been granted), the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

- (a) Whether the Licensee was in violation of the Commission's requirements as set forth in the Notice referenced in Section II above, and
- (b) Whether, on the basis of such violation, this Order should be sustained.

Dated this 5th day of September, 2003.

For the Nuclear Regulatory Commission.

James G. Luehman,

Deputy Director, Office of Enforcement.

[FR Doc. 03-23399 Filed 9-12-03; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Meeting of the Subcommittee on Reactor Fuels; Notice of Meeting

The ACRS Subcommittee on Reactor Fuels will hold a meeting on September 29-30, 2003, Room T-2B3, 11545 Rockville Pike, Rockville, Maryland.

Portions of the meeting on September 30, 2003 may be closed to public attendance to discuss Electric Power Research Institute (EPRI) proprietary information per 5 U.S.C. 552b(c)(4).

The agenda for the subject meeting shall be as follows:

Monday, September 29, 2003—8:30 a.m. until the conclusion of business

Tuesday, September 30, 2003—8:30 a.m. until the conclusion of business

The purpose of this meeting is to review progress by the Office of Nuclear Regulatory Research in the area of high burnup fuels and other fuel-related research, to understand industry activities associated with the "Robust Fuel Program," and to hear the experience of industry related to crud deposits on reactor fuels. The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff, EPRI, and other interested persons regarding these matters. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Mr. Ralph Caruso (telephone 301-415-8065) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted only during those portions of the meeting that are open to the public.

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 8 a.m. and 5:30 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes to the agenda.

Dated: September 9, 2003.

Sher Bahadur,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 03-23401 Filed 9-12-03; 8:45 am]

BILLING CODE 7590-01-P

OFFICE OF MANAGEMENT AND BUDGET

Proposed Bulletin on Peer Review and Information Quality

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Notice and request for comments.

SUMMARY: OMB requests comments on a proposed bulletin under Executive Order No. 12866 and supplemental information quality guidelines. As part of an ongoing effort to improve the quality, objectivity, utility, and integrity of information disseminated by the Federal Government to the public, the Office of Management and Budget (OMB), in coordination with the Office of Science and Technology Policy

(OSTP), proposes to issue new guidance to realize the benefits of meaningful peer review of the most important science disseminated by the Federal Government regarding regulatory topics. The proposed bulletin would be issued under the authority of Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106-554; H.R. 5658); 44 U.S.C. 3504(d)(1), 3506(a)(1)(B); Executive Order No. 12866, as amended. Part I of the Supplementary Information below provides background and the request for comments. Part II provides the text of the proposed bulletin.

DATES: Interested parties should submit comments to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, at the address shown below on or before December 15, 2003.

ADDRESSES: Due to potential delays in OMB's receipt and processing of mail, respondents are strongly encouraged to submit comments electronically to ensure timely receipt. We cannot guarantee that comments mailed will be received before the comment closing date. Electronic comments may be submitted to:

OMB_peer_review@omb.eop.gov. Please put the full body of your comments in the text of the electronic message and as an attachment. Please include your name, title, organization, postal address, telephone number, and e-mail address in the text of the message. Comments may also be submitted via facsimile to (202) 395-7245. Comments may be mailed to Dr. Margo Schwab, Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., New Executive Office Building, Room 10201, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Dr. Margo Schwab, Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., New Executive Office Building, Room 10201, Washington, DC 20503 (tel. (202) 395-3093).

John D. Graham,

Administrator, Office of Information and Regulatory Affairs.

SUPPLEMENTARY INFORMATION:

Part I—Background and Request for Comment

A “peer review,” as used in this document for scientific and technical information relevant to regulatory policies, is a scientifically rigorous review and critique of a study's methods, results, and findings by others in the field with requisite training and

expertise. Independent, objective peer review has long been regarded as a critical element in ensuring the reliability of scientific analyses. For decades, the American academic and scientific communities have withheld acknowledgement of scientific studies that have not been subject to rigorous independent peer review. Peer review “has been an essential part of the American science scene and one of the reasons why American science has done so well.” Columbia University Provost Jonathon R. Cole (quoted in Abate, Tom, “What's the Verdict on Peer Review?” 21st Century, volume 1 (No. 1), Spring 1995, Columbia University); *see also* GAO Report, Peer Review Practices at Federal Science Agencies Vary, at 1 (March 1999) (“To help ensure the quality and integrity of the research, U.S. science has traditionally relied on independent reviews by peers.”).

Independent peer review is especially important for information that is relevant to regulatory policies. Agencies often develop or fund the science that underlies their regulations, and then oversee the peer review of those studies. Unless the peer review is conducted with genuine independence and objectivity, this can create at least the appearance of a conflict-of-interest. For example, it might be thought that scientists employed or funded by an agency could feel pressured to support what they perceive to be the agency's regulatory position, first in developing the science, and then in peer reviewing it. Scientists with a financial interest in the subject matter of a study (*e.g.*, ties to a regulated business) face a similar issue. Given that genuinely independent and objective peer review can provide a vital second opinion on the science that underlies federal regulation, the peer review of such information should be carried out under proper and clearly-articulated procedures.

Scientists and government officials have recognized the importance of peer review in regulatory processes:

- Joint Presidential/Congressional Commission on Risk Assessment and Risk Management: “Peer review of economic and social science information should have as high a priority as peer review of health, ecological, and engineering information.” Risk Assessment and Risk Management in Regulatory Decision-Making, vol. 2, at 103 (1997).

- The National Academies' National Research Council: “[B]enefit-cost analysis should be subject to systematic, consistent, formal peer review.” Valuing Health Risks, Costs, and Benefits for Environmental Decision Making, at 207 (1990).

- Congress' General Accounting Office: “Peer review is critical for improving the quality of scientific and technical products * * *” GAO Testimony Before the House Subcommittee on Energy and Environment, Committee on Science, at 8 (Mar. 11, 1997).

- Sally Katzen, Former Administrator of OIRA: Scientific inferences “should pass muster under peer review by those in the same discipline, who should have an opportunity for such review to ensure that the underlying work was done competently and that any assumptions made are reasonable.” Testimony Before the Environment, Energy, and Natural Resources Subcommittee of the House Committee on Government Operations (Feb. 1, 1994).

In addition, many bipartisan legislative proposals have supported independent, external peer review. See, *e.g.*, S. 343, the “Comprehensive Regulatory Reform Act of 1995;” S. 1001, the “Regulatory Procedures Reform Act of 1995;” S. 291, the “Regulatory Reform Act of 1995;” H.R. 1022, the “Risk Assessment and Cost-Benefit Act of 1995.” In 1999, for instance, a bipartisan coalition (including Senators Frist and Daschle, among many others) proposed to require agencies to conduct genuinely independent and transparent peer reviews of their most important risk assessments and cost-benefit analyses. See S. 746, the “Regulatory Improvement Act of 1999.”¹

Existing agency peer review mechanisms have not always been sufficient to ensure the reliability of regulatory information disseminated or relied upon by federal agencies. While most agencies have policies that require or encourage peer review, they do not always conduct peer review according to their own policies—even for major rulemakings. Indeed, an agency Inspector General recently found that although one agency had issued extensive agency peer review policies and mandates, “[t]he critical science supporting the [agency's] rules was often not independently peer reviewed. Consequently, the quality of some science remains unknown.” EPA OIG, Science to Support Rulemaking, at ii (Nov. 15, 2002) (emphasis supplied).

Even when agencies do conduct timely peer reviews, such reviews are sometimes undertaken by people who

¹ This legislative proposal was sponsored by a bipartisan coalition of 21 Senators, including Senators Levin, Thompson, Daschle, Frist, Moynihan, Voinovich, Stevens, Rockefeller, Abraham, Breaux, Roth, Robb, Cochran, Lincoln, and Enzi.

are not independent of the agencies, or are not perceived to be independent. Simply put, the agency proposing or supporting a regulation or study may not always be the best entity to commission or supervise its own peer review. Nonetheless, some agencies sometimes use their own employees to do peer reviews—a practice forbidden by other agencies' peer review manuals. See, e.g., Agency for Toxic Substances & Disease Registry Peer Review Policy (Mar. 1, 1996) (peer review is "by outside (not ATSDR) expert scientists"); DOJ, Office of Juvenile Justice & Delinquency Prevention, Peer Review Guideline at 1 ("Peer review is * * * by experts from outside the Department"). As the National Academies' National Research Council has explained:

External experts often can be more open, frank, and challenging to the status quo than internal reviewers, who may feel constrained by organizational concerns. Evaluation by external reviewers thus can enhance the credibility of the peer review process by avoiding both the reality and the appearance of conflict of interest.

Peer Review in Environmental Technology Development Programs: The Department of Energy's Office of Science and Technology 3 (1998) ("NRC Report").

The American Geophysical Union has likewise recognized that "real or perceived conflicts of interest" include the review of papers "from those in the same institution." AGU, Guidelines to Publication of Geophysical Research (Oct. 2000). Congress did the same in the Superfund legislation by providing that reviewers should not have "institutional ties with any person involved in the conduct of the study or research under review." 42 U.S.C. 9604(i)(13).

When an agency does initiate a program to select outside peer reviewers for regulatory science, it sometimes selects the same reviewers for all or nearly all of its peer reviews on a particular topic. While this may be appropriate in limited circumstances, more often it could lead an observer to conclude that the agency continually selected the peer reviewers because of its comfort with them. This hardly satisfies the purposes and principles underlying independent peer review. Thus, the National Academies' National Research Council has stressed that even "standing panels should have rotating membership terms to ensure that fresh perspectives are regularly replenished." NRC, Scientific Research in Education 138.

It is also important to understand the relationship of the peer reviewers with the agency, including their funding

history. A peer reviewer who is financially dependent on the agency, or at least hopes to profit financially from other dealings with the agency, may not always be completely independent, or appear truly independent. One agency's Inspector General has encouraged the agency to do a better job of "consistently inquir[ing] whether peer review candidates have any financial relationship with [the agency]." EPA OIG Report No. 1999-P-217, at 10 (1999). Medical journals have similarly recognized the possibility that the receipt of significant funding from an interested entity can lead to bias, or the perception of bias, on the part of a reviewer. See "Financial Associations of Authors," *New England Journal of Medicine*, vol. 346, 1901-02 (2002); Philip Campbell, "Declaration of Financial Interests," *Nature*, vol. 412, 751 (2001). But while some federal agencies are becoming more sensitive to peer reviewers' financial ties to private interests, most have not been as focused on reviewers' ties to the agency itself. See, e.g., Food & Drug Administration Guidance on Conflict of Interest for Advisory Committee Members, Consultants & Experts (Feb. 2000); National Institutes of Health Center for Scientific Review, Review Procedures for Scientific Review Group Meetings (Oct. 24, 2002).

In addition to selecting independent and qualified peer reviewers for regulatory science, it is also essential to grant the peer reviewers access to sufficient information and to provide them with an appropriately broad mandate. In the past, some agencies have sought peer review of only narrow questions regarding a particular study or issue. While the scope of peer reviewers' responsibilities will necessarily vary by context, peer reviewers must generally be able to render a meaningful review of the work as a whole. As one agency's peer review handbook explains, a good charge to the peer reviewers is ordinarily one that both "focuses the review by presenting specific questions and concerns" the agency is aware of, and also "invites general comments on the entire work product" so as to ensure that the peer review is not hemmed in by inappropriately narrow questions. EPA Science Policy Council, Peer Review Handbook, § 3.2.1 (2d ed. 2000).

Even when an agency solicits a comprehensive and independent peer review of regulatory science, the results are not always available for public scrutiny or comment. While a non-transparent peer review may be better than no peer review at all, public scrutiny of at least a summary of the

peer reviewers' analyses and conclusions helps to ensure that the peer review process is meaningful and that the agency has fairly considered the peer reviewers' conclusions. Simply put, openness enhances the credibility of the peer review of regulatory science.

For these reasons, the Fish and Wildlife Service and the National Oceanic and Atmospheric Administration have required that peer reviewers' reports and opinions be included in the administrative record for the regulatory action at issue. See Endangered & Threatened Wildlife and Plants: Notice of Interagency Cooperative Policy for Peer Review in Endangered Species Act Activities, 59 FR 34,270 (July 1, 1994). The Agency for Toxic Substances and Disease Registry further requires that final research reports "consider all peer review comments," and that the "reasons for not adopting any peer reviewer's comment should be documented." Agency for Toxic Substances & Disease Registry Peer Review Policy at 5.

While the peer review policies described above promote independent and transparent peer review, experience has shown that they are not always followed by all of the federal agencies, and that actual practice has not always lived up to the ideals underlying the various agencies' manuals. In the National Science and Technology Policy, Organization, and Priorities Act of 1976 (Pub. L. 94-282), Congress called on OSTP to serve as a source of scientific and technological analysis and judgment for the President with respect to major policies, plans, and programs of the Federal Government. Pursuant to the 1976 Act, OSTP has evaluated the scale, quality, and effectiveness of the federal effort in science and technology, and has led interagency efforts to develop and to implement sound science and technology policies.

The President and the Congress have also granted OMB the authority and responsibility to address agency peer review practices. Executive Order 12866, issued in 1993 by President Clinton, specifies in section 1(b)(7) that "[e]ach agency shall base its decisions on the best reasonably obtainable scientific, technical, economic, or other information concerning the need for, and consequences of, the intended regulation." The Executive Order further requires OMB to provide guidance to the agencies regarding regulatory planning. See *id.* section 2(b).

Similarly, the Paperwork Reduction Act requires the Director of OMB to "develop and oversee the implementation of policies, principles, standards, and guidelines to * * *

apply to Federal agency dissemination of public information,” and specifies that agencies are “responsible for * * * complying with the * * * policies established by the Director.” 44 U.S.C. 3504(d)(1), 3506(a)(1)(B). In the Information Quality Act, Congress further specified that OMB’s guidelines should “provide policy and procedural guidance to Federal agencies for ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by Federal agencies.” Pub. L. 106–554, section 515(a).

Proposed Guidance

OMB’s current information quality guidance encourages but does not require peer reviews, and identifies general criteria that agencies should consider when they conduct such reviews. See *Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies*, 67 FR 8,452, 8,454–55, 8,459–60 (Feb. 22, 2002). To best serve the President’s policy of improving our federal regulatory system and the quality and integrity of information disseminated by the federal agencies, OMB, in coordination with OSTP, now proposes to ensure that agencies conduct peer reviews of the most important scientific and technical information relevant to regulatory policies that they disseminate to the public, and that the peer reviews are reliable, independent, and transparent. This notice seeks comment on the following proposed guidance, which would take the form of an OMB Bulletin, would supplement (but not replace) OMB’s information quality guidelines pursuant to the Information Quality Act, Pub. L. 106–554, section 515(b), and would also serve as guidance pursuant to the Paperwork Reduction Act, 44 U.S.C. 3504(d), and Executive Order 12866. OIRA will consult with OSTP in implementing this Bulletin as it relates to the peer review process.

Many agencies already have extensive peer review requirements. This guidance would supplement those requirements for the peer review of “significant regulatory information,” which is scientific or technical information that (i) qualifies as “influential” under OMB’s information quality guidelines and (ii) is relevant to regulatory policies. This category does not include most routine statistical and financial information, such as that distributed by the Census Bureau, the Bureau of Labor Statistics and the

Federal Reserve. Nor does it include science that is not directed toward regulatory issues, such as most of the scientific research conducted by the National Institutes of Health and the National Science Foundation. It is also limited to the peer review of *studies* to be disseminated, as opposed to applications for grants. In order to avoid duplication of effort, we have also exempted information that has already been adequately peer-reviewed from the peer review requirements of this Bulletin. Finally, OMB has excluded some categories of information, such as national security information, and some types of proceedings, such as individual adjudications and permit applications, from the scope of this Bulletin. The Bulletin also recognizes that waivers of these requirements may be required in some circumstances, such as when court-imposed deadlines or other exigencies make full compliance with this Bulletin impractical.

This Bulletin requires peer review of the category of “significant regulatory information” described above. It also articulates specific requirements for the peer review of “significant regulatory information” that the agency intends to disseminate in support of a major regulatory action, that could have a clear and substantial impact on important public policies or important private sector decisions with a possible impact of more than \$100 million in any year, or that the Administrator of OIRA determines to be of significant interagency interest or relevant to an Administration policy priority. Such an impact can occur whether or not a federal rulemaking is envisioned or considered likely to occur, in part because information might influence local, state, regional, or international decisions. For this category of especially important information, whose reliability is paramount, agencies must take care to select external peer reviewers who possess the requisite experience and independence from the agency. The agencies must also provide the peer reviewers with sufficient information and an appropriately broad charge. The agency must then publicly respond to the peer reviewers’ written report, and make other appropriate disclosures.

In addition to setting forth basic peer review procedures, this guidance also elaborates on the reporting requirements of Executive Order 12866 and the Information Quality Act. Pursuant to these authorities, agencies already provide OMB with information regarding upcoming regulatory initiatives and information quality issues. In doing so, each agency should make sure to identify: studies that will

be subject to the peer review requirements of this Bulletin; the agency’s plan for conducting the peer review; and correction requests filed by members of the public regarding the quality of information disseminated by the agency. These reporting requirements will permit the public, OMB, and OSTP to monitor agency compliance throughout the peer review process.

Finally, this Bulletin provides that each agency that receives a non-frivolous administrative correction request challenging the agency’s compliance with the Information Quality Act must promptly post the request on its Internet website or forward a copy to OIRA and, if requested, consult with OIRA regarding the request. This consulting requirement will assist OMB in discharging its responsibility under the Information Quality Act to monitor the quality of information disseminated to the public. Together with the peer review and reporting requirements discussed above, it should also give the public reasonable assurance that the most important regulatory science disseminated by the federal government comes with indicia of reliability.

Additional Requests for Comment

OMB seeks comments from all interested parties on all aspects of this proposed Bulletin and guidelines. In particular, OMB seeks comment on the scope of this Bulletin. As explained above, this proposal covers significant regulatory information, with some exceptions. It may be that the overall scope of this Bulletin should be reduced or enlarged, or that fewer or more exceptions should be made.

OMB also seeks comment on whether some provisions of this proposal should be strengthened, modified, or removed. While the bipartisan legislative proposal discussed above required all peer reviewers to be independent of the agency, this proposal leaves open the possibility that agency employees could serve on peer review panels in certain circumstances. This proposal also identifies circumstances that raise questions about the independence of peer reviewers (e.g., agency employees and agency-supported research projects), but it does not flatly preclude the selection of peer reviewers who raise some of those concerns. Members of the public are welcome to comment on whether these provisions strike the appropriate balance between safeguarding the fact and appearance of impartiality, on the one hand, and ensuring that qualified peer reviewers will not be precluded from service

based on unnecessarily stringent conflict-of-interest requirements, on the other. OMB is especially concerned about the government's need to recruit the best qualified scientists to serve as peer reviewers.

For this reason, OMB also seeks comment on whether any of the provisions of this proposal would unnecessarily burden participating scientists or discourage qualified scientists from participating in agency peer reviews. Specifically, OMB seeks comment on whether peer reviewers' disclosure requirements should be limited to a specific numbers of years, perhaps to activities occurring during the previous five or ten years, instead of extending back indefinitely. More generally, OMB seeks suggestions regarding how agencies can encourage peer-review participation by qualified scientists.

In addition, OMB seeks comment on whether agencies should be permitted to select their own peer reviewers for regulatory information. Although some observers may favor a system whereby a centralized body would appoint peer reviewers or supervise the details of the peer review process, OMB is not proposing such a system. Within the broad confines of this guidance, the agencies would retain significant discretion in formulating a peer review plan appropriate to each study. It is, however, arguable that an entity outside of the agency should select the peer reviewers and perhaps even supervise the peer review process. The latter approach might lend the appearance of greater integrity to the peer review process, but could be unduly inefficient and raise other concerns.

Finally, OMB seeks comment from the affected agencies on the expected benefits and burdens of this proposed Bulletin. OMB believes that most agencies usually submit the types of studies covered by this Bulletin to at least some peer review. As a result, while this Bulletin should improve the quality of peer reviews, it may not impose substantial costs and burdens on the agencies that they are not already incurring. OMB seeks comment on this and all other aspects of this proposed Bulletin.

Part II—Proposed OMB Bulletin and Supplemental Information Quality Guidelines

Section 1. Definitions

For purposes of this Bulletin and guidance:

“Administrator” means the Administrator of the Office of Information and Regulatory Affairs.

“Agency” has the meaning ascribed to it in the Paperwork Reduction Act, 44 U.S.C. 3502(1).

“Dissemination” has the meaning ascribed to it in OMB's Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies, 67 FR 8,452, 8,460 (Feb. 22, 2002) (“OMB's Information-Quality Guidelines”).

“The Information Quality Act” means Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658).

“Major regulatory action” means the type of significant regulatory action that is defined in Section 1(f)(1) of Executive Order 12866 and is not exempt from the requirements of that Order.

“Regulatory information” means any scientific or technical study that is relevant to regulatory policy. Information is relevant to regulatory policy if it might be used by local, state, regional, federal and/or international regulatory bodies.

“Significant regulatory information” means regulatory information that satisfies the “influential” test in OMB's Information-Quality Guidelines.

“Study” refers broadly to any research report, data, finding, or other analysis.

Section 2. Peer Review of Significant Regulatory Information

To the extent permitted by law, agencies shall have an appropriate and scientifically-rigorous peer review conducted on all significant regulatory information that the agency intends to disseminate. Agencies need not, however, have peer review conducted on studies that have already been subjected to adequate independent peer review. For purposes of this Bulletin, peer review undertaken by a scientific journal may generally be presumed to be adequate. This presumption is rebuttable based on a persuasive showing in a particular instance. In addition, agencies need not have peer review conducted on significant regulatory information that relates to national defense or foreign affairs, or that is disseminated in the course of an individual agency adjudication or proceeding on a permit application.

During the planning of a peer review for significant regulatory information, the agency should select an appropriate peer review mechanism based on the novelty and complexity of the science to be reviewed, the benefit and cost implications, and any controversy regarding the science. Depending on these factors, appropriate peer review mechanisms for significant regulatory

information can range from review by qualified specialists within an agency (if they reside in a separate agency program) to formal review by an independent body of experts outside the agency. The experts may be selected by the agency or an outside group.

Section 3. Additional Peer Review Requirements for Especially Significant Regulatory Information

If significant regulatory information is subject to the peer review requirements of Section 2 of this Bulletin and (i) the agency intends to disseminate the information in support of a major regulatory action, (ii) the dissemination of the information could otherwise have a clear and substantial impact on important public policies or important private sector decisions with a possible impact of more than \$100 million in any year, or (iii) the Administrator determines that the information is of significant interagency interest or is relevant to an Administration policy priority, then, to the extent permitted by law, the agency shall have a formal, independent, external peer review conducted on the information. The peer review shall proceed in accordance with the following guidance:

Selection of Peer Reviewers: Peer reviewers shall be selected primarily on the basis of necessary scientific and technical expertise. When multiple disciplines are required, the selected reviewers should include as broad a range of expertise as is necessary. When selecting reviewers from the pool of qualified external experts, the agency sponsoring the review shall strive to appoint experts who, in addition to possessing the necessary scientific and technical expertise, are independent of the agency, do not possess real or perceived conflicts of interest, and are capable of approaching the subject matter in an open-minded and unbiased manner. Factors relevant to whether an individual satisfies these criteria include whether the individual: (i) Has any financial interests in the matter at issue; (ii) has, in recent years, advocated a position on the specific matter at issue; (iii) is currently receiving or seeking substantial funding from the agency through a contract or research grant (either directly or indirectly through another entity, such as a university); or (iv) has conducted multiple peer reviews for the same agency in recent years, or has conducted a peer review for the same agency on the same specific matter in recent years. If it is necessary to select a reviewer who is or appears to be biased in order to obtain a panel with appropriate expertise, the agency shall ensure that

another reviewer with a contrary bias is appointed to balance the panel.

Charge to Peer Reviewers: The agency shall provide to peer reviewers an explicit, written charge statement describing the purpose and scope of the review. The charge shall be appropriately broad and specific to facilitate a probing, meaningful critique of the agency's work product. Peer reviewers shall be asked to review scientific and technical matters, leaving policy determinations for the agency. This must be clearly stated and adhered to during the peer review process so the review is based solely on the science being evaluated. In addition, the agency shall be careful not to divulge internal deliberative information to the peer reviewers. The charge should generally frame specific questions about information quality, assumptions, hypotheses, methods, analytic results, and conclusions in the agency's work product. It should ask reviewers to apply the standards of OMB's Information-Quality Guidelines and the agency's own information quality guidelines. Where reviewers are expected to identify scientific uncertainties, they should generally be asked to suggest ways to reduce or eliminate those uncertainties.

Information Access: The agency shall provide peer reviewers sufficient information to enable them to understand the data, methods, analytic results, and conclusions of the material to be peer reviewed, with due regard for the agency's interest in protecting its deliberative processes. Reviewers shall be informed of the reproducibility and other quality guidelines issued by OMB and federal agencies under the Information Quality Act. If the document is a formal regulatory analysis, reviewers should be briefed on the content of OMB's guidelines for regulatory analysis. If aspects of the agency's work are likely to be controversial, reviewers should be provided relevant background information on those potential sources of controversy.

Opportunity for Public Comment: The agency shall provide an opportunity for other interested agencies and persons to submit comments. The agency shall ensure that such comments are provided to the peer reviewers with ample time for consideration before the peer reviewers conclude their review and prepare their report.

Peer Review Reports: The agency shall direct peer reviewers of the regulatory information—individually or often as a group—to issue a final report detailing the nature of their review and their findings and conclusions. The peer

review report shall also disclose the names, organizational affiliations, and qualifications of all peer reviewers, as well as any current or previous involvement by a peer reviewer with the agency or issue under peer review consideration. If there is a group report, any partial or complete dissenting statements should be included with the group's final report. The agency shall also provide a written response to the peer review report(s) explaining: The agency's agreement or disagreement with the report(s), including any recommendations expressed therein; the basis for that agreement or disagreement; any actions the agency has undertaken or proposed to undertake in response to the report(s); and (if applicable) the reasons the agency believes those actions satisfy any concerns or recommendations expressed by the report(s). The agency shall disseminate the final peer review report(s) and the agency's written statement of response in the same manner that it disseminates the work product that was reviewed. All of these written materials should be included in the administrative record for any related rulemakings.

Consultation with OIRA and OSTP: Agencies shall consult with OIRA and OSTP concerning the sufficiency of their planned peer review policies. Upon request, an agency should discuss with OIRA how the agency plans to review a specific document covered by the Bulletin and whether such a plan is sufficient. This consultation is understood to serve as one of the pre-dissemination quality procedures envisioned by the Information Quality Act.

Certification in Administrative Record: If an agency relies on significant regulatory information subject to the requirements of this section in support of a major regulatory action, it shall include in the administrative record for that action a certification explaining how the agency has complied with the requirements of this Bulletin and the Information Quality Act with respect to the significant regulatory information at issue.

Section 4. Peer Review Procedures

a. Federal Advisory Committee Act

When considering selection of an outside panel of peer reviewers for regulatory information subject to the requirements of this Bulletin, an agency should assess the treatment of such a panel under the Federal Advisory Committee Act, and may retain a firm to oversee the peer review process with instructions to comply with principles

consistent with those set forth in this Bulletin. See *Byrd v. EPA*, 174 F.3d 239 (D.C. Cir. 1999) (holding that peer review panels selected and supervised by outside consultants are not governed by the Federal Advisory Committee Act, 5 U.S.C.S. App. II §§ 1–15). Although such a firm can be engaged to oversee multiple peer review processes for an agency, the agency shall ensure that the firm itself possesses independence (and the appearance of independence) from the agency.

b. Agency Guidelines

Based on this supplement to OMB's information quality guidelines, each agency shall supplement or amend its own information quality guidelines to incorporate the requirements of Sections 2 and 3 herein on a prospective basis, except that an agency need not amend its guidelines if there is no reasonable likelihood that the agency will disseminate information covered by the requirements of Sections 2 and/or 3 of this Bulletin. In addition to incorporating these requirements, agencies should have specific guidelines as to what entanglements with agencies or affected businesses are so significant as to preclude an individual's participation as a peer reviewer, irrespective of other factors. Agency guidance should also address the following additional aspects of the peer review process, as well as any other matters they wish to address: the protection of confidential business information; any other needs for confidentiality in the peer review process (including any privacy interests of peer reviewers); and any types of information regarding the peer reviewers that should be publicly disclosed in addition to the information identified in Section 3 of this Bulletin (potentially including prior service as an expert witness, sources of personal or institutional funding, and/or other matters that might suggest a possible conflict of interest or appearance of a conflict of interest).

c. Waiver

The Administrator may waive some or all of the peer review requirements of Sections 2 and/or 3 of this Bulletin if an agency makes a compelling case that waiver is necessitated for specific information by an emergency, imminent health hazard, homeland security threat, or some other compelling rationale. As appropriate, the Administrator shall consult with the Director of OSTP before deciding whether to grant a waiver.

Section 5. Interagency Work Group on Peer Review Policies

The Administrator will periodically convene a meeting of an interagency group of peer review specialists and program managers, including the OSTP Associate Director for Science. The group may make recommendations regarding best peer review practices and may recommend other steps to expedite and improve agency processes.

Section 6. Reports on Agency Peer Reviews

Each agency shall provide to OIRA at least once each year:

- A summary description of any existing, ongoing, or contemplated scientific or technical studies that might (in whole or in part) constitute or support significant regulatory information the agency intends to disseminate within the next year; and
- The agency's plan for conducting a peer review of such studies under the requirements of this Bulletin, including the identification of an agency contact to whom inquiries may be directed to learn the specifics of the plan.

In order to minimize the paperwork involved, agencies should include this information in one of the periodic reports they submit to OMB under Executive Order 12866 or the Information Quality Act.

Section 7. Correction Requests Under the Information Quality Act

The Information Quality Act requires OMB to issue guidance concerning administrative mechanisms by which members of the public may seek to obtain correction of information maintained and disseminated by an agency. See Pub. L. 106-554, section 515(b)(2)(B). OMB must also monitor the agencies' handling of such correction requests. See *id.*(C).

In order to improve OMB's ability to assess the quality of information disseminated to the public and the adequacy of agencies' request-handling processes, an agency shall, within seven days of receipt, provide OIRA with a copy of each non-frivolous information quality correction request. If an agency posts such a request on its Internet website within seven days of receipt, it need not provide a copy to OIRA.

Upon request by OIRA, each agency shall provide a copy of its draft response to any such information quality correction request or appeal at least seven days prior to its intended issuance, and consult with OIRA to ensure the response is consistent with the Information Quality Act, OMB's government-wide Information Quality

Guidelines, and the agency's own information quality guidelines. The agency shall not issue its response until OIRA has concluded consultation with the agency. OIRA may consult with OSTP as appropriate if a request alleges deficiencies in the peer review process.

Section 8. Interagency Comment

Interagency comment can assist in identifying questions or weaknesses in scientific and technical analyses. As part of its consideration of peer reviews, information quality correction requests, or major regulatory actions, OIRA may exercise its authority to request comment from other agencies. OIRA may make such comment public, or direct that it be included in the Administrative Record for any related rulemakings. Interagency comment may be conducted in addition to peer review, or may comprise the peer review required by Sections 2 and/or 3 of this Bulletin if it is conducted in accordance with the requirements of this Bulletin.

Section 9. Effective Date and Existing Law

The requirements of this Bulletin apply to information disseminated on or after January 1, 2004. The requirements are not intended to displace other peer review mechanisms already created by law. Any such mechanisms should be employed in a manner as consistent as possible with the practices and procedures laid out herein. Agencies may consult with OIRA regarding the relationship of this Bulletin with preexisting law.

[FR Doc. 03-23367 Filed 9-12-03; 8:45 am]

BILLING CODE 3110-01-P

PENSION BENEFIT GUARANTY CORPORATION

Required Interest Rate Assumption for Determining Variable-Rate Premium; Interest Assumptions for Multiemployer Plan Valuations Following Mass Withdrawal

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of interest rates and assumptions.

SUMMARY: This notice informs the public of the interest rates and assumptions to be used under certain Pension Benefit Guaranty Corporation regulations. These rates and assumptions are published elsewhere (or can be derived from rates published elsewhere), but are collected and published in this notice for the convenience of the public. Interest rates

are also published on the PBGC's Web site (<http://www.pbgc.gov>).

DATES: The required interest rate for determining the variable-rate premium under part 4006 applies to premium payment years beginning in September 2003. The interest assumptions for performing multiemployer plan valuations following mass withdrawal under part 4281 apply to valuation dates occurring in October 2003.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202-326-4024. (TTY/TDD users may call the Federal relay service toll-free at 1-800-877-8339 and ask to be connected to 202-326-4024.)

SUPPLEMENTARY INFORMATION:

Variable-Rate Premiums

Section 4006(a)(3)(E)(iii)(II) of the Employee Retirement Income Security Act of 1974 (ERISA) and § 4006.4(b)(1) of the PBGC's regulation on Premium Rates (29 CFR part 4006) prescribe use of an assumed interest rate (the "required interest rate") in determining a single-employer plan's variable-rate premium. The required interest rate is the "applicable percentage" (currently 100 percent) of the annual yield on 30-year Treasury securities for the month preceding the beginning of the plan year for which premiums are being paid (the "premium payment year"). (Although the Treasury Department has ceased issuing 30-year securities, the Internal Revenue Service announces a surrogate yield figure each month—based on the 30-year Treasury bond maturing in February 2031—which the PBGC uses to determine the required interest rate.)

The required interest rate to be used in determining variable-rate premiums for premium payment years beginning in September 2003 is 5.31 percent.

The following table lists the required interest rates to be used in determining variable-rate premiums for premium payment years beginning between October 2002 and September 2003.

For premium payment years beginning in:	The required interest rate is:
October 2002	4.76
November 2002	4.93
December 2002	4.96
January 2003	4.92
February 2003	4.94
March 2003	4.81
April 2003	4.80
May 2003	4.90
June 2003	4.53
July 2003	4.37

For premium payment years beginning in:	The required interest rate is:
August 2003	4.93
September 2003	5.31

Multiemployer Plan Valuations Following Mass Withdrawal

The PBGC's regulation on Duties of Plan Sponsor Following Mass Withdrawal (29 CFR part 4281) prescribes the use of interest assumptions under the PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044). The interest assumptions applicable to valuation dates in October 2003 under part 4044 are contained in an amendment to part 4044 published elsewhere in today's **Federal Register**. Tables showing the assumptions applicable to prior periods are codified in appendix B to 29 CFR part 4044.

Issued in Washington, DC, on this 8th day of September, 2003.

Joseph H. Grant,

Deputy Executive Director and Chief Operating Officer, Pension Benefit Guaranty Corporation.

[FR Doc. 03-23366 Filed 9-12-03; 8:45 am]

BILLING CODE 7708-01-P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Review of a Revised Information Collection: SF 2823

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) will submit to the Office of Management and Budget (OMB) a request for review of a revised information collection. SF 2823, Designation of Beneficiary: Federal Employees' Group Life Insurance, is used by any Federal employee or retiree covered by the Federal Employees' Group Life Insurance Program to instruct the Office of Federal Employees' Group Life Insurance how to distribute the proceeds of his or her life insurance when the statutory order of precedence does not meet his or her needs.

Comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the Office of Personnel

Management, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Approximately 40,000 SF 2823 forms are completed annually by annuitants and 1,000 forms are completed by assignees. Each form takes approximately 15 minutes to complete for an annual estimated burden of 10,250 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606-8358, FAX (202) 418-3251 or via E-mail to mbtoomey@opm.gov. Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 60 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to—Christopher N. Meuchner, Life Insurance and Long Term Care Group, Center for Retirement and Insurance Services, U.S. Office of Personnel Management, 1900 E Street, NW., Room 2H22, Washington, DC 20415-3661.

For Information Regarding Administrative Coordination Contact: Cyrus S. Benson, Team Leader, Publications Team, Support Group, (202) 606-0623.

Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 03-23405 Filed 9-12-03; 8:45 am]

BILLING CODE 6325-50-P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Review of a Revised Information Collection: Forms RI 20-7 and RI 30-3

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget a request for review of a revised information collection. RI 20-7, Representative Payee Application, is used by the Civil Service Retirement System (CSRS) and the Federal

Employees Retirement System (FERS) to collect information from persons applying to be fiduciaries for annuitants or survivor annuitants who appear to be incapable of handling their own funds or for minor children. RI 30-3, Information Necessary for a Competency Determination, collects medical information regarding the annuitant's competency for OPM's use in evaluating the annuitant's condition.

Comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Approximately 12,480 RI 20-7 forms will be completed annually. This form requires approximately 30 minutes to complete; the annual burden is 6,240 hours. Approximately 250 RI 30-3 forms will be completed annually. This form requires approximately 1 hour to complete; the annual burden is 250 hours. The total annual burden is 6,490 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606-8358, FAX (202) 418-3251 or via E-mail to mbtoomey@opm.gov. Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 60 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to—Ronald W. Melton, Chief, Operation Support Group, Center for Retirement and Insurance Services, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3349A, Washington, DC 20415-3540.

FOR INFORMATION REGARDING

ADMINISTRATIVE COORDINATION—CONTACT: Cyrus S. Benson, Team Leader, Publications Team, Support Group, (202) 606-0623.

Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 03-23406 Filed 9-12-03; 8:45 am]

BILLING CODE 6325-50-P

**OFFICE OF PERSONNEL
MANAGEMENT****Submission for OMB Review;
Comment Request for Review of a
Currently Approved Information
Collection: RI 20-63, RI 20-116, RI 20-
117**

AGENCY: Office of Personnel
Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget (OMB) a request for review of a currently approved information collection. RI 20-63, Survivor Annuity Election for a Spouse, is used by annuitants to elect a reduced annuity with a survivor annuity for their spouse. RI 20-116 is a cover letter for RI 20-63 giving information about the cost to elect less than the maximum survivor annuity. This letter may be used to decline to elect. RI 20-117 is a cover letter for RI 20-63 giving information about the cost to elect the maximum survivor annuity. This letter may be used to ask for more information or to decline to elect.

RI 20-117 is accompanied by RI 20-63A, Information on Electing a Survivor Annuity for Your Spouse, or RI 20-63B, Information on Electing a Survivor Annuity for Your Spouse When You Are Providing a Former Spouse Annuity. Both booklets explain the election. RI 20-63A is for annuitants who do not have a former spouse who is entitled to a survivor annuity benefit; RI 20-63B is for those who do have a former spouse who is entitled to a benefit. These booklets do not require OMB clearance. They have been included because they provide the annuitant additional information.

Approximately 2,400 RI 20-63 forms are returned each year electing survivor annuities and 200 annuitants return the cover letter to ask for information about the cost to elect less than the maximum survivor annuity or to refuse to provide any survivor benefit. It is estimated to take approximately 45 minutes to complete the form with a burden of 1,800 hours and 10 minutes to complete the letter, which gives a burden of 34 hours. The total burden for RI 20-63 is 1,834 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606-8358, FAX (202) 418-3251 or via E-mail to mbtoomey@opm.gov. Please include a mailing address with your request.

DATES: Comments on this proposal should be received on or before October 15, 2003.

ADDRESSES: Send or deliver comments to—Ronald W. Melton, Chief, Operations Support Group, Center for Retirement and Insurance Services, U.S. Office of Personnel Management, 1900 E Street NW., Room 3349, Washington, DC 20415-3540; and, Joseph F. Lackey, Jr., OPM Desk Officer, Office of Information & Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 10235, Washington, DC 20503.

**FOR INFORMATION REGARDING
ADMINISTRATIVE COORDINATION—CONTACT:**
Cyrus S. Benson, Team Leader,
Publications Team, RIS Support
Services, (202) 606-0623.

Kay Coles James,

Director, Office of Personnel Management.

[FR Doc. 03-23407 Filed 9-12-03; 8:45 am]

BILLING CODE 6325-50-P

**OFFICE OF PERSONNEL
MANAGEMENT****Submission for OMB Review;
Comment Request for Reclearance of
a Revised Information Collection: RI
92-22**

AGENCY: Office of Personnel
Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget (OMB) a request for review of a revised information collection. RI 92-22, Annuity Supplement Earnings Report, is used each year to obtain the earned income of each Federal Employees Retirement System (FERS) annuitant receiving an annuity supplement. The annuity supplement is paid to eligible FERS annuitants who are not retired on disability and are not yet age 62. The supplement approximates the portion of a full career Social Security benefit earned while under FERS and ends at age 62. Like Social Security benefits, the annuity supplement is subject to an earnings limitation.

Approximately 700 RI 92-22 forms are completed annually. Each form requires approximately 15 minutes to complete. The annual estimated burden is 175 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606-8358, FAX (202) 418-3251 or via E-mail

to mbtoomey@opm.gov. Please include a mailing address with your request.

DATES: Comments on this proposal should be received on or before October 15, 2003.

ADDRESSES: Send or deliver comments to Ronald W. Melton, Chief, Operations Support Group, Center for Retirement and Insurance Services, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3349, Washington, DC 20415-3540; and Joseph F. Lackey, Jr., OPM Desk Officer, Office of Information & Regulatory Affairs, Office of Management and Budget, New Executive Office Building NW., Room 10235, Washington, DC 20503.

**FOR INFORMATION REGARDING
ADMINISTRATIVE COORDINATION CONTACT:**
Cyrus S. Benson, Team Leader,
Publications Team, RIS Support
Services, (202) 606-0623.

Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 03-23408 Filed 9-12-03; 8:45 am]

BILLING CODE 6325-50-P

**OFFICE OF PERSONNEL
MANAGEMENT****Federal Prevailing Rate Advisory
Committee; Open Committee Meetings**

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on—

Wednesday, September 17, 2003
Thursday, October 2, 2003
Thursday, October 16, 2003
Thursday, October 30, 2003

The meetings will start at 10 a.m. and will be held in Room 5A06A, Office of Personnel Management Building, 1900 E Street, NW., Washington, DC.

The Federal Prevailing Rate Advisory Committee is composed of a Chair, five representatives from labor unions holding exclusive bargaining rights for Federal blue-collar employees, and five representatives from Federal agencies. Entitlement to membership on the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the Prevailing Rate System and other matters pertinent to establishing prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management.

This scheduled meeting will start in open session with both labor and management representatives attending.

During the meeting either the labor members or the management members may caucus separately with the Chair to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would unacceptably impair the ability of the Committee to reach a consensus on the matters being considered and would disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public because of a determination made by the Director of the Office of Personnel Management under the provisions of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92-463) and 5 U.S.C. 552b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of a meeting.

Annually, the Chair compiles a report of pay issues discussed and concluded recommendations. These reports are available to the public, upon written request to the Committee's Secretary.

The public is invited to submit material in writing to the Chair on Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information on this meeting may be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 5538, 1900 E Street, NW., Washington, DC 20415 (202) 606-1500.

Dated: September 2, 2003.

Mary M. Rose, Chairperson, Federal Prevailing Rate Advisory Committee.

[FR Doc. 03-23343 Filed 9-12-03; 8:45 am]

BILLING CODE 6325-49-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48454; File No. SR-CHX-2003-12]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to Automatic Execution of Partial Orders

September 5, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 1, 2003, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") filed with the Securities and Exchange

Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On September 5, 2003, the Exchange amended the proposed rule change.³ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend certain provisions of CHX Article XX, Rule 37 (Guaranteed Execution System and Midwest Automated Execution System), which governs, among other things, automatic execution of market and marketable limit orders. Specifically, the CHX seeks to add an Interpretation and Policy providing that a CHX specialist may elect to activate the "auto-partials" functionality on a voluntary basis, at any point during the regular trading session. Proposed Interpretation and Policy .11 constitutes the Exchange's stated existing policy, practice and interpretation with respect to the auto-partial provisions of CHX Article XX, Rule 37(b).

The text of the proposed rule change is below. Proposed new language is italicized; proposed deletions are in [brackets].

* * * * *

RULE 37

(b) Automated Executions. The Exchange's Midwest Automated Execution System (the MAX System) may be used to provide an automated delivery and execution facility for orders that are eligible for automatic execution on the Exchange.

* * * * *

(6) Execution of Dual Trading System Issues.

(A) A MAX market or marketable limit agency order that is of a size less than or equal to the auto-execution threshold shall be automatically filled at the ITS BBO price up to the size of the auto-execution threshold. If the size of the incoming order is greater than the auto-execution threshold, the order shall be designated as an open order; provided, however, that if an order

³ See Letter from Kathleen Boege, Associate General Counsel, CHX, to Ms. Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated September 5, 2003 ("Amendment No. 1"). In Amendment No. 1, the CHX corrected a minor typographical error in their rule text and noted that its MAX automatic execution system provides electronic notice to order-sending firms when Exchange specialists modify their automatic execution parameters.

sending firm has notified the specialist, in a manner approved by the Exchange, that the order sending firm elects to have such orders filled up to the size of the auto-execution threshold and if the specialist has engaged the auto-partial functionality as described in Interpretation and Policy .11, the order shall automatically be filled up to the size of the auto-execution threshold and the portion of the order that exceeds the auto-execution threshold shall be designated as an open order. If the size of the order is greater than the auto-acceptance threshold, the order shall be designated as an open order; provided, however, that the specialists may cancel the order within one minute of its being entered into MAX.

* * * * *

(7) Execution of NASDAQ/NM Securities.

(A) In NASDAQ/NM Securities, if the specialist is quoting at the NBBO price at the time a MAX market or marketable limit order is received, an order that is less than or equal to the auto-execution threshold shall automatically be filled at such NBBO price up to the size of the auto-execution threshold (or the specialist's bid or offer if greater than the auto execution threshold). If the order is of a size greater than the auto-execution threshold, the order shall automatically be filled up to the size of the specialist's bid or offer (as the case may be) and the portion of the order that exceeds the specialist's bid or offer shall be designated as an open order.

* * * * *

(B) If the specialist is not quoting at the NBBO at the time a MAX market or marketable limit agency order is received, an order that is less than or equal to the auto-execution threshold shall be automatically filled at the NBBO up to the size of the auto-execution threshold if the specialist has not, within 20 seconds (or a lesser time increment designated by the specialist) after receipt of the order, complied with the manual execution requirement of Rule [43(d)] 37(a) of this Article. If the size of the incoming order is greater than the auto-execution threshold, the order shall be designated as an open order; provided, however, that if an order sending firm has notified the specialist, in a manner approved by the Exchange, that the order sending firm elects to have such orders filled up to the size of the auto-execution threshold and if the specialist has engaged the auto-partial functionality as described in Interpretation and Policy .11, the order shall automatically be filled up to the size of the auto-execution threshold and the portion of the order that exceed

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

the auto-execution threshold shall be designated as an open order. If the size of the incoming order is greater than the auto-acceptance threshold, the order shall be designated as an open order; provided, however, that the specialist may cancel the order within one minute of its being entered into MAX.

* * * * *

Interpretations and Policies:

* * * * *

.11 *The partial automatic execution algorithms referenced in Rule 37(b) constitute voluntary MAX enhancements that may be enabled by a CHX specialist on an issue-by-issue basis. The CHX specialist may elect to enable or disable these enhancements during any portion of the Primary Trading Session.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change would amend certain provisions of CHX Article XX, Rule 37, which governs, among other things, automatic execution of partial market and marketable limit orders. Specifically, the CHX seeks to add an Interpretation and Policy providing that a CHX specialist may elect to activate the auto-partials functionality on a voluntary basis, at any point during the regular trading session. Proposed Interpretation and Policy .11 constitutes the Exchange's stated existing policy, practice and interpretation with respect to the auto-partial provisions of CHX Article XX, Rule 37(b).

The Exchange's Midwest Automatic Execution System ("MAX") provides for automatic execution of eligible market and marketable limit orders, in accordance with the provisions of CHX Article XX, Rule 37(b), which governs automatic execution of such orders. The Commission previously has approved

changes to CHX Article XX, Rule 37(b) that permit automatic execution of partial orders, if an order-sending firm has affirmatively elected to permit such partial executions.⁴ The technological enhancement to the Exchange's MAX system, that effects automatic execution of partial orders, is referred to as the "auto-partials" functionality.

According to the Exchange, throughout the development and implementation of the auto-partials functionality, the Exchange's staff and members have consistently treated the auto-partials functionality as a voluntary systems enhancement that could be enabled at the discretion of the CHX specialist.⁵ The proposed rule change clarifies the consistent interpretation of those provisions of CHX Article XX, Rule 37(b) that contemplate the auto-partials enhancement.

In the case of stocks with low trading volume, for example, a CHX specialist who received a large order for that issue might not be able to secure sufficient liquidity in another market to fill the order for his customer. In such case, if the CHX specialist has offered auto-partial execution, a portion of the order would be executed automatically but the remaining portion would be subject to manual execution at the best price the CHX specialist could obtain as agent for the balance of the order. If the CHX specialist had not offered auto-partials, the customer would quickly discern that it had not received an automatic execution and would then have the option to cancel the order and seek execution of the entire order in another market center.

The CHX believes that another instance in which a CHX specialist might elect to disengage the auto-partials algorithm is immediately prior to the close of the regular trading session. In the case of a large order received immediately prior to the close that received an auto-partial execution, most customers would request (and for business reasons most CHX specialists would give) execution of the balance of the order at the auto-partial execution

⁴ See Securities Exchange Act Release No. 44778 (September 7, 2001), 66 FR 48074 (September 17, 2001) (SR-CHX-2001-11), Securities Exchange Act Release No. 46321 (August 7, 2002), 67 FR 53369 (August 15, 2002) (CHX 2001-32).

⁵ Even if a CHX specialist elects to enable the auto-partials functionality, partial orders will not be executed unless an order-sending firm has affirmatively indicated its election to have orders executed on a partial basis. Thus, despite the CHX specialist's discretion to enable the auto-partials functionality, CHX order-sending firms still maintain the discretion to forego partial executions if their preferences and/or business model dictate that they receive fills of entire orders.

price. The CHX specialist, perhaps lacking the liquidity to fill the entire order out of his inventory, would be without recourse to obtain liquidity in another market center, and would be left with a significant position overnight, potentially subjecting the CHX specialist to extreme and unwarranted exposure at the open the following morning.

The CHX believes that the proposed rule change, which reflects existing pattern and practice with respect to the auto-partials functionality, represents a reasonable balance between the various business models of CHX specialists, and permits specialists to offer a customer enhancement without prejudicing other specialists whose circumstances dictate that they forego engagement of the auto-partials functionality.

2. Statutory Basis

The CHX believes the proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.⁶ The CHX believes the proposal is consistent with Section 6(b)(5) of the Act⁷ in that it is designed to promote just and equitable principles of trade, to remove impediments, and to perfect the mechanism of, a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

(ii) as to which the CHX consents, the Commission will:

A. by order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to file number SR-CHX-2003-12 and should be submitted by October 6, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03-23417 Filed 9-12-03; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48460; File Nos. SR-NASD-2002-162; SR-NYSE-2002-36]

Self-Regulatory Organizations; Notice of Extension of Comment Period for the Amendments to Proposed Rule Changes by the National Association of Securities Dealers, Inc. and New York Stock Exchange, Inc. Relating to Supervisory Control Amendments

September 8, 2003.

On August 16, 2002, the New York Stock Exchange ("NYSE" or "Exchange"), and on November 4, 2002, the National Association of Securities Dealers, Inc. ("NASD"), filed with the

Securities and Exchange Commission ("SEC" or "Commission") proposed rule changes pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² regarding the supervisory and supervisory control procedures of member firms. A complete description of the proposed rule changes is found in the notices of filing, which were published in the **Federal Register** on November 27, 2002.³ On April 28, 2003, the NYSE submitted Amendment No. 2 to the proposed rule change, and on August 7, 2003, the NYSE filed Amendment No. 3 to the proposed rule change. On August 5, 2003, the NASD filed Amendment No. 1 to the proposed rule change, and on August 7, 2003, the NASD filed Amendment No. 2 to the proposed rule change. A complete description of these amendments is found in the notices thereof, which were published in the **Federal Register** on August 13, 2003.⁴

To give the public additional time to comment on the amendments to the proposed rule changes, the Commission has decided to extend the comment periods pursuant to section 19(b)(2) of the Act.⁵ Accordingly the comment periods shall be extended until October 3, 2003.

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the amendments are 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 changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release Nos. 46858 (November 20, 2002), 67 FR 70994 (SR-NYSE-2002-36) and 46859 (November 20, 2002), 67 FR 70990 (SR-NASD-2002-162); see also Securities Exchange Act Release No. 46858A (November 27, 2002), 67 FR 72261 (SR-NYSE-2002-36 Correction).

⁴ See Securities Exchange Act Release Nos. 48298 (August 7, 2003), 68 FR 48421 (SR-NASD-2002-162) and 48299 (August 7, 2003), 68 FR 48431 (SR-NYSE-2002-36).

⁵ 15 U.S.C. 78s(b)(2).

the principal office of the NASD or NYSE. All submissions should refer to File No. SR-NASD-2002-162 or SR-NYSE-2002-36 and should be submitted by October 3, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁶

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03-23418 Filed 9-12-03; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48459; File No. SR-Phlx-2003-61]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Equity and Index Option Fees

September 8, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and rule 19b-4² thereunder, notice is hereby given that on August 29, 2003, the Philadelphia Stock Exchange, Inc. ("Exchange" or "Phlx") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Phlx. 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

Phlx proposes to amend its schedule of dues, fees, and charges to adopt the following equity option and index option fees: (1) A cap of \$50,000 per member organization on all "firm-related" equity option and index option comparison and transaction charges combined; (2) a license fee of \$0.10 per contract side for Firm/Proprietary and Firm/Proprietary Facilitation transactions in the Nasdaq-100 Index Tracking Stock ("QQQ")^{SM3} equity

⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The Nasdaq-100[®], Nasdaq-100 Index[®], Nasdaq[®], The Nasdaq Stock Market[®], Nasdaq-100 SharesSM, Nasdaq-100 TrustSM, Nasdaq-100 Index Tracking StockSM, and QQQSM are trademarks or service marks of The Nasdaq Stock Market, Inc. ("Nasdaq") and have been licensed for use for certain purposes by the Phlx pursuant to a License Agreement with Nasdaq. The Nasdaq-100 Index[®] (the "Index") is determined, composed, and calculated by Nasdaq

⁸ 17 CFR 200.30-3(a)(12).

options to be imposed after the \$50,000 firm-related equity and index option comparison and transaction cap is reached; (3) a specialist unit fixed monthly fee ("fixed monthly fee") in lieu of paying the rate currently in effect for equity and index option transaction charges and equity option specialist deficit (shortfall) fee ("Shortfall Fee"); and (4) a charge of \$0.10 per contract side for specialist unit transactions in the QQQ equity options, if the specialist unit elects to pay a fixed monthly fee.

A. \$50,000 "Firm-Related" Equity Option and Index Option Cap

The Exchange is proposing to adopt a cap of \$50,000 per member organization⁴ on all "firm-related" equity option and index option comparison and transaction charges combined. Specifically, "firm-related" charges include equity option firm/proprietary comparison charges, equity option firm/proprietary transaction charges, equity option firm/proprietary facilitation transaction charges, index option firm (proprietary and customer executions) comparison charges, and index option firm transaction charges. Therefore, under this proposal, such firm-related charges for equity option and index options, in the aggregate for one billing month, would not exceed \$50,000 per month per member organization.

B. QQQ Equity Option License Fee of \$0.10 Per Contract Side for Equity Option Firm/Proprietary and Firm/Proprietary Facilitation Transactions

The Exchange is proposing to adopt a license fee of \$0.10 per contract side for equity option Firm/Proprietary and Firm/Proprietary Facilitation transactions in QQQ equity options to be imposed after the \$50,000 firm-

without regard to the Licensee, the Nasdaq-100 TrustSM, or the beneficial owners of Nasdaq-100 SharesSM. According to Phlx, Nasdaq has complete control and sole discretion in determining, comprising, or calculating the Index or in modifying in any way its method for determining, comprising, or calculating the Index in the future.

⁴ This proposal applies to member organizations for orders for the proprietary account of any member or non-member broker-dealer that derives more than 35% of its annual, gross revenues from commissions and principal transactions with customers. Member organizations will be required to verify this amount to the Exchange by certifying that they have reached this threshold by submitting a copy of their annual report, which was prepared in accordance with Generally Accepted Accounting Principles ("GAAP"). In the event that a member organization has not been in business for one year, the most recent quarterly reports, prepared in accordance with GAAP, will be accepted. See Securities Exchange Act Release No. 43558 (November 14, 2000), 65 FR 69984 (November 21, 2000). As part of this proposal, this footnote will be included on the Phlx Summary of Equity Option and Index Option fee schedules.

related equity option and index option comparison and transaction cap, as described above, is reached. Therefore, when a member organization exceeds the \$50,000 cap (comprised of firm-related equity option and index option comparison and transaction charges combined), the firm will be charged \$50,000 plus the QQQ license fee of \$0.10 per contract side for any QQQ trades (if any) over those trades that were included in reaching the \$50,000 level. The \$0.10 license fee for firm/proprietary and firm/proprietary facilitation transactions is in addition to the proposed \$50,000 cap, if the cap is reached, on "firm-related" equity option and index option comparison and transaction charges.⁵

C. Specialist Unit Fixed Monthly Fee

Currently, Phlx equity option specialists are charged equity option transaction charges and specialist deficit fees, while index option specialists are charged index option transaction charges.⁶ Phlx specialist units that have been active⁷ on the Phlx for at least one year from September 1, 2002, may now elect to continue paying the above-referenced charges or, in lieu of these charges, to pay a fixed monthly fee as more fully described below. The fixed monthly fee for each specialist unit will be calculated by:

1. Computing the equity options and index options volume that each unit transacted in May 2003 and June 2003 ("Volume"), provided it has been a Phlx specialist unit for a one-year period (from September 1, 2002);
2. Multiplying the Volume by the specialist transaction charges that are currently in effect, (*i.e.*, \$0.21 per contract for equity options and \$0.24 per contract for index options). The total of the equity and index

⁵ See Exhibit 3 to the Phlx's Form 19b-4, which provides examples of how the QQQ license fee will be calculated. Exhibit 3 to the Form 19b-4 is available for review at the Phlx and the Commission.

⁶ This proposal does not affect or alter the charges listed on Appendix A of the Exchange's Schedule of Dues, Fees, and Charges. Specialist units will continue to be charged applicable non transactional-related fees and membership-related fees that appear on Appendix A of the Exchange's schedule of dues, fees and charges. Non transactional-related fees include floor-related fees, such as trading post/booth, controller space, floor facility, and shelf space fees, as well as communication charges such as direct wire to the floor, telephone system and execution services/communication charges. Specialist units will also continue to be charged applicable membership-related fees, such as membership dues, application fees, and initiation, transfer, examinations, and technology fees.

⁷ In order to be eligible for the fixed monthly fee, the specialist unit must have been trading an equity or index option book on the Phlx trading floor in their capacity as a specialist unit with Phlx equity option or index option transactions in at least one equity option or index option book, for at least one year from September 1, 2002.

option transaction charges are added together to arrive at the total for the period ("Total Transaction Charges");⁸

3. For equity options, calculating for that month the Shortfall Fee at the current rate (currently 12%, with a monthly limit of \$10,000, if applicable) for the months of May 2003 and June 2003;⁹ and

4. Adding the Total Transaction Charges with the Shortfall Fee calculation, if applicable, dividing the total by two, and multiplying the quotient by 1.062, which will produce the fixed monthly fee.

For a specialist unit that has selected the fixed monthly fee and acquires, after September 1, 2003, an equity or index option book already traded on the Exchange, a similar methodology described to calculate the fixed monthly fee is applied to that specialist unit's book. In this case, the same 2 months volume (May 2003 and June 2003) will be multiplied by the applicable specialist transaction fee of \$0.21 or \$0.24 applicable to the acquired options book. If applicable, any shortfall fee will be recalculated as described in step 3 above, with the totals for May 2003 and June 2003 added together. These aggregate totals will then be divided by two and the result then multiplied by 1.062 to arrive at the fixed monthly fee for that options book. That fee is then added to the acquiring specialist unit's fixed monthly fee for all other equity and index options.

For a specialist unit who has selected the fixed monthly fee and who obtains a book after September 1, 2003 as a result of a new Exchange listing, the methodology used to calculate the fixed fee for the newly listed Exchange equity or index option books will be the average of the two-previous months' national volume multiplied by 12% with that product multiplied by 21%,

⁸ In the case of the specialist unit trading QQQ options, the calculation is slightly different. The May 2003 and June 2003 QQQ equity options volume will be subtracted from the May 2003 and June 2003 total equity and index option volumes; that figure will then be multiplied by the current equity option charge (\$0.21 per equity option contract) and then added to the product of \$0.11 multiplied by the May 2003 and June 2003 QQQ equity options volume (the \$0.10 license fee owed to Nasdaq subtracted from the \$0.21 charge). Steps 3 and 4 above are then followed. Then, all QQQ equity option transactions to which the specialist unit is a party will incur an additional \$0.10 per contract, which will be added to the specialist unit's fixed fees. See Exhibit 3 to Phlx's Form 19b-4, which is available for review at the Phlx and the Commission.

⁹ See Securities Exchange Act Release Nos. 48207 (July 22, 2003), 68 FR 44558 (July 29, 2003) (notice of filing and immediate effectiveness of File No. SR-Phlx-2003-47) and 48206 (July 22, 2003), 68 FR 44555 (July 29, 2003) (notice of filing and immediate effectiveness of File No. SR-Phlx-2003-45).

which is then multiplied by the specialist unit's current transaction charge of \$0.21.¹⁰

In both cases, for requests after September 1, 2003, if the equity or index option book does not have a complete two months' volume, the then-current transaction charge is used until that option book trades for two full calendar months nationally, after which the above-methodology is applied.

A specialist unit may, by the 15th day of the current billing month, select the fixed monthly fee for the following month,¹¹ provided the specialist unit has been an active Phlx equity or index specialist unit for one year from September 1, 2002.¹² In the case where a specialist unit has operated for less than one year, that unit is eligible for the fixed monthly fee on the first business day of the next full calendar month following its one-year anniversary.¹³

The fixed monthly fee will be in effect through February 29, 2004. If a specialist unit elects the fixed monthly fee, it must remain in the fixed monthly fee program through February 29, 2004.¹⁴

D. QQQ Equity Option License Fee of \$0.10 Per Contract Side for Equity Option When the Specialist Unit Elects a Fixed Monthly Rate

A charge of \$0.10 per contract side for all specialist unit transactions in the QQQ equity options is proposed if the

¹⁰ The 12% represents the Exchange's shortfall target, the 21% represents the average contract sides to which specialists are a party, and the \$0.21 represents the current specialist equity option transaction charge.

¹¹ For example, if a specialist unit wishes to select the fixed monthly fee beginning on October 1, 2003, it must notify the Exchange by September 15, 2003. The fixed monthly fee will not be implemented retroactively. If the 15th of a month is not a business day, then the specialist unit may select the fixed monthly fee method by the next business day. The Exchange intends to distribute to the specialist units administrative procedures to follow in connection with choosing the fixed monthly fee methodology. The requirement that a specialist unit elect the fixed rate by the 15th of the month will be waived for the first month. Therefore, due to the fact that this proposal is scheduled to become effective for transactions settling on or after September 1, 2003, specialists will have the opportunity to select the fixed monthly fee until 9:00 a.m. on September 2, 2003.

¹² Specialist units must elect to participate in the monthly fixed fee program. Therefore, if no election is made, the specialist unit would continue to pay the rate currently in effect for equity and index option transaction charges and equity option specialist deficit (shortfall) fee.

¹³ For example, if the one-year anniversary is on October 4, the specialist unit is eligible to select the fixed monthly fee by October 15 and the fixed monthly fee will then be in effect beginning November 1.

¹⁴ See Exhibit 3 to Phlx's Form 19b-4, which is available for review at the Phlx and the Commission.

specialist unit elects to pay a fixed monthly fee.¹⁵ This fee is in addition to the fixed monthly fee.

The above-referenced proposals are scheduled to become effective for transactions settling on or after September 1, 2003. In connection with the specialist fixed monthly fee proposal and the related QQQ license fee proposal, the proposals will be in effect through February 29, 2004.¹⁶

The text of the proposed rule change is available at the Phlx and the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In general, the purpose of the proposed rule change is to promote equity option and index option business on the Phlx. Specifically, in connection with the \$50,000 "firm-related" cap, the Exchange believes this proposal offers an incentive for firms to transact more volume on the Phlx floor. An increase in firm orders should provide more trading opportunities for floor members, thereby increasing revenue potential to the membership, in addition to

¹⁵ As previously discussed, under this proposal, specialist units may elect to pay a fixed monthly fee in lieu of specialist equity and index option transaction charges and equity option shortfall fees. Therefore, this \$0.10 fee would be in addition to the fixed monthly fee, but does not apply if specialist units elect to pay the current equity option and index option transaction charges, and equity option specialist deficit (shortfall) fees.

¹⁶ Therefore, for transactions settling on or after March 1, 2004, the fixed monthly fee and the charge of \$0.10 per contract side to specialists for transactions in the QQQ equity options when the specialist unit elects to pay the fixed monthly fee will no longer be available and will be removed from the Phlx fee schedule unless a separate proposed rule change is filed to the contrary. The \$50,000 "firm-related" equity option and index option cap and the related QQQ license fee charge of \$0.10 per contract side for equity option firm/proprietary and firm/proprietary facilitation transactions that is imposed after the \$50,000 firm equity and index option comparison and transaction cap is reached, will remain in effect.

increasing revenue to the Exchange. In connection with the firm-related equity option and index option cap, the purpose of including the footnote related to equity option and index option "firm" transactions is to clarify to whom the firm-related charges apply.¹⁷

The purpose of the QQQ license fee is to adopt a fee for trading in the QQQ options to defray licensing costs associated with the trading of this product. Also, in connection with the specialist fixed fee, this proposal offers the opportunity for a specialist unit to choose a fixed monthly fee in lieu of paying the rate currently in effect for equity and index option transaction charges and the equity option Shortfall Fee. The Exchange staff has noted that some specialist units prefer knowing the exact cost of their equity and index option transactions; thus, allowing them to budget accordingly, and adjust their business models and strategies to meet these fixed costs. In addition, the fixed fee should create an incentive to bring in more business, above the fixed amount, which would be free of additional transaction charges assessed on specialist units. Additional order flow may generate transaction fees on the contra side that, in turn, may generate additional revenue for the Exchange.

2. Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act,¹⁸ in general, and with Section 6(b)(4) of the Act,¹⁹ in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective pursuant to

¹⁷ See note 4 *infra*.

¹⁸ 15 U.S.C. 78f(b).

¹⁹ 15 U.S.C. 78f(b)(4).

Section 19(b)(3)(A)(ii) of the Act²⁰ and subparagraph (f)(2) of Rule 19b-4²¹ thereunder, because it establishes or changes a due, fee, or other charge.

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.²²

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of Phlx. All submissions should refer to File No. SR-Phlx-2003-61 and should be submitted by October 6, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²³

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03-23416 Filed 9-12-03; 8:45 am]

BILLING CODE 8010-01-P

SOCIAL SECURITY ADMINISTRATION

Privacy Act of 1974, as Amended; New System of Records and New Routine Use Disclosures

AGENCY: Social Security Administration.

ACTION: Proposed new system of records and proposed routine uses.

SUMMARY: In accordance with the Privacy Act (5 U.S.C. 552a(e)(4) and (e)(11)), we are issuing public notice of our intent to establish a new system of records entitled *eWork System, 60-0330*, and routine uses applicable to the system of records. We also are issuing notice that we may disclose personally identifiable information from the *eWork System* to consumer reporting agencies in accordance with 5 U.S.C. 552a(b)(12) and 31 U.S.C. 3711(e). We invite public comment on this proposal.

DATES: We filed a report of the proposed *eWork System* and the applicable routine uses with the Chairwoman of the Senate Committee on Governmental Affairs, the Chairman of the House Committee on Government Reform, and the Director, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on September 9, 2003. The proposed *eWork System* and the proposed routine uses will become effective on October 18, 2003, unless we receive comments warranting them not to be effective.

ADDRESSES: Interested individuals may comment on this publication by writing to the Executive Director, Office of Public Disclosure, Office of the General Counsel, Social Security Administration, Room 3-A-6 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235-6401. All comments received will be available for public inspection at the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Pamela J. McLaughlin, Strategic Issues Team, Office of Public Disclosure, Office of the General Counsel, Social Security Administration, Room 3-C-1 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235-6401, e-mail address at pam.mclaughlin@ssa.gov, or by telephone at (410) 965-3677.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose of the Proposed New eWork System of Records

A. General Background

Social Security Title II disability beneficiaries are allowed to work in a "trial work period." Under certain other circumstances permitted by the Social Security Act, SSA can also make determinations concerning their ability to successfully return to the workforce. These individuals must undergo continuing disability reviews (CDRs) based on work activity. SSA is developing the *eWork System* as a means of controlling and processing "work" CDRs. This system will replace

a manual, labor-intensive paper process. The *eWork System* will allow SSA personnel to process "work" CDRs more efficiently, timely, and accurately. In addition, the *eWork System* will collect information from Title XVI recipients making any report of earnings. Because SSA will maintain and retrieve information from the proposed *eWork System* using individuals' Social Security numbers (SSNs) and/or names, the proposed system will constitute a "system of records" under the Privacy Act.

The *eWork System* will allow SSA to automate programmatic and administrative tasks such as:

- Generating requests to employers and Title II disability applicants or beneficiaries to verify the applicants/beneficiaries' earnings and work activity;
- Recording and storing monthly earnings and other work activity information for employed and/or self-employed Title II disability applicants or beneficiaries, and for Title XVI recipients making any report of earnings;
- Producing feedback reports of an individual beneficiary's current entitlement/eligibility and work status based on information in other SSA databases, and producing receipts for all reports of earnings;
- Identifying complex and sensitive cases for handling by appropriate direct service personnel, such as technical experts;
- Automating requests for disability folders that may be located at different locations within SSA;
- Recording the completion of a work CDR decision for management information and workload reporting purposes;
- Obtaining relevant information from other SSA databases for use in work CDR's;
- Providing management information reports concerning "work" CDR's and earnings reports; and
- Providing information for statistical and evaluation purposes.

B. Collection and Maintenance of Data in the eWork System

The *eWork System* will include identifying information about Title II disability beneficiaries; information about their disability claims, work activity, and participation in the "Ticket-to-Work" Program (if applicable), Title XVI recipients and their reports of earnings; and administrative data. See the "Categories of records" section of the notice below for a full description of the data that will be maintained in the system.

²⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

²¹ 17 CFR 240.19b-4(f)(2).

²² See 15 U.S.C. 78s(b)(3)(C).

²³ 17 CFR 200.30-3(a)(12).

II. Proposed Routine Use Disclosures of Data Maintained in the Proposed *eWork System*

A. Proposed Routine Use Disclosures

We are proposing to establish the following routine use disclosures of information that will be maintained in the proposed new *eWork System*:

1. To the Office of the President for the purpose of responding to an individual pursuant to an inquiry received from that individual or from a third party on his or her behalf.

We will disclose information under this routine use only in situations in which an individual may contact the Office of the President, seeking that Office's assistance in a matter relating to the *eWork System*. Information will be disclosed when the Office of the President makes an inquiry and indicates that it is acting on behalf of the individual whose record is requested.

2. To a congressional office in response to an inquiry from that office made at the request of the subject of a record.

We will disclose information under this routine use only in situations in which an individual may ask his or her congressional representative to intercede in a matter relating to the *eWork System*. Information will be disclosed when the congressional representative makes an inquiry and indicates that he or she is acting on behalf of the individual whose record is requested.

3. To the Department of Justice (DOJ), a court or other tribunal, or another party before such tribunal when:

(a) SSA, or any component thereof, or

(b) any SSA employee in his/her official capacity; or

(c) any SSA employee in his/her individual capacity where DOJ (or SSA where it is authorized to do so) has agreed to represent the employee; or

(d) the United States or any agency thereof where SSA determines that the litigation is likely to affect the operations of SSA or any of its components is party to litigation or has an interest in such litigation, and SSA determines that the use of such records by DOJ, a court or other tribunal, or another party before such tribunal is relevant and necessary to the litigation, provided, however, that in each case, SSA determines that such disclosure is compatible with the purpose for which the records were collected.

Disclosure of any information defined as "return or return information" under 26 U.S.C. 6103 of the Internal Revenue Code (IRC) will not be disclosed unless

authorized by a statute, the Internal Revenue Service (IRS), or IRS regulations.

We will disclose information under this routine use only as necessary to enable DOJ to effectively defend SSA, its components or employees in litigation involving the proposed system of records or when the United States is a party to litigation and SSA has an interest in the litigation.

4. Disclosure to the Internal Revenue Service (IRS), Department of Treasury, for the purpose of auditing SSA's compliance with the safeguard provisions of the Internal Revenue Code (IRC) of 1986, as amended.

This proposed routine use would allow the IRS to audit SSA's maintenance of earnings and wage information in the *eWork System* to ensure that SSA complies with the safeguard requirements of the IRC.

5. To student volunteers and other workers, who technically do not have the status of Federal employees, when they are performing work for SSA as authorized by law, and they need access to personally identifiable information in SSA records in order to perform their assigned Agency functions.

Under certain Federal statutes, SSA is authorized to use the service of volunteers and participants in certain educational, training, employment and community service programs. Examples of such statutes and programs include: 5 U.S.C. 3711 regarding student volunteers and 42 U.S.C. 2753 regarding the College Work-Study Program. We contemplate disclosing information under this routine use only when SSA uses the services of these individuals, and they need access to information in this system to perform their assigned agency duties.

6. To contractors and other Federal agencies, as necessary, for the purpose of assisting SSA in the efficient administration of its programs. We contemplate disclosing information under this routine use only in situations in which SSA may enter into a contractual or similar agreement with a third party to assist in accomplishing an agency function relating to this system of records.

SSA occasionally contracts out certain of its functions when this would contribute to effective and efficient operations. SSA must be able to give a contractor whatever information the Agency can legally provide in order for the contractor to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor from using or disclosing the information for any purpose other than that described in the contract.

7. To Federal, State and local law enforcement agencies and private security contractors as appropriate, information necessary:

- To enable them to protect the safety of SSA employees and customers, the security of the SSA workplace and the operation of SSA facilities, or

- To assist investigations or prosecutions with respect to activities that affect such safety and security or activities that disrupt the operation of SSA facilities.

We will disclose information under this routine use to law enforcement agencies and private security contractors when information is needed to respond to, investigate, or prevent activities that jeopardize the security and safety of SSA customers, employees or workplaces or that otherwise disrupt the operation of SSA facilities.

Information would also be disclosed to assist in the prosecution of persons charged with violating Federal or local law in connection with such activities.

8. To Federal agencies, contractors or third parties for the performance of evaluations, statistical studies, research and demonstration projects directly relating to this system of records, including the Ticket-to-Work Program.

We will disclose information under this routine use to Federal agencies, contractors or third parties when information is needed to perform evaluations, statistical studies, and research and demonstration projects specific to this system of records and the Ticket-to-Work Program.

9. Non-tax return information which is not restricted from disclosure by Federal law to the General Services Administration (GSA) and the National Archives Records Administration (NARA) under 44 U.S.C. 2904 and 2906, as amended by NARA Act of 1984, for the use of those agencies in conducting records management studies.

The Administrator of GSA and the Archivist of NARA are charged by 44 U.S.C. 2904, as amended, with promulgating standards, procedures and guidelines regarding record management and conducting records management studies. 44 U.S.C. 2906, as amended, provides that GSA and NARA are to have access to federal agencies' records and that agencies are to cooperate with GSA and NARA. In carrying out these responsibilities, it may be necessary for GSA and NARA to have access to this proposed system of records. In such instances, the routine use will facilitate disclosure.

B. Compatibility of Proposed Routine Uses

The Privacy Act (5 U.S.C. 552a(b)(3)) and SSA's disclosure regulation (20 CFR part 401) permit us to disclose information under a published routine use for a purpose that is compatible with the purpose for which we collected the information. SSA's Regulations at 20 CFR 401.150(c) permit us to disclose information under a routine use where necessary to carry out SSA programs. SSA's Regulations at 20 CFR 401.120 provide that we will disclose information when a law specifically requires the disclosure. The proposed routine uses numbered 1 through 8 above will ensure efficient administration of SSA programs administered through the proposed *eWork System*; the disclosure that would be made under routine use number 9 is required by law. The proposed routine uses are appropriate and meet the relevant statutory and regulatory criteria.

III. Disclosure to Consumer Reporting Agencies

The Privacy Act of 1974, as amended (5 U.S.C. 552a(b)(12)) permits Federal agencies to disclose certain information to consumer reporting agencies in accordance with 31 U.S.C. 3711(e) without the consent of the individuals to whom the information pertains. The purpose of this disclosure is to provide an incentive for individuals to pay any outstanding debts they owe to the Federal government by including information about these debts in the records relating to those persons maintained by consumer reporting agencies. This is a practice commonly used by the private sector. The information disclosed will be limited to that which is needed to establish the identity of the individual debtor, the amount, status, and history of the debt, and the agency or program under which the debt arose.

We have added the following statement at the end of the routine uses section of the proposed system of records:

Disclosure pursuant to 5 U.S.C. 552a(b)(12) may be made to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701, *et seq.*) as amended. The disclosure will be made in accordance with 31 U.S.C. 3711(e) when authorized by sections 204(f), 808(e), or 1631(b)(4) of the Social Security Act (42 U.S.C. 404(f), 1008(e), or 1383(b)(4)). The purpose of this disclosure is to aid in the collection of

outstanding debts owed to the Federal government, typically, to provide an incentive for debtors to repay delinquent Federal government debts by making these debts part of their credit records. The information to be disclosed is limited to the individual's name, address, SSN, and other information necessary to establish the individual's identity, the amount, status, and history of the debt and the agency or program under which the debt arose.

IV. Records Storage Medium and Safeguards for the Proposed *eWork System*

The *eWork System* is an automated database. Only authorized SSA personnel who have a need for the information in the performance of their official duties will be permitted access to the information. We will safeguard the security of the information by requiring the use of access codes to enter the computer systems that will maintain the data and will store computerized records in secured areas that are accessible only to employees who require the information to perform their official duties. Any manually maintained records will be kept in locked cabinets or in otherwise secure areas. Furthermore, SSA employees having access to SSA databases maintaining personal information must sign a sanction document annually, acknowledging their accountability for making unauthorized access to or disclosure of such information.

Contractor personnel having access to data in the *eWork System* will be required to adhere to SSA rules concerning safeguards, access and use of the data.

SSA personnel having access to the data on this system will be informed of the criminal penalties of the Privacy Act for unauthorized access to or disclosure of information maintained in this system. See 5 U.S.C. 552a(i)(1).

V. Effect of the Proposed *eWork System* on the Rights of Individuals

The proposed new system of records will maintain only that information that is necessary for the efficient and effective control and processing of "work" CDRs and initial disability applications involving work activity, and Title XVI recipient reports of earnings. Security measures will be employed that protect access to and preclude unauthorized disclosure of records in the proposed system of records. Therefore, we do not anticipate that the proposed system of records will have an unwarranted adverse effect on the rights of individuals.

Dated: September 9, 2003.

Jo Anne B. Barnhart,
Commissioner.

60-0330

SYSTEM NAME:

eWork System, Office of the Deputy Commissioner for Disability and Income Security Programs, Office of Employment Support Programs.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Social Security Administration, Office of Systems, 6401 Security Boulevard, Baltimore, Maryland 21235.

In addition to the Headquarters location, SSA field locations; addresses may be obtained by writing to the system manager at the address below.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system covers Social Security Title II disability beneficiaries who must undergo a continuing disability review (CDR) because of work activity, participate in the Ticket-to-Work Program, or make earnings or work reports; and Title XVI recipients making any report of work or earnings.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains the following types of records: Identifying information such as a Social Security number (SSN), name and date of birth; claim information such as type of claim, date disability began, reason for reopening, continuance or cessation code, date of termination (if applicable); work activity and employment information; evidence of earnings; district office and state agency code; data related to the Ticket-to-Work Program such as Ticket eligibility, receipt, assignment and use, alleged and verified earnings, and suspension of continuing disability determinations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sect. 222, 225, 1611, 1631 and 1633 of the Social Security Act (42 U.S.C. 422, 425, 1382, 1383 and 1383b); the Federal Records Act of 1950 (Pub. L. 81-754, 64 Stat. 583), as amended.

PURPOSE(S):

Information in this system will be used to:

- Generate requests to employers and Title II disability applicants or beneficiaries to verify the applicants/beneficiaries' earnings and work activity;
- Record and store monthly earnings and other work activity information,

work and earnings reports, and evidence for Title II disability beneficiaries who are employed and/or self-employed, and for Title XVI recipients making any report of earnings;

- Produce reports of beneficiaries' current entitlement/eligibility and work status based on information from their families and representatives and information in other SSA databases;
- Produce receipts for all reports of earnings;
- Identify complex and sensitive cases for handling by appropriate direct service personnel, such as technical experts;
- Automate requests for disability folders that may be located at different locations within SSA;
- Obtain relevant information from other SSA databases for use in CDRs;
- Provide management information reports concerning "work" CDRs, work and earnings reports, and other related workloads; and
- Provide information for statistical studies, evaluations, research and demonstration projects relating to SSA's disability programs, and specifically, to the Ticket-to-Work Program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosures may be made for routine uses as indicated below. However, disclosure of any information defined as "return or return information" under 26 U.S.C. 6103 of the Internal Revenue Code (IRC) will not be disclosed unless authorized by a statute, the Internal Revenue Service (IRS), or IRS regulations.

1. To the Office of the President for the purpose of responding to an individual pursuant to an inquiry received from that individual or from a third party on his or her behalf.
2. To a congressional office in response to an inquiry from that office made at the request of the subject of a record.
3. To the Department of Justice (DOJ), a court or other tribunal, or another party before such tribunal when:
 - (a) SSA, or any component thereof, or
 - (b) any SSA employee in his/her official capacity; or
 - (c) any SSA employee in his/her individual capacity where DOJ (or SSA where it is authorized to do so) has agreed to represent the employee; or
 - (d) the United States or any agency thereof where SSA determines that the litigation is likely to affect the operations of SSA or any of its components

is party to litigation or has an interest in such litigation, and SSA determines

that the use of such records by DOJ, a court or other tribunal, or another party before such tribunal is relevant and necessary to the litigation, provided, however, that in each case, SSA determines that such disclosure is compatible with the purpose for which the records were collected.

Disclosure of any information defined as "return or return information" under 26 U.S.C. 6103 of the Internal Revenue Code (IRC) will not be disclosed unless authorized by a statute, the Internal Revenue Service (IRS), or IRS regulations.

4. To the Internal Revenue Service (IRS), Department of the Treasury, for the purpose of auditing SSA's compliance with the safeguard provisions of the Internal Revenue Code (IRC) of 1986, as amended.

5. To student volunteers and other workers, who technically do not have the status of Federal employees, when they are performing work for SSA as authorized by law, and they need access to personally identifiable information in SSA records in order to perform their assigned Agency functions.

6. To contractors and other Federal agencies, as necessary, for the purpose of assisting SSA in the efficient administration of its programs. We contemplate disclosing information under this routine use only in situations in which SSA may enter into a contractual or similar agreement with a third party to assist in accomplishing an agency function relating to this system of records.

7. To Federal, State and local law enforcement agencies and private security contractors as appropriate, information is necessary:

- To enable them to protect the safety of SSA employees and customers, the security of the SSA workplace and the operation of SSA facilities, or
- To assist investigations or prosecutions with respect to activities that affect such safety and security or activities that disrupt the operation of SSA facilities.

8. To Federal agencies, contractors or third parties for the performance of evaluations, statistical studies, research and demonstration projects directly relating to this system of records, including the Ticket-to-Work Program.

9. Non-tax return information which is not restricted from disclosure by Federal law to the General Services Administration (GSA) and the National Archives Records Administration (NARA) under 44 U.S.C. § 2904 and § 2906, as amended by NARA Act of 1984, for the use of those agencies in conducting records management studies.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosure pursuant to 5 U.S.C. 552a(b)(12) may be made to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701, *et seq.*) as amended. The disclosure will be made in accordance with 31 U.S.C. 3711(e) when authorized by sections 204(f), 808(e), or 1631(b)(4) of the Social Security Act (42 U.S.C. 404(f), 1008(e), or 1383(b)(4)). The purpose of this disclosure is to aid in the collection of outstanding debts owed to the Federal government, typically, to provide an incentive for debtors to repay delinquent Federal government debts by making these debts part of their credit records. The information to be disclosed is limited to the individual's name, address, SSN, and other information necessary to establish the individual's identity, the amount, status, and history of the debt and the agency or program under which the debt arose.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are maintained in both electronic and paper form (*e.g.*, magnetic tape and disc and microfilm).

RETRIEVABILITY:

Records in this system will be retrieved by the individual's SSN and/or name.

SAFEGUARDS:

Security measures include the use of access codes to enter the computer system which will maintain the data, the storage of computerized records in secured areas which are accessible only to employees who require the information in performing their official duties. SSA employees who have access to the data will be informed of the criminal penalties of the Privacy Act for unauthorized access to or disclosure of information maintained in the system. See 5 U.S.C. 552a(i)(1).

Contractor personnel having access to data in the system of records will be required to adhere to SSA rules concerning safeguards, access and use of the data.

RETENTION AND DISPOSAL:

Records in this system are retained for one year when they pertain to documents provided by and returned to an individual, denial of requests for confidential information, release of confidential information to an authorized third party, and

undeliverable material. Records are maintained for at least 7 years when they contain information and/or evidence pertaining to Social Security coverage, wage, and self-employment determinations or when they affect future claims development. Additional information collected may be retained for longer periods for purposes of analysis and process improvement, without regard to individual records.

The means of disposal of the information in this system will be appropriate to the storage medium (e.g., deletion of individual electronic records or shredding of paper records).

SYSTEM MANAGER(S) AND ADDRESSES:

Office of the Deputy Commissioner for Disability and Income Security Programs, Associate Commissioner, Office of Employment Support Programs, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235.

NOTIFICATION PROCEDURES:

An individual can determine if this system contains a record about him/her by writing to the systems manager(s) at the above address and providing his/her name, SSN or other information that may be in the system of records that will identify him/her. An individual requesting notification of records in person should provide the same information, as well as provide an identity document, preferably with a photograph, such as a driver's license or some other means of identification. If an individual does not have any identification documents sufficient to establish his/her identity, the individual must certify in writing that he/she is the person claimed to be and that he/she understands that the knowing and willful request for, or acquisition of, a record pertaining to another individual under false pretenses is a criminal offense (20 CFR 401.45).

If notification is requested by telephone, an individual must verify his/her identity by providing identifying information that parallels the record to which notification is being requested. If it is determined that the identifying information provided by telephone is insufficient, the individual will be required to submit a request in writing or in person. If an individual is requesting information by telephone on behalf of another individual, the subject individual must be connected with SSA and the requesting individual in the same phone call. SSA will establish the subject individual's identity (his/her name, SSN, address, date of birth and place of birth along with one other piece of information such as mother's maiden

name) and ask for his/her consent in providing information to the requesting individual (20 CFR 401.45).

If a request for notification is submitted by mail, an individual must include a notarized statement to SSA to verify his/her identity or must certify in the request that he/she is the person claimed to be and that he/she understands that the knowing and willful request for, or acquisition of, a record pertaining to another individual under false pretenses is a criminal offense. These procedures are in accordance with SSA Regulations (20 CFR 401.45).

RECORD ACCESS PROCEDURES:

Same as Notification procedures. Requesters also should reasonably specify the record contents they are seeking. These procedures are in accordance with SSA Regulations (20 CFR 401.50).

CONTESTING RECORD PROCEDURES:

Same as Notification procedures. Requesters also should reasonably identify the record, specify the information they are contesting, and state the corrective action sought and the reasons for the correction with supporting justification showing how the record is untimely, incomplete, inaccurate or irrelevant. These procedures are in accordance with SSA Regulations (20 CFR 401.65).

RECORD SOURCE CATEGORIES:

Information in this system of records is obtained from information collected from individuals interviewed in person in the SSA FOs or over the telephone, contractors, third parties and from existing systems of records such as the *Claims Folder System, 60-0089, Master Beneficiary Record, 60-0090, Master Files of Social Security Numbers (SSN) Holders and SSN Application, 60-0058, and the Supplemental Security Income Record and Special Veterans Benefits, 60-0103.*

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE PRIVACY ACT:

None.

[FR Doc. 03-23413 Filed 9-12-03; 8:45 am]

BILLING CODE 4191-02-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 172: Future Air-Ground Communications in the Very High Frequency (VHF) Aeronautical Data Band (118-137 MHz)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 172 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 172: Future Air-Ground Communications in the VHF Aeronautical Data Band (118-137 MHz).

DATES: The meeting will be held September 30-October 2, 2003 from 9 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at RTCA, Inc., 1828 L Street, NW., Suite 805, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Washington, DC 20036; telephone (202) 833-9339; fax (202) 833-9434; Web site <http://www.rtca.org>.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 172 meeting. The agenda will include:

- *September 30:*
 - Opening Plenary Session (Welcome and Introductory Remarks, Review of Agenda, Review Summary of Previous Meeting)
 - Convene Working Group-3 (WG-3), resolve final review and comments (FRAC), to draft Change 1 to DO-271A, VHF Digital Link Mode 3 Minimum Operational Performance Standard (MOPS)
- *October 1-2:*
 - Reconvene WG-3 as necessary, work the DO-281 Change 1 issues.
 - Convene WG-2, to entertain white papers and actions regarding the development of Version B of the DO-224A, Signal-in-Space Minimum Aviation Communications Including Compatibility with Digital Voice.
 - Convene Plenary-Approve WG-3 recommendations for draft Change 1 to DO-271A VDL 3 MOPS to forward to RTCA Program Management Committee.
 - Review relevant activities
 - International Civil Aviation Organization (ICAO) Aeronautical Mobile Communications Panel work
 - NEXCOM activities

- EUROCAE WG-47 status and issues
- Others as appropriate
- Closing Plenary Session (Other Business, Date and Place of Next Meeting, Adjourn)

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on September 3, 2003.

Robert Zoldos,

FAA Systems Engineer, RTCA Advisory Committee.

[FR Doc. 03-23506 Filed 9-12-03; 8:45 am]

BILLING CODE 4910-13-M

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 San Francisco International Airport, San Francisco, CA

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 San Francisco International 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).

DATES: Comments must be received on or before October 15, 2003.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Lawndale, CA 90261, or San Francisco Airports District Office, 831 Mitten Road, Room 210, Burlingame, CA 94010-1303. In addition, on copy of any comments submitted to the FAA must be mailed or delivered to Mr. John L. Martin, Airport Director, San Francisco International Airport, at the following address: P.O. Box 8097, San Francisco, CA. Air carriers and foreign air carriers may

submit copies of written comments previously provided to the San Francisco Airport Commission under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT:

Marlys Lingsch, Airports Program Analyst, San Francisco Airports District Office, 831 Mitten Road, Room 210, Burlingame, CA 94010-1303, Telephone: (650) 876-2806. 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 impose and use the revenue from a PFC at San Francisco International 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 27, 2003, the FAA determined that the application to impose and use the revenue from the PFC submitted by the San Francisco Airport Commission was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than November 29, 2003.

The following is a brief overview of the impose and use application No. 03-03-C-00-SFO:

Level of proposed PFC: \$4.50.

Proposed charge effective date: November 1, 2008.

Proposed charge expiration date: November 1, 2018.

Total estimated PFC revenue: \$539,107,697.

Brief description of the proposed project: Boarding Areas A and G and International Terminal Building.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/ Commercial Operators (ATCO) filing FAA Form 1800-31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Division located at: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Lawndale, CA 90261. In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the San Francisco Airport Commission.

Issued in Lawndale, California, on August 27, 2003.

Mark A. McClardy,

Manager, Airports Division, Western-Pacific Region.

[FR Doc. 03-23507 Filed 9-12-03; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Policy Statement No. ASNM-03-115-31]

Conducting Component Level Tests To Demonstrate Compliance

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed policy; request for comments; reopening of comment period.

SUMMARY: The Federal Aviation Administration (FAA) announced the availability of proposed policy on conducting component level tests in order to demonstrate compliance with the requirements of § 25.785(b) and (d), in a **Federal Register** notice published on July 22, 2003 (68 FR 43418). The comment period closed on August 21, 2003. The FAA is herewith reopening the comment period to allow additional time for comment.

DATES: Send your comments on or before October 30, 2003.

ADDRESSES: Address your comments to the individual identified under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Jim Cashdollar, Federal Aviation Administration, Transport Airplane Directorate, Transport Standards Staff, Airframe and Cabin Safety Branch, ANM-115, 1601 Lind Avenue SW., Renton, WA 98055-4056; telephone (425) 227-2785; fax (425) 227-1149; e-mail: jim.cashdollar@faa.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

The proposed policy is available on the Internet at the following address: <http://www.airweb.faa.gov/rgl>. If you do not have access to the Internet, you can obtain a copy of the policy by contacting the period listed under **FOR FURTHER INFORMATION CONTACT**.

The FAA invites your comments on this proposed policy. We will accept your comments, data, views, or arguments by letter, fax, or e-mail. Send your comments to the person indicated in **FOR FURTHER INFORMATION CONTACT**. Mark your comments, "Comments to Policy Statement No. ANM-03-115-31."

Use the following format when preparing your comments:

- Organize your comments issue-by-issue.
- For each issue, state what specific change you are requesting to the proposed policy.
- Include justification, reasons, or data for each change you are requesting.

We also welcome comments in support of the proposed policy.

We will consider all communications received on or before the closing date for comments. We may change the proposed policy because of the comments received.

Background

The policy memorandum provides FAA certification policy on conducting component level tests in order to demonstrate compliance with the requirements of § 25.785(b) and (d). The tests described herein provide a standardized approach by which each potentially injurious item located within the headstrike zone can be assessed for occupant injury potential. These test methods are the product of an Aviation Rulemaking Advisory Committee recommendation and are harmonized with the Joint Aviation Authorities (JAA) and Transport Canada.

On August 16, 2003, the FAA received a request from the General Aviation Manufacturers Association (GAMA) for an additional 45 days in which to prepare comments on this proposed policy. The reason for the request was that the proposed policy supersedes certain compliance methods that GAMA believes are important and significant methods that should remain acceptable for demonstrating compliance with the deethalization requirements. The FAA has determined that allowing this additional comment time will enhance the policy in that it will provide time for Industry to develop and submit their arguments justifying additional methods of compliance for inclusion in the final policy. The FAA is therefore reopening the comment period to afford all interested parties time to comment.

Issued in Renton, Washington, on September 4, 2008.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03-23301 Filed 9-12-03; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number MARAD 2003 16089]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel COOL CHANGE.

SUMMARY: As authorized by Public Law 105-383 and Public Law 107-295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2003-16089 at <http://dms.dot.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Public Law 105-383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before October 15, 2003.

ADDRESSES: Comments should refer to docket number MARAD 2003-16089. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL-401, Department of Transportation, 400 7th St., SW., Washington, DC 20590-0001. You may also send comments electronically via the Internet at <http://dmses.dot.gov/submit/>. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is

available on the World Wide Web at <http://dms.dot.gov>.

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR-830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202-366-0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel COOL CHANGE is: Intended Use: "Sail Training, sightseeing."

Geographic Region: "U.S. East Coast & Gulf of Mexico, specifically: Coastal Georgia including but not limited to Brunswick, GA; coastal North Carolina, including but not limited to Beaufort, NC, and Northwest Florida between Fort Myers and Panama City, FL."

Dated: September 9, 2003.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 03-23362 Filed 9-12-03; 8:45 am]

BILLING CODE 4910-81-P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD 2003 16087]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel CRABBY BILL.

SUMMARY: As authorized by Public Law 105-383 and Public Law 107-295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2003-16087 at <http://dms.dot.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Public Law 105-383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a

waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before October 15, 2003.

ADDRESSES: Comments should refer to docket number MARAD-2003 16087. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL-401, Department of Transportation, 400 7th St., SW., Washington, DC 20590-0001. You may also send comments electronically via the Internet at <http://dmses.dot.gov/submit/>. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at <http://dms.dot.gov>.

FOR FURTHER INFORMATION CONTACT:

Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR-830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202-366-0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel CRABBY BILL is: Intended Use: "Coastwise Charters." Geographic Region: "From the Chesapeake Bay to Key West, Florida."

Dated: September 9, 2003.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 03-23358 Filed 9-12-03; 8:45 am]

BILLING CODE 4910-81-P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD 2003 16082]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel EARN CHATHA.

SUMMARY: As authorized by Public Law 105-383 and Public Law 107-295, the Secretary of Transportation, as

represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2003-16082 at <http://dms.dot.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Public Law 105-383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before October 15, 2003.

ADDRESSES: Comments should refer to docket number MARAD-2003 16082. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL-401, Department of Transportation, 400 7th St., SW., Washington, DC 20590-0001. You may also send comments electronically via the Internet at <http://dmses.dot.gov/submit/>. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at <http://dms.dot.gov>.

FOR FURTHER INFORMATION CONTACT:

Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR-830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202-366-0760.

SUPPLEMENTARY INFORMATION: As

described by the applicant the intended service of the vessel EARN CHATHA is: Intended Use: "Vessel will be used for 6 pack charter fishing trips and sightseeing tours."

Geographic Region: "East Coast of the U.S. from Maine to Florida with primary service in New Jersey, Maryland, North Carolina and Florida."

Dated: September 9, 2003.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 03-23364 Filed 9-12-03; 8:45 am]

BILLING CODE 4910-81-P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD 2003 16090]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel JEFE.

SUMMARY: As authorized by Public Law 105-383 and Public Law 107-295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2003-16090 at <http://dms.dot.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Public Law 105-383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before October 15, 2003.

ADDRESSES: Comments should refer to docket number MARAD 2003-16090. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL-401, Department of Transportation, 400 7th St., SW., Washington, DC 20590-0001. You may also send comments electronically via the Internet at <http://>

dmses.dot.gov/submit/. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at <http://dms.dot.gov>.

FOR FURTHER INFORMATION CONTACT:

Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR-830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202-366-0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel JEFE is:

Intended Use: "Sport fishing charters."

Geographic Region: "Pt. Conception, CA, to the Mexican Border."

Dated: September 9, 2003.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 03-23361 Filed 9-12-03; 8:45 am]

BILLING CODE 4910-81-P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD 2003 16084]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel PATRICIA E.

SUMMARY: As authorized by Public Law 105-383 and Public Law 107-295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2003-16084 at <http://dms.dot.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Public Law 105-383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have

an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before October 15, 2003.

ADDRESSES: Comments should refer to docket number MARAD-2003 16084. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL-401, Department of Transportation, 400 7th St., SW., Washington, DC 20590-0001. You may also send comments electronically via the Internet at <http://dmses.dot.gov/submit/>. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at <http://dms.dot.gov>.

FOR FURTHER INFORMATION CONTACT:

Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR-830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202-366-0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel PATRICIA E is:

Intended Use: "Sportfishing, part time charter."

Geographic Region: "Atlantic coast—Maine to Florida."

Dated: September 9, 2003.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 03-23363 Filed 9-12-03; 8:45 am]

BILLING CODE 4910-81-P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD 2003 16088]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of

the Coastwise Trade Laws for the vessel S/V Y NOT.

SUMMARY: As authorized by Public Law 105-383 and Public Law 107-295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2003-16088 at <http://dms.dot.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Public Law 105-383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before October 15, 2003.

ADDRESSES: Comments should refer to docket number MARAD-2003 16088. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL-401, Department of Transportation, 400 7th St., SW., Washington, DC 20590-0001. You may also send comments electronically via the Internet at <http://dmses.dot.gov/submit/>. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at <http://dms.dot.gov>.

FOR FURTHER INFORMATION CONTACT:

Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR-830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202-366-0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel S/V Y NOT is:

Intended Use: "Term vacation charter."

Geographic Region: "Chesapeake Bay to Key West, Fla."

Dated: September 9, 2003.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 03-23360 Filed 9-12-03; 8:45 am]

BILLING CODE 4910-81-P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD 2003 16086]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel STRIKER.

SUMMARY: As authorized by Public Law 105-383 and Public Law 107-295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2003-16086 at <http://dms.dot.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Public Law 105-383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before October 15, 2003.

ADDRESSES: Comments should refer to docket number MARAD-2003 16086. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL-401,

Department of Transportation, 400 7th St., SW., Washington, DC 20590-0001.

You may also send comments electronically via the Internet at <http://dmses.dot.gov/submit/>. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at <http://dms.dot.gov>.

FOR FURTHER INFORMATION CONTACT:

Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR-830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202-366-0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel STRIKER is:

Intended Use: "Charter Fishing."

Geographic Region: "U.S. waters, excluding Alaska and Hawaii."

Dated: September 9, 2003.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 03-23357 Filed 9-12-03; 8:45 am]

BILLING CODE 4910-81-P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD 2003 16085]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel WANDERER.

SUMMARY: As authorized by Public Law 105-383 and Public Law 107-295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2003-16085 at <http://dms.dot.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Public Law 105-383

and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before October 15, 2003.

ADDRESSES: Comments should refer to docket number MARAD-2003 16085. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL-401, Department of Transportation, 400 7th St., SW., Washington, DC 20590-0001. You may also send comments electronically via the Internet at <http://dmses.dot.gov/submit/>. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at <http://dms.dot.gov>.

FOR FURTHER INFORMATION CONTACT:

Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR-830 Room 7201, 400 Seventh Street, SW.2003., Washington, DC 20590. Telephone 202-366-0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel WANDERER is:

Intended Use: "Dinner cruise charter."

Geographic Region: "Galveston Bay, TX, USA."

Dated: September 9, 2003.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 03-23359 Filed 9-12-03; 8:45 am]

BILLING CODE 4910-81-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2003-15819; Notice 1]

Mitsubishi Motors North America, Inc.,
Receipt of Application for Decision of
Inconsequential Noncompliance

Mitsubishi Motors North America, Inc. (MMNA) has determined that approximately 25,832 vehicles equipped with new pneumatic tires failed to comply with certain provisions mandated by Federal Motor Vehicle Safety Standard (FMVSS) No. 110, "Tire selection and rims", regarding the vehicle normal load.

Pursuant to 49 U.S.C. 30118(d) and 30120(h), MMNA has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR part 573, "Defect and Noncompliance Reports."

This notice of receipt of an application is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the application.

Mitsubishi Motors Sales Caribbean, Inc., and DaimlerChrysler Corporation (at that time, Chrysler Corporation) imported and distributed approximately 25,832 vehicles (Mitsubishi Mirages and Eagle Summit passenger vans), during the periods of September 22, 1994, through May 9, 1996. FMVSS No. 110, "Tire selection and rims," S4.2.2, mandates that the vehicle's normal load on each tire must not exceed the test load for the high speed performance test as specified in FMVSS No. 109, "New pneumatic tires," paragraph S5.5. Paragraph S5.5.1 requires that the tire and wheel assembly be pressed against the test wheel, with a load of 88 percent of the tire's maximum load rating as marked on the tire sidewall.

As requested by MMNA, the affected vehicles, when loaded at the vehicle normal load slightly, exceed 88 percent of the maximum load rating. Specifically, the vehicle's normal load exceeds 88 percent of the maximum load rating by approximately 12kg, which means that the normal load is 89.5 percent of the maximum load rating. The noncompliance resulted from a running change during the 1995 model year that added a three-speed automatic transmission that increased the curb weight by 15kg. FMVSS No. 110 requires that the vehicle's normal load on each tire must not be greater than the high speed performance test load, which is 88 percent of the

maximum load rating as stated on the tire sidewall. Compliance with FMVSS No. 110, S4.2.2, was calculated, by MMNA, based on the original curb weight (without the three-speed transmission) at the vehicle normal load.

MMNA does not believe that the foregoing noncompliance will adversely impact motor vehicle safety. MMNA argues that the tires exceed the FMVSS No. 109 high-speed performance requirements "even at loading conditions significantly above the maximum normal vehicle load."

Interested persons are invited to submit written views, arguments, and data on the application described above. Comments must refer to the docket and notice number cited at the beginning of this notice and be submitted by any of the following methods: Mail: Docket Management Facility; U.S. Department of Transportation, Nassif Building, Room PL-401, 400 Seventh Street SW., Washington, DC 20590-001. Hand Delivery: Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC. Fax: 1-202-493-2251, or submit to Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

It is requested, but not required, that two copies of the comments be provided. The Docket Section is open on weekdays from 10 am to 5 pm except Federal Holidays. Comments may be submitted electronically by logging onto the Docket Management System website at <http://dms.dot.gov>. Click on "Help" to obtain instructions for filing the document electronically.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the application is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: October 15, 2003.

Authority: 49 U.S.C. 301118, 301120; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: September 8, 2003.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 03-23415 Filed 9-12-03; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34393]

The Burlington Northern and Santa Fe
Railway Company—Trackage Rights
Exemption—Union Pacific Railroad
Company

Union Pacific Railroad Company (UP), pursuant to a written trackage rights agreement entered into between UP and The Burlington Northern and Santa Fe Railway Company (BNSF), has agreed to grant certain trackage rights to BNSF on UP's Corpus Christi Subdivision in and near San Antonio, TX, between milepost 3.14 and a point to be determined by mutual written agreement (existing trackage); on new trackage to be constructed by UP between UP's Corpus Christi Subdivision and a point on the western side of Leon Creek for the purpose of serving a new automotive manufacturing plant (Toyota Plant) and associated facilities for the benefit of Toyota Motor Sales, USA, Inc. (TMS), and TMS affiliated companies, as defined in the agreement, near San Antonio, Bexar County, TX (new trackage); and along certain properties needed by BNSF to construct certain connections, sidings and capacity improvements to the described Corpus Christi Subdivision (those properties, the existing trackage, and the new trackage are collectively referred to as joint trackage). The total distance over the existing trackage and the new trackage, depending on the final design and construction, will be approximately 5 to 10 miles. BNSF will operate its own trains with its own crews over UP's line under the trackage rights agreement.

The transaction was scheduled to be consummated on September 5, 2003, and operations will begin upon completion of the new trackage line.

The purpose of the trackage rights is to allow BNSF to provide competitive rail service to the Toyota Plant and other facilities described in the trackage rights agreement.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The

filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34393 must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on Sarah W. Bailiff, 2500 Lou Menk Drive, P. O. Box 961039, Fort Worth, TX 76161-0039.

Board decisions and notices are available on our Web site at "<http://www.stb.dot.gov>."

Decided: September 9, 2003.

By the Board, David M. Kongschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03-23422 Filed 9-12-03; 8:45 am]

BILLING CODE 4915-00-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 2587

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 2587, Application for Special Enrollment Examination.

DATES: Written comments should be received on or before November 14, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622-3945, or through the internet at CAROL.A.SAVAGE@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Application for Special Enrollment Examination.

OMB Number: 1545-0949.

Form Number: Form 2587.

Abstract: Form 2587 is used by individuals to apply to take the Special Enrollment Examination to establish eligibility for enrollment to practice before the IRS. The information on the form is used by the Director of Practice to identify those individuals seeking to take the examination and to plan for the administration of the examination.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals.

Estimated Number of Respondents: 8,000.

Estimated Time Per Respondent: 6 minutes.

Estimated Total Annual Burden Hours: 800.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 8, 2003.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03-23461 Filed 9-12-03; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[LR-311-81]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, LR-311-81 (T.D. 7925), Penalties for Underpayment of Deposits and Overstated Deposit Claims, and Time For Filing Information Returns of Owners, Officers and Directors of Foreign Corporations (section 1.6046-1).

DATES: Written comments should be received on or before November 14, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of regulations should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622-3945, or through the internet at CAROL.A.SAVAGE@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Penalties for Underpayment of Deposits and Overstated Deposit Claims, and Time For Filing Information Returns of Owners, Officers and Directors of Foreign Corporations.

OMB Number: 1545-0794.

Regulation Project Number: LR-311-81.

Abstract: These regulations relate to the penalty for underpayment of deposits and the penalty for overstated deposit claims, and to the time for filing information returns of owners, officers and directors of foreign corporations. Internal Revenue Code section 6046 requires information returns with respect to certain foreign corporations, and the regulations provide the date by which these returns must be filed.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, and not-for-profit institutions.

The burden for section 6046-1 is entirely reflected on Form 5471.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 8, 2003.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03-23462 Filed 9-12-03; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8828

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent

burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8828, Recapture of Federal Mortgage Subsidy.

DATES: Written comments should be received on or before November 14, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622-3945, or through the internet at CAROL.A.SAVAGE@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Recapture of Federal Mortgage Subsidy.

OMB Number: 1545-1288.

Form Number: 8828.

Abstract: Internal Revenue Code section 143(m) provides for recapture of a portion of the federal subsidy from use of qualified mortgage bonds and mortgage credit certificates in cases where the financing is obtained after 1990 and the home subject to the financing is sold during the first 9 years after financing was obtained. Form 8828 provides the IRS with the information necessary to determine that the recapture tax has been properly computed.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 1,000.

Estimated Time Per Respondent: 2 hr., 40 min.

Estimated Total Annual Burden Hours: 2,678.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be

retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 8, 2003.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03-23463 Filed 9-12-03; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8554

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8554, Application for Renewal of Enrollment To Practice Before the Internal Revenue Service.

DATES: Written comments should be received on or before November 14, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue

Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information or copies of the form should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622-3945, or through the internet at CAROL.A.SAVAGE@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Application for Renewal of Enrollment To Practice Before the Internal Revenue Service.

OMB Number: 1545-0946.

Form Number: 8554.

Abstract: The information obtained from Form 8554 relates to the approval of continuing professional education programs and the renewal of the enrollment status for those individuals admitted (enrolled) to practice before the Internal Revenue Service. The information will be used by the Director of Practice to determine the qualifications of individuals who apply for renewal of enrollment.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 39,500.

Estimated Time Per Response: 1 hour, 12 minutes.

Estimated Total Annual Burden Hours: 47,400.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of

information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 8, 2003.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03-23464 Filed 9-12-03; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG-116050-99]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing notice of proposed rulemaking, REG-116050-99, Stock Transfer Rules: Carryover of Earnings and Taxes (§ 1.367(b)-1).

DATES: Written comments should be received on or before November 14, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information or copies of the regulation should be directed to Carol Savage, (202) 622-3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION: *Title:* Stock Transfer Rules: Carryover of Earnings and Taxes.

OMB Number: 1545-1711.

Regulation Project Number: REG-116050-99.

Abstract: The proposed regulations relate to the carryover of certain tax attributes, such as earnings and profits and foreign income tax accounts, when two corporations combine in a section 367(b) transaction.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 600.

Estimated Time Per Respondent: 8 hours.

Estimated Total Annual Burden Hours: 1,800.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 8, 2003.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03-23465 Filed 9-12-03; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY**Internal Revenue Service****Proposed Collection; Comment Request for Form 8854**

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8854, Expatriation Initial Information Statement.

DATES: Written comments should be received on or before November 14, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622-3945, or through the internet at CAROL.A.SAVAGE@irs.gov.

SUPPLEMENTARY INFORMATION: *Title:* Expatriation Initial Information Statement.

OMB Number: 1545-1567.

Form Number: 8854.

Abstract: Internal Revenue Code Section 6039G requires persons who lose U.S. citizenship to provide information concerning citizenship, income tax liability, net worth, and net assets. Form 8854 is used to report this information.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents—Part I: 10,000.

Estimated Number of Respondents—Parts I and II: 1,000.

Estimated Time Per Respondent—Part I: 1 hour, 46 minutes.

Estimated Time Per Respondent—Parts I and II: 7 hours, 8 minutes.

Estimated Total Annual Burden Hours: 23,060.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 8, 2003.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03-23466 Filed 9-12-03; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY**Internal Revenue Service****Proposed Collection; Comment Request for Form 706-GS(T)**

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995,

Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 706-GS(T), Generation-Skipping Transfer Tax Return For Terminations.

DATES: Written comments should be received on or before November 14, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622-3945, or through the internet at CAROL.A.SAVAGE@irs.gov.

SUPPLEMENTARY INFORMATION: *Title:* Generation-Skipping Transfer Tax Return For Terminations.

OMB Number: 1545-1145.

Form Number: 706-GS(T).

Abstract: Form 706-GS(T) is used by trustees to compute and report the tax due on generation-skipping transfers that result from the termination of interests in a trust. The IRS uses the information to verify that the tax has been properly computed.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 100.

Estimated Time Per Respondent: 7 hours, 1 minute.

Estimated Total Annual Burden Hours: 702.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper

performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 8, 2003.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03-23470 Filed 9-12-03; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1138

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1138, Extension of Time for Payment of Taxes by a Corporation Expecting a New Operating Loss Carryback.

DATES: Written comments should be received on or before November 14, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, at (202) 622-6665, or at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet at Allan.M.Hopkins@irs.gov.

SUPPLEMENTARY INFORMATION: *Title:* Extension of Time for Payment of Taxes

by a Corporation Expecting a New Operating Loss Carryback.

OMB Number: 1545-1035.

Form Number: 1138.

Abstract: Form 1138 is filed by corporations to request an extension of time for the payment of taxes for a prior tax year when the corporation believes that it will have a net operating loss in the current tax year. The IRS uses Form 1138 to determine if the request should be granted.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 2,033.

Estimated Time Per Respondent: 4 hr., 49 min.

Estimated Total Annual Burden Hours: 9,800.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 8, 2003.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03-23471 Filed 9-12-03; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form CT-2

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form CT-2, Employee Representative's Quarterly Railroad Tax Return.

DATES: Written comments should be received on or before November 14, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, at (202) 622-3179, or at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet at Allan.M.Hopkins@irs.gov.

SUPPLEMENTARY INFORMATION: *Title:* Employee Representative's Quarterly Railroad Tax Return.

OMB Number: 1545-0002.

Form Number: Form CT-2.

Abstract: Employee representatives file Form CT-2 quarterly to report compensation on which railroad retirement taxes are due. The IRS uses this information to ensure that employee representatives have paid the correct tax. Form CT-2 also transmits the tax payment.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 112.

Estimated Time Per Respondent: 1 hr., 8 min.

Estimated Total Annual Burden Hours: 127.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 8, 2003.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03-23472 Filed 9-12-03; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[T.D. 8418]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the

Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, T.D. 8418, Arbitrage Restrictions on Tax-exempt Bonds (§§ 1.148-1, 1.148-2, 1.148-3, 1.148-4, 1.148-5, 1.148-6, 1.148-7, 1.148-8, and 1.148-11).

DATES: Written comments should be received on or before November 14, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Allan Hopkins, at (202) 622-6665, or at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet, at Allan.M.Hopkins@irs.gov.

SUPPLEMENTARY INFORMATION: *Title:* Arbitrage Restrictions on tax-exempt Bonds.

OMB Number: 1545-1098.

Regulation Project Number: T.D. 8418.

Abstract: This regulation requires state and local governmental issuers of tax-exempt bonds to rebate arbitrage profits earned on nonpurpose investments acquired with the bond proceeds. Issuers are required to submit a form with the rebate. The regulations provide for several elections, all of which must be in writing.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: State, local, or tribal governments, and not-for-profit institutions.

Estimated Number of Respondents: 3,100.

Estimated Time Per Respondent: 2 hours, 45 minutes

Estimated Total Annual Burden

Hours: 8,550.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 9, 2003.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03-23473 Filed 9-12-03; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Wage & Investment Earned Income Tax Credit Issue Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Wage & Investment Earned Income Tax Credit Issue Committee of the Taxpayer Advocacy Panel will be conducted.

DATES: The meeting will be held Friday, October 3, 2003 from 1 pm EDT to 4:30 pm EDT.

FOR FURTHER INFORMATION CONTACT: Marisa Knispel at 1-888-912-1227, or (718) 488-3557.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Wage & Investment Earned Income Tax Credit Issue Committee of the Taxpayer Advocacy Panel will be held Friday, October 3, 2003, from 1 pm EDT to 4:30 pm EDT at Grand Hyatt Hotel, 1000 H Street, NW., Washington, DC. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the

Internal Revenue Service. Written comments will be accepted by mail. If you would like to have the TAP consider a written statement, please call 1-888-912-1227 or (718) 488-3557, or write Marisa Knispel, TAP Office, 10 Metro Tech Center, 624 Fulton Street, Brooklyn, NY 11201. Mrs. Knispel can be reached at 1-888-912-1227 or 718-488-3557. The agenda will include various IRS issues.

Dated: September 5, 2003.

Tersheia Carter,

Acting Director, Taxpayer Advocacy Panel.
[FR Doc. 03-23467 Filed 9-12-03; 8:45 am]
BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Wage & Investment Reducing Taxpayer Burden (Notices) Issue Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Wage & Investment Reducing Taxpayer Burden (Notices) Issue Committee of the Taxpayer Advocacy Panel will be conducted.

DATES: The meeting will be held Friday, October 3, 2003 from 1 p.m. EDT to 4:30 p.m. EDT.

FOR FURTHER INFORMATION CONTACT: Sallie Chavez at 1-888-912-1227, or (954) 423-7979.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Wage & Investment Reducing Taxpayer Burden (Notices) Issue Committee of the Taxpayer Advocacy Panel will be held Friday, October 3, 2003, from 1 p.m. EDT to 4:30 p.m. EDT at Grand Hyatt Hotel, 1000 H Street, NW., Washington, DC. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service. Written comments will be accepted by mail. If you would like to have the TAP consider a written statement, please call 1-888-912-1227 or 954-423-7979, or write Sallie Chavez, TAP Office, 1000 South Pine Island Road, Suite 340, Plantation, FL 33324. Ms. Chavez can be reached at 1-888-912-1227 or (954) 423-7979. The agenda will include various IRS issues.

Dated: September 5, 2003.

Tersheia Carter,

Acting Director, Taxpayer Advocacy Panel.
[FR Doc. 03-23468 Filed 9-12-03; 8:45 am]
BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Small Business/Self-Employed Compliance Issues Schedule C Non-Filers of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Small Business/Self-Employed Compliance Issue Schedule C Non-Filers of the Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Friday, October 3, 2003 from 1:30 p.m. e.d.t. to 5 p.m. e.d.t.

FOR FURTHER INFORMATION CONTACT: Mary Peterson O'Brien at 1-888-912-1227, or (206) 220-6098.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Small Business/Self-Employed Compliance Issue Schedule C Non-Filers of the Taxpayer Advocacy Panel will be held Friday, October 3, 2003, from 1:30 p.m. e.d.t. to 5 p.m. e.d.t. at Grand Hyatt Hotel, 1000 H Street, NW., Washington, DC. Written comments will be accepted by mail. If you would like to have the TAP consider a written statement, please call 1-888-912-1227 or 206-220-6098, or write Mary Peterson O'Brien, TAP Office, 915 Second Avenue Stop W-406, Seattle, WA 98174. Mrs. Peterson O'Brien can be reached at 1-888-912-1227 or 206-220-6098. The agenda will include various IRS issues.

Dated: September 5, 2003.

Tersheia Carter,

Acting Director, Taxpayer Advocacy Panel.
[FR Doc. 03-23474 Filed 9-12-03; 8:45 am]
BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Small Business/Self-Employed Reducing Taxpayer Burden Payroll Taxes of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Small Business/Self-Employed Reducing Taxpayer Burden Payroll Taxes of the Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Friday, October 3, 2003 from 1:30 p.m. e.d.t. to 5 p.m. e.d.t.

FOR FURTHER INFORMATION CONTACT: Mary Peterson O'Brien at 1-888-912-1227, or 206-220-6098.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Small Business/Self-Employed Reducing Taxpayer Burden Payroll Taxes of the Taxpayer Advocacy Panel will be held Friday, October 3, 2003, from 1:30 p.m. e.d.t. to 5 p.m. e.d.t. at Grand Hyatt Hotel, 1000 H Street, NW., Washington, DC. Written comments will be accepted by mail. If you would like to have the TAP consider a written statement, please call 1-888-912-1227 or 206-220-6098, or write Mary Peterson O'Brien, TAP Office, 915 Second Avenue Stop W-406, Seattle, WA 98174. Mrs. Peterson O'Brien can be reached at 1-888-912-1227 or 206-220-6098. The agenda will include various IRS issues.

Dated: September 5, 2003.

Tersheia Carter,

Acting Director, Taxpayer Advocacy Panel.
[FR Doc. 03-23475 Filed 9-12-03; 8:45 am]
BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Ad Hoc Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Ad Hoc Committee of the Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Friday, October 3, 2003 from 1:30 p.m. e.d.t. to 5 p.m. e.d.t.

FOR FURTHER INFORMATION CONTACT: Anne Gruber at 1-888-912-1227, or 206-220-6095.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Ad Hoc Committee of the Taxpayer Advocacy Panel will be held Friday, October 3, 2003, from 1:30 p.m. e.d.t. to 5 p.m. e.d.t. at Grand Hyatt Hotel, 1000 H Street, NW., Washington, DC. Written comments will be accepted by mail. If you would like to have the TAP consider a written statement, please call 1-888-912-1227 or 206-220-6095, or write Anne Gruber, TAP Office, 915 Second Avenue Stop W-406, Seattle, WA 98174. Mrs. Gruber can be reached at 1-888-912-1227 or (206) 220-6095. The agenda will include various IRS issues.

Tersheia Carter,

Acting Director, Taxpayer Advocacy Panel.
[FR Doc. 03-23476 Filed 9-12-03; 8:45 am]
BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Joint Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Joint Committee of the Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Saturday, October 4, 2003 from 12:30 p.m. e.d.t. to 1 p.m. e.d.t.

FOR FURTHER INFORMATION CONTACT: Barbara Toy at 1-888-912-1227, or 414-297-1611.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Joint

Committee of the Taxpayer Advocacy Panel will be held Saturday, October 4, 2003, from 12:30 p.m. e.d.t. to 1 p.m. e.d.t. at Grand Hyatt Hotel, 1000 H Street, NW., Washington, DC. Written comments will be accepted by mail. If you would like to have the TAP consider a written statement, please call 1-888-912-1227 or (414) 297-1611 or write Barbara Toy, TAP Office, 310 West Wisconsin Avenue Stop 1006MIL, Milwaukee, WI 53203. Mrs. Toy can be reached at 1-888-912-1227 or (414) 297-1611. The agenda will include various IRS issues.

Dated: September 5, 2003.

Tersheia Carter,

Acting Director, Taxpayer Advocacy Panel.
[FR Doc. 03-23477 Filed 9-12-03; 8:45 am]
BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 1 Taxpayer Advocacy Panel (Including the States of New York, Connecticut, Massachusetts, Rhode Island, New Hampshire, Vermont and Maine)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 1 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Saturday, October 4, 2003 from 8:30 a.m. EDT to 12 noon EDT.

FOR FURTHER INFORMATION CONTACT: Marisa Knispel at 1-888-912-1227, or 718-488-3557.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 1 Taxpayer Advocacy Panel will be held Saturday, October 4, 2003, from 8:30 a.m. EDT to 12 noon EDT at Grand Hyatt Hotel, 1000 H Street, NW., Washington, DC. Written comments will be accepted by mail. If you would like to have the TAP consider a written statement, please call 1-888-912-1227 or 718-488-3557, or write Marisa Knispel, TAP Office, 10 Metro Tech Center, 625 Fulton Street, Brooklyn, NY 11021. Mrs. Knispel can be reached at 1-888-912-1227 or (718) 488-3557. The agenda will include various IRS issues.

Dated: September 5, 2003.

Tersheia Carter,

Acting Director, Taxpayer Advocacy Panel.
[FR Doc. 03-23478 Filed 9-12-03; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 2 Taxpayer Advocacy Panel (Including the States of Delaware, North Carolina, South Carolina, New Jersey, Maryland, Pennsylvania, Virginia and the District of Columbia)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 2 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Saturday, October 4, 2003 from 8:30 a.m. EDT to 12 noon EDT.

FOR FURTHER INFORMATION CONTACT: Inez De Jesus at 1-888-912-1227, or 954-423-7977.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 2 Taxpayer Advocacy Panel will be held Saturday, October 4, 2003, from 8:30 a.m. EDT to 12 noon EDT at Grand Hyatt Hotel, 1000 H Street, NW., Washington, DC. Written comments will be accepted by mail. If you would like to have the TAP consider a written statement, please call 1-888-912-1227 or 954-423-7977, or write Inez De Jesus, TAP Office, 1000 South Pine Island Rd., Suite 340, Plantation, FL 33324. Ms. De Jesus can be reached at 1-888-912-1227 or 954-423-7977. The agenda will include various IRS issues.

Dated: September 5, 2003.

Tersheia Carter,

Acting Director, Taxpayer Advocacy Panel.
[FR Doc. 03-23479 Filed 9-12-03; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY**Internal Revenue Service****Open Meeting of the Area 3 Taxpayer Advocacy Panel (Including the States of Florida, Georgia, Alabama, Mississippi, Louisiana, Arkansas and Tennessee)**

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 3 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Saturday, October 4, 2003 from 8:30 a.m. EDT to 12 noon EDT.

FOR FURTHER INFORMATION CONTACT: Sallie Chavez at 1-888-912-1227, or (954) 423-7979.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 3 Taxpayer Advocacy Panel will be held Saturday, October 4, 2003, from 8:30 a.m. EDT to 12 noon EDT at Grand Hyatt Hotel, 1000 H Street, NW., Washington, DC. Written comments will be accepted by mail. If you would like to have the TAP consider a written statement, please call 1-888-912-1227 or (954) 423-7979, or write Sallie Chavez, TAP Office, 1000 South Pine Island Rd., Suite 340, Plantation, FL 33324. Mrs. Chavez can be reached at 1-888-912-1227 or (954) 423-7979. The agenda will include various IRS issues.

Dated: September 5, 2003.

Tersheia Carter,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 03-23480 Filed 9-12-03; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY**Internal Revenue Service****Open Meeting of the Area 4 Taxpayer Advocacy Panel (Including the States of Kentucky, West Virginia, Indiana, Illinois, Ohio, Michigan, Wisconsin)**

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 4 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy

Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Saturday, October 4, 2003 from 8:30 a.m. EDT to 12 noon EDT.

FOR FURTHER INFORMATION CONTACT: Mary Ann Delzer at 1-888-912-1227, or 414-297-1619.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 4 Taxpayer Advocacy Panel will be held Saturday, October 4, 2003, from 8:30 a.m. EDT to 12 noon EDT at Grand Hyatt Hotel, 1000 H Street, NW., Washington, DC. Written comments will be accepted by mail. If you would like to have the TAP consider a written statement, please call 1-888-912-1227 or 414-297-1619, or write Mary Ann Delzer, TAP Office, 310 West Wisconsin Avenue Stop 1006MIL, Milwaukee, WI 53203. Ms. Delzer can be reached at 1-888-912-1227 or 414-297-1619. The agenda will include various IRS issues.

Dated: September 5, 2003.

Tersheia Carter,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 03-23481 Filed 9-12-03; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY**Internal Revenue Service****Open Meeting of the Area 5 Taxpayer Advocacy Panel (Including the States of Texas, Oklahoma, Kansas, Missouri, Nebraska, Iowa, South Dakota, North Dakota, and Minnesota)**

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 5 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Saturday, October 4, 2003 from 8:30 a.m. EDT to 12 noon EDT.

FOR FURTHER INFORMATION CONTACT: Mary Ann Delzer at 1-888-912-1227, or 414-297-1619.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 5

Taxpayer Advocacy Panel will be held Saturday, October 4, 2003, from 8:30 a.m. EDT to 12 noon EDT at Grand Hyatt Hotel, 1000 H Street, NW., Washington, DC. Written comments will be accepted by mail. If you would like to have the TAP consider a written statement, please call 1-888-912-1227 or 414-297-1619, or write Mary Ann Delzer, TAP Office, 310 West Wisconsin Avenue Stop 1006MIL, Milwaukee, WI 53203-2221. Ms. Delzer can be reached at 1-888-912-1227 or 414-297-1619. The agenda will include various IRS issues.

Dated: September 5, 2003.

Tersheia Carter,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 03-23482 Filed 9-12-03; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY**Internal Revenue Service****Open Meeting of the Area 6 Taxpayer Advocacy Panel (Including the States of Arizona, New Mexico, Nevada, Idaho, Utah, Colorado, Oregon, Wyoming, Washington, Montana, Alaska, Hawaii)**

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 6 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Saturday, October 4, 2003 from 8:30 a.m. EDT to 12 noon EDT.

FOR FURTHER INFORMATION CONTACT: Anne Gruber at 1-888-912-1227, or 206-220-6095.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 6 Taxpayer Advocacy Panel will be held Saturday, October 4, 2003, from 8:30 a.m. EDT to 12 noon EDT at Grand Hyatt Hotel, 1000 H Street, NW., Washington, DC. Written comments will be accepted by mail. If you would like to have the TAP consider a written statement, please call 1-888-912-1227 or 206-220-6095, or write Anne Gruber, TAP Office, 915 Second Avenue Stop W-406, Seattle, WA 98174. Mrs. Gruber can be reached at 1-888-912-1227 or 206-220-6095. The agenda will include various IRS issues.

Dated: September 5, 2003.

Tersheia Carter,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 03-23483 Filed 9-12-03; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 7 Taxpayer Advocacy Panel (Includes the State of California)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 7 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Saturday, October 4, 2003 from 8:30 a.m. EDT to 12 noon EDT.

FOR FURTHER INFORMATION CONTACT: Mary Peterson O'Brien at 1-888-912-1227, or 206-220-6098.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 7 Taxpayer Advocacy Panel will be held Saturday, October 4, 2003, from 8:30 a.m. EDT to 12 noon EDT at Grand Hyatt Hotel, 1000 H Street, NW., Washington, DC. Written comments will be accepted by mail. If you would like to have the TAP consider a written statement, please call 1-888-912-1227 or 206-220-6098, or write Mary Peterson O'Brien, TAP Office, 915 Second Avenue Stop W-406, Seattle, WA 98174. Mrs. Peterson O'Brien can be reached at 1-888-912-1227 or 206-220-6098. The agenda will include various IRS issues.

Dated: September 5, 2003.

Tersheia Carter,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 03-23484 Filed 9-12-03; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 1 Taxpayer Advocacy Panel (Including the States of New York, Connecticut, Massachusetts, Rhode Island, New Hampshire, Vermont and Maine)

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 1 Taxpayer Advocacy Panel will be conducted (via teleconference) to discuss various IRS issues. The public is invited to make oral comments.

DATES: The meeting will be held Tuesday, October 28, 2003.

FOR FURTHER INFORMATION CONTACT: Marisa Knispel at 1-888-912-1227 (toll-free), or 718-488-3557 (non toll-free).

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 1 Taxpayer Advocacy Panel will be held Tuesday, October 28, 2003 from 1 p.m. EDT to 2 p.m. EDT via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1-888-912-1227 or 718-488-3557, or write Marisa Knispel, TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201, or post comments to the Web site: <http://www.improveirs.org>. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made in advance with Marisa Knispel. Ms. Knispel can be reached at 1-888-912-1227 or 718-488-3557.

The agenda will include the following: Various IRS issues.

Dated: September 10, 2003.

Tersheia Carter,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 03-23485 Filed 9-12-03; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Issue Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Issue Committee will be conducted (via teleconference) to discuss various issues. The public is invited to make oral comments.

DATES: The meeting will be held Wednesday, October 15, 2003.

FOR FURTHER INFORMATION CONTACT: Marisa Knispel at 1-888-912-1227 (toll-free), or 718-488-3557 (non toll-free).

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Issue Committee will be held Wednesday, October 15, 2003 from 2 p.m. to 3 p.m. EDT via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. For more information or to confirm attendance, notification of intent to attend the meeting must be made with Marisa Knispel. Mrs. Knispel may be reached at 1-888-912-1227 or 718-488-3557, or write Marisa Knispel, TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201, or post comments to the Web site: <http://www.improveirs.org>.

The agenda will include the following: Various IRS issues.

Dated: September 10, 2003.

Tersheia Carter,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 03-23486 Filed 9-12-03; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Issue Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Issue Committee will be conducted (via teleconference) to discuss various issues. The public is invited to make oral comments.

DATES: The meeting will be held Wednesday, September 17, 2003.

FOR FURTHER INFORMATION CONTACT: Marisa Knispel at 1-888-912-1227 (toll-free), or 718-488-3557 (non toll-free).

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory

Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Issue Committee will be held Wednesday, September 17, 2003 from 2 p.m. to 3 p.m. EDT via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. For more information or to confirm attendance, notification of intent to attend the meeting must be made with Marisa Knispel. Mrs. Knispel may be reached at 1-888-912-1227 or 718-488-3557, or write Marisa Knispel, TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201, or post comments to the Web site: <http://www.improveirs.org>.

The agenda will include the following: Various IRS issues.

Dated: September 10, 2003.

Tersheia Carter,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 03-23487 Filed 9-12-03; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 1 Taxpayer Advocacy Panel (Including the States of New York, Connecticut, Massachusetts, Rhode Island, New Hampshire, Vermont and Maine)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 1 Taxpayer Advocacy Panel will be conducted (via teleconference) to discuss various IRS issues. The public is invited to make oral comments.

DATES: The meeting will be held Tuesday, September 23, 2003.

FOR FURTHER INFORMATION CONTACT: Marisa Knispel at 1-888-912-1227 (toll-free), or 718-488-3557 (non toll-free).

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 1 Taxpayer Advocacy Panel will be held Tuesday, September 23, 2003 from 1 p.m. EDT to 2 p.m. EDT via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1-888-912-1227 or 718-488-3557, or write Marisa Knispel, TAP Office, 10 MetroTech Center, 625 Fulton Street,

Brooklyn, NY 11201, or post comments to the Web site: <http://www.improveirs.org>. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made in advance with Marisa Knispel. Ms. Knispel can be reached at 1-888-912-1227 or 718-488-3557.

The agenda will include the following: Various IRS issues.

Dated: September 10, 2003.

Tersheia Carter,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 03-23488 Filed 9-12-03; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the request to reissue U.S. Savings Bonds to a personal trust.

DATES: Written comments should be received on or before November 15, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106-1328, or Vicki.Thorpe@bpd.treas.gov.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106-1328, (304) 480-6553.

SUPPLEMENTARY INFORMATION:

Title: Request To Reissue United States Savings Bonds to a Personal Trust.

OMB Number: 1535-0009.

Form Number: PD F 1851.

Abstract: The information is requested to support a request for reissue of savings bonds in the name of the trustee of a personal trust estate.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals.

Estimated Number of Respondents: 55,000.

Estimated Time Per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 13,750.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: September 9, 2003.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 03-23393 Filed 9-12-03; 8:45 am]

BILLING CODE 4810-39-P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Application by Survivors for Payment of Bond or Check Issued Under the Armed Forces Leave Act of 1946, as amended.

DATES: Written comments should be received on or before November 15, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106-1328, or Vicki.Thorpe@bpd.treas.gov.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106-1328, (304) 480-6553.

SUPPLEMENTARY INFORMATION: *Title:* Application by Survivor for Payment of Bond or Check Issued Under the Armed Forces Leave Act of 1946, as Amended.

OMB Number: 1535-0104.

Form Number: PD F 2066.

Abstract: The information is requested to support payment of bonds or checks issued under the Armed Forces Leave Act of 1946, as amended.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals.

Estimated Number of Respondents: 400.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 200.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: September 9, 2003.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 03-23394 Filed 9-12-03; 8:45 am]

BILLING CODE 4810-39-P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Application For Recognition as Natural Guardian of a Minor Not Under Legal Guardianship and for Disposition of Minor's Interest in Registered Securities.

DATES: Written comments should be received on or before November 15, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106-1328, or Vicki.Thorpe@bpd.treas.gov.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106-1328, (304) 480-6553.

SUPPLEMENTARY INFORMATION: *Title:* Application for Recognition as Natural Guardian of a Minor Not Under Legal Guardianship and for Disposition of Minor's Interest in Registered Securities.

OMB Number: 1535-0105.

Form Number: PD F 2481.

Abstract: The information is to support disposition of registered securities belonging to a minor.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals.

Estimated Number of Respondents: 25.

Estimated Time Per Respondent: 10 minutes.

Estimated Total Annual Burden Hours: 5.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: September 9, 2003.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 03-23395 Filed 9-12-03; 8:45 am]

BILLING CODE 4810-39-P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the extension of information collections under the regulations which were issued pursuant to the Government Securities Act.

DATES: Written comments should be received on or before November 15, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106-1328, or Vicki.Thorpe@bpd.treas.gov.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106-1328, (304) 480-6553.

SUPPLEMENTARY INFORMATION: *Title:* Government Securities Act Regulations.

OMB Number: 1535-0089.

Abstract: The information collections are contained within the regulations issued pursuant to the Government Securities Act (GSA), as amended (15 U.S.C. 780-5), which require government securities brokers and dealers to make and keep certain records concerning their business activities and their holdings of securities, to submit financial reports, and to make certain disclosures to investors. The regulations also require depository institutions to keep certain records of non-fiduciary custodial holdings of government securities. The regulations and associated collections are fundamental to customer protection and dealer financial responsibility.

Current Actions: None.

Type of Review: Extension.

Affected Public: Government securities brokers and dealers and depository institutions.

Estimated Number of Respondents: 8,564.

Estimated Total Annual Burden Hours: 363,957.

Request for comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: September 9, 2003.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 03-23396 Filed 9-12-03; 8:45 am]

BILLING CODE 4810-39-P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Payments by banks and other financial institutions of United States Savings Bonds/Notes.

DATES: Written comments should be received on or before November 15, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106-1328, or Vicki.Thorpe@bpd.treas.gov.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106-1328, (304) 480-6553.

SUPPLEMENTARY INFORMATION: *Title:* Payments by Banks and Other Financial Institutions of United States Savings Bonds and Notes (Freedom Shares).

OMB Number: 1535-0087.

Abstract: Qualified financial institutions are authorized to redeem eligible savings bonds and notes, and receive settlement through the Federal Reserve check collection system.

Current Actions: None.

Type of Review: Extension.

Affected Public: Businesses or other for-profit.

Estimated Number of Respondents: 40,000.

Estimated Time Per Respondent: 4 seconds.

Estimated Total Annual Burden Hours: 52,556.

Request for comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of

information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: September 9, 2003.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 03-23397 Filed 9-12-03; 8:45 am]

BILLING CODE 4810-39-P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Regulations Governing Book-Entry Treasury Bonds, Notes and Bills.

DATES: Written comments should be received on or before November 15, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106-1328, or Vicki.Thorpe@bpd.treas.gov.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106-1328, (304) 480-6553.

SUPPLEMENTARY INFORMATION: *Title:* Regulations Governing Book-Entry Treasury Bonds, Notes and Bills.

OMB Number: 1535-0068.

Abstract: The information is requested to establish an investor's Treasury account; to dispose of securities upon the owner's request; and, to determine entitlement to securities.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals, businesses or other for-profit, and state or local governments.

Estimated Number of Respondents: 75,000.

Estimated Time Per Respondent: 7 minutes.

Estimated Total Annual Burden Hours: 8,775.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of

information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: September 9, 2003.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 03-23398 Filed 9-12-03; 8:45 am]

BILLING CODE 4810-39-P

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF THE TREASURY**Internal Revenue Service****26 CFR Part 1****[REG-106736-00]****RIN 1545-AX93****Assumption of Partner Liabilities***Correction*

In proposed rule document 03-15282 beginning on page 37434 in the issue of Tuesday, June 24, 2003, make the following corrections:

§ 1.752-0 [Corrected]

1. On page 37440, in the second column, in § 1.752-0, in the first line, “1.752-6” should read, “§ 1.752-6”.

§ 1.752-7 [Corrected]

2. On page 37442, in the second column, in § 1.752-7(b)(9), in the last line, ““1.752-1” should read, “§§ 1.752-1”.

3. On page 37443, in the third column, in § 1.752-7(e)(2), in Example 2, in the 14th line from the bottom, “sfrom” should read, “from”.

4. On page 37446, in the third column, in § 1.752-7(j)(2)(ii), in the 9th and 10th lines, “§ 1.358-7, 1.752-7, § 1.704-1(b)(2)(iv)(b)” should read, “§§ 1.358-7, 1.752-7, 1.704-1(b)(2)(iv)(b)”.

[FR Doc. C3-15282 Filed 9-12-03; 8:45 am]

BILLING CODE 1505-01-D



Federal Register

**Monday,
September 15, 2003**

Part II

Department of State

22 CFR Parts 96 and 98

**Hague Convention on Intercountry
Adoption; Intercountry Adoption Act of
2000; Accreditation of Agencies; Approval
of Persons; Preservation of Convention
Records; Proposed Rules**

DEPARTMENT OF STATE

22 CFR Part 96

[Public Notice 4466]

RIN 1400-AA-88

Hague Convention on Intercountry Adoption; Intercountry Adoption Act of 2000; Accreditation of Agencies; Approval of Persons; Preservation of Convention Records

AGENCY: Department of State.

ACTION: Proposed rule.

SUMMARY: The Department of State (the Department) is proposing regulations to implement the 1993 Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (the Convention) and the Intercountry Adoption Act of 2000 (the IAA). The Convention and the IAA require that adoption service providers be accredited or approved to provide adoption services for intercountry adoptions involving two countries party to the Convention. These proposed rules establish procedures that the Department will use to designate accrediting entities for the purpose of evaluating agencies and persons and determining if they may be granted accreditation or approval. These proposed rules also contain procedures and standards to accredit agencies and approve persons to provide adoption services in Convention cases. These rules will ensure that, when the Convention enters into force for the United States, there will be accredited agencies and approved persons to provide adoption services for Convention adoptions.

DATES: Comments must reach the Department on or before November 14, 2003.

ADDRESSES: Commenters may send hard copy submissions or comments in electronic format. Commenters sending only hard copies must send an original and two copies referencing docket number State/AR-01/96 to: U.S. Department of State, CA/OCS/PRI, Adoption Regulations Docket Room, SA-29, 2201 C Street, NW., Washington, DC 20520. Hard copy comments may also be sent by overnight courier services to: U.S. Department of State, CA/OCS/PRI, Adoption Regulations Docket Room, 2201 C Street, NW., Washington, DC 20520. Do not personally hand deliver comments to the Department of State.

Comments referencing the docket number State/AR-01/96 may be submitted electronically to adoptionregs@state.gov. Two hard

copies of the comments submitted electronically must be mailed under separate cover as well. The electronic comments or the hard copy comments must be received by the date noted above in the date section of this proposed rule. Comments must be made in the text of the message or submitted as a Word file avoiding the use of any form of encryption or use of special characters. If you submit comments by hard copy rather than electronically, include a disk with the submission if possible. Hard copy submissions without an accompanying disk file, however, will be accepted.

FOR FURTHER INFORMATION CONTACT: Edward Betancourt or Anna Mary Coburn at 202-647-2826 or Jessica Rosenbaum at 202-312-9717. Hearing- or speech-impaired persons may use the Telecommunications Devices for the Deaf (TDD) by contacting the Federal Information Relay Service at 1-800-877-8339.

SUPPLEMENTARY INFORMATION: As noted, comments may be submitted electronically to: adoptionregs@state.gov. Public comments and supporting materials are available for viewing at the Adoption Regulations Docket Room. To review docket materials, members of the public must make an appointment by calling Delilia Gibson-Martin at 202-647-2826. The public may copy a maximum of 100 pages at no charge. Additional copies cost \$0.25 a page.

The Department of State will keep the official record for this action in paper form. Accordingly, the official administrative file is the paper file maintained at the Adoption Regulations Docket Room, United States Department of State. The Department of State's responses to public comments, whether the comments are received in written or electronic format, will be published in the **Federal Register**, and no immediate responses will be provided. General information about intercountry adoptions is available on the Department of State's Web site at <http://travel.state.gov/adopt.html> and the Department of Homeland Security Web site at <http://www.immigration.gov>. Background information about the development of these regulations is provided at <http://www.hagueregs.org>.

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I. Legal Authority

The Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, May 29, 1993,

S. Treaty Doc. 105-51 (1998); 1870 U.N.T.S. 167 (Reg. No. 31922 (1993)), 32 I.L.M. 1134 (1993); Intercountry Adoption Act of 2000, 42 U.S.C. 14901-14954.

II. Introduction

Regulations to implement the 1993 Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (the Convention) and the recently enacted Intercountry Adoption Act of 2000 (the IAA), Public Law 106-279, 42 U.S.C. 14901-14954 (herein referred to as the IAA or Public Law 106-279), are being proposed for the first time. These regulations will be added as part 96 of title 22 of the Code of Federal Regulations (CFR). The purpose of these regulations is to enable the United States to become a party to the Convention. The Convention governs intercountry adoptions between countries that are parties to the Convention ("Convention adoptions"). The IAA is the U.S. implementing legislation for the Convention. Once the Convention enters into force for the United States, all Convention adoptions must comply with the Convention, the IAA, and these regulations.

These regulations address the accreditation of agencies (non-profit adoption service providers) and the approval of persons (for-profit and individual adoption service providers) to provide adoption services in Convention cases. The regulations also set forth the process for designating one or more accrediting entities to perform the accreditation and approval functions, the procedures for conferring and renewing accreditation and approval, the procedures for monitoring compliance with accreditation or approval standards, the rules for taking adverse action against accredited agencies and approved persons, and the standards for accreditation and approval. The regulations also address which agencies and persons are required to adhere to these standards, and what adoption-related activities are exempted from the accreditation and approval requirements. Finally, the regulations set forth the procedures and requirements for temporary accreditation under section 203(c) of the IAA. (Pub. L. 106-279, section 203(c)).

These regulations do not address how the Department and the Department of Homeland Security (herein referred to as DHS until the Department of Homeland Security identifies which DHS bureau will assume the functions delegated to the Immigration and Naturalization Service (INS) under the IAA will implement the provisions of the Convention and the IAA that govern

procedures for completing and recognizing Convention adoptions. The regulations on intercountry adoption procedures for Convention adoptions will become part 97 of title 22 of the CFR and will be published at a later date. Also published in today's **Federal Register** is the proposed rule for part 98 of title 22 of the CFR. Part 97 is reserved, and part 98 provides the proposed rule on the Department and DHS's retention of Convention records.

The IAA designates the U.S. Department of State as the Central Authority for the United States. The Secretary of State is designated as the head of the Central Authority. For purposes of this Preamble, the shorthand term "the Department" is generally used rather than the Secretary of State or the Department of State. Certain Central Authority functions are delegable outside of the Department and the Federal government and will effectively be delegated either to the accrediting entities or to the accredited agencies, temporarily accredited agencies, or approved persons, as appropriate, pursuant to these regulations. The IAA specifically provides that the Department may "authorize public or private entities to perform appropriate central authority functions for which the [Department] is responsible, pursuant to regulations or under agreements published in the **Federal Register**." (Pub. L. 106-279, section 102(f)(1)).

As Central Authority, the Department will be responsible for: Acting as liaison with other Central Authorities; assisting U.S. citizens seeking to adopt children from abroad and to residents of other Convention countries seeking to adopt children from the United States; exchanging information; overseeing the accreditation and approval of adoption service providers; monitoring and facilitating individual cases involving U.S. citizens; and, jointly with the Attorney General (presumably now the Secretary of Homeland Security), establishing a Case Registry with information on intercountry adoptions with Convention and non-Convention countries.

This Preamble is intended to facilitate understanding of the background and purpose underlying the regulations. The Preamble should not be considered a substitute for the text of the regulations themselves. The Preamble is designed to provide an overview of the proposed regulations; however, it will not become part of the final regulations when they are published in the CFR. Accrediting entities, as well as accredited agencies and approved persons, and those working under the supervision and

responsibility of accredited agencies and approved persons, will be held responsible for compliance with the regulations that apply to them.

III. The 1993 Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption

A. Development of the Hague Convention on Intercountry Adoption

A copy of the Convention is available on the Hague Conference Web site at <http://www.hcch.net>. The Convention is a multilateral treaty developed under the auspices of the intergovernmental organization known as the Hague Conference on Private International Law (Hague Conference). The Convention provides a framework of safeguards for protecting children and families involved in intercountry adoption, while still being acceptable to, and capable of being implemented by, diverse sending and receiving countries. This Convention is one of the most widely embraced and broadly accepted conventions developed by the Hague Conference.

The Convention is the first international instrument to recognize that intercountry adoption could "offer the advantage of a permanent home to a child for whom a suitable family cannot be found in his or her state of origin." (S. Treaty Doc. 105-51, at 1). Some countries involved in the multilateral negotiations on the Convention sought to prohibit intercountry adoptions even for those children eligible for adoption for whom a permanent family placement in the child's country of origin could not be arranged. On the other hand, proponents of intercountry adoption at the Hague Conference believed that the best interests of a child would not be served by arbitrarily prohibiting a child in need of a permanent family placement from being matched with an adoptive family simply because the family resided in another country. The Convention reflects a consensus that an intercountry adoption may well be in an individual child's best interests.

If a country becomes a party to the Convention, intercountry adoptions—incoming and outgoing—with other party countries must comply with the requirements of the Convention. The objectives of the Convention are: First, to establish safeguards to ensure that intercountry adoptions take place in the best interests of the child and with respect for the child's fundamental rights as recognized in international law; second, to establish a system of cooperation among contracting states to ensure that those safeguards are

respected and thereby prevent the abduction, sale of, or traffic in children; and third, to secure the recognition in contracting states of adoptions made in accordance with the Convention. The Convention also requires all parties to act expeditiously in the process of adoption. The Convention's norms and principles apply whether the party country is acting as a sending country or as a receiving country.

To accomplish its goals, the Convention makes a number of significant modifications to current intercountry adoption practice, including three particularly important changes. First, the Convention mandates close coordination between the governments of contracting countries through a Central Authority in each Convention country. In its role as a coordinating body, the Central Authority is responsible for sharing information about the laws of its own and other Convention countries and monitoring individual cases. Second, the Convention requires that each country involved make certain determinations before an adoption may proceed. The sending country must determine in advance that the child is eligible to be adopted, that it is in the child's best interests to be adopted internationally, that the consent of birth parents, institutions, or authorities that are necessary under the law of the country of origin have been obtained freely and in writing, and that the consent of the child, if required, has been obtained. The sending country must also prepare a child background study that includes the medical history of the child as well as other background information.

Concurrently, the receiving country must determine in advance that the prospective adoptive parent(s) are eligible and suited to adopt, that they have received counseling, and that the child will be eligible to enter and reside permanently in the receiving country. The receiving country must also prepare a home study on the prospective adoptive parent(s). These advance determinations and studies are designed to ensure that the child is protected and that there are no obstacles to completing the adoption.

B. U.S. Ratification of the Convention

The United States signed the Convention on March 31, 1994, with the intent to ratify it in due course. On September 20, 2000, the Senate gave its advice and consent to ratification. The Senate's advice and consent to the Convention were subject to the following declaration: "The President shall not deposit the instrument of

ratification for the Convention until such time as the Federal law implementing the Convention is enacted and the United States is able to carry out all the obligations of the Convention, as required by its implementing legislation." (146 Cong. Rec. S8866 (daily ed. Sept. 20, 2000)). Thus, the Convention will not actually come into force and govern intercountry adoptions between the United States and other party countries until the United States is able to carry out its obligations. These regulations are essential in enabling the United States to meet its Convention obligations.

The United States strongly supports the Convention's purposes and principles and believes that U.S. ratification will further the critical goal of protecting children and families involved in intercountry adoptions. The United States is a major participant in intercountry adoption, primarily as a receiving country but also as a sending country. Many U.S. citizens adopt children eligible for adoption from another country, and in those cases the United States is acting as a receiving country. From October 1999 to September 2002, a total of 59,079 children were issued orphan visas to immigrate to the United States in connection with their adoption. As a sending country, the United States also places children abroad for adoption. There are no reliable statistics at the Federal level on the number of U.S. children adopted annually by persons resident in a foreign country.

Advocates for ratification of the Convention argued that many Convention countries would eventually refuse to permit intercountry adoptions by U.S. citizens unless the United States ratified the Convention (Hearing on the Convention and IAA Before the Senate Comm. on Foreign Relations, 106th Cong. (October 5, 1999)). The Department in fact has seen such developments. The Department wishes to complete preparations for implementation as rapidly as possible to ensure that U.S. families and the children they adopt have the advantage of the Convention's protections and that U.S. prospective adoptive parent(s) will be able to adopt children from Convention countries, particularly if those countries prohibit adoptions vis-à-vis countries that are not party to the Convention. The Department also wants to ensure that U.S. children who are adopted by parents from other countries are protected under the Convention and the IAA as well.

C. Use of Private, Accredited Adoption Service Providers

One particularly controversial issue that arose during Convention negotiations was whether private adoption service providers would be permitted to perform Central Authority functions. Some countries wanted all parties to rely exclusively on public or governmental authorities to perform Central Authority functions. Other countries, including the United States, advocated for parties to have the option of using private adoption service providers to complete Convention tasks. In the United States, private, non-profit adoption service providers currently handle the majority of U.S. intercountry adoption cases. In its final form, the Convention permits party countries to choose to use private, Convention-accredited adoption service providers to perform Central Authority tasks. Specifically, Article 22 permits private, non-profit adoption service providers instead of Central Authorities to complete certain Central Authority functions required by the Convention. As discussed below, however, private, for-profit providers may perform such functions only as authorized under Article 22(2), which imposes limitations that do not apply to private, non-profit providers.

By including a provision allowing non-governmental bodies to provide adoption services, the Convention recognized the critical role private bodies play—and historically have played—in the intercountry adoption process. In the United States, for example, the number of intercountry adoptions from 1989 to 2001 totaled 147,021, and private, non-profit adoption service providers handled most of those adoptions. Recognizing, also, the role of private, for-profit adoption service providers in the United States, the Senate gave its advice and consent to the ratification of the Convention subject to a declaration, pursuant to Article 22(2) of the Convention, that U.S. Central Authority functions under Articles 15 to 21 of the Convention may be performed by approved private, for-profit adoption service providers. (146 Cong. Rec. S8866 (daily ed. Sept. 20, 2000)).

Consistent with Article 22 of the Convention and the declaration just discussed, the IAA establishes a system to accredit private non-profit, and to approve for-profit, adoption service providers and outlines specific standards the private providers must meet in order to become accredited agencies (in the case of non-profits) or approved persons (in the case of for-

profits and private individuals). The proposed regulations focus exclusively on this essential process of accrediting agencies and approving persons that wish to offer or provide adoption services in Convention cases.¹ These regulations contain detailed and comprehensive standards intended to ensure that the United States complies with the Convention, which requires that accredited agencies and approved persons be directed and staffed by persons qualified by their ethical standards and by training or experience to work in the field of intercountry adoption, and be subject to supervision by competent authorities of the Convention country as to their composition, operation, and financial situation. Accredited agencies and approved persons must also comply with the requirements of Article 32 of the Convention, which provides that no one shall derive improper financial or other gain from activity related to an intercountry adoption; only costs and expenses, including reasonable professional fees of persons involved in the adoption, may be charged or paid; and the key personnel of the agencies and persons involved in an adoption shall not receive remuneration which is unreasonably high in relation to services rendered. These proposed regulations reflect those Convention requirements.

D. Ability of U.S. Accredited Agencies and Approved Persons To Operate in Other Convention Countries

Once accredited or approved, an agency or person may offer or provide adoption services in the United States in Convention cases. However, under Article 12 of the Convention, a private body accredited in one Convention country may act in another Convention country only if the competent authorities of both countries have authorized it to do so. Thus, U.S. accredited agencies and approved persons are not automatically entitled to operate in other Convention countries. In practice, this means that even if a U.S. agency or person is accredited or approved in the United States, another Convention country may choose to work with only certain U.S. accredited agencies or approved persons.

Currently some Convention (and non-Convention) countries require U.S.

agencies and persons to be accredited under the laws and standards of that Convention country. This practice may well continue. The Department is hopeful that, to avoid duplicative accreditation processes, and as permitted by Article 12 of the Convention, other Convention countries will recognize the accreditation or approval granted by the United States and permit U.S. accredited agencies and approved persons to act inside the other Convention country without requiring any further accreditation. The Department is mindful, however, that some U.S. agencies or persons, especially those that work in more than one Convention country, may well have to go through several costly accreditation processes. One of the rationales for drafting comprehensive, stringent standards for U.S. accreditation and approval is to encourage other Convention countries to accept U. S. accreditation or approval and not require further accreditation or approval.

E. Timing of Implementation

In accordance with the U.S. Senate's conditions for ratification, the Convention will not actually come into force for the United States until the United States is able to meet its obligations under the Convention and the U.S. instrument of ratification is deposited. Once the instrument of ratification is deposited, the Convention will come into force for the United States on the first day of the month following the expiration of three months after the deposit (thus, after a period of not less than three months and not more than four months).

Practically speaking, the United States must have accredited bodies ready to provide adoption services before the Convention enters into force for the United States. Thus, the regulations contemplate that the accrediting entities will be able to use the standards in subpart F of the regulations to begin accrediting agencies and approving persons before the Convention enters into force for the United States. This process of accrediting agencies or approving persons prior to the actual entry into force of the Convention is necessary so that there are agencies and persons legally permitted to provide adoption services as of the date the Convention first enters into force for the United States.

These regulations, therefore, will be effective prior to the date the Convention comes into force for the United States to enable the Department and its designated accrediting entities to perform the time-consuming task of

accrediting and approving private bodies. Certain sections of these proposed regulations will not be operative, however, until the Convention enters into force for the United States. The proposed regulation by its own terms makes these sections effective only after entry into force of the Convention. For example, the provision that requires all agencies and persons to be accredited or approved will become effective on the date that the Convention enters into force. This approach is consistent with section 505(a)(2) of the IAA, which provides that the IAA mandatory accreditation and approval requirement take effect upon the entry into force of the Convention for the United States. The Department will announce the entry into force date for the Convention in the **Federal Register**. Until the Convention enters into force for the United States, agencies and persons may continue to provide adoption services without accreditation or approval, even for adoptions involving other countries that are parties to the Convention, if permitted by such Convention countries.

In summary, the steps taken prior to ratification of the Convention are: (1) The Department, after publication of these proposed regulations open to notice and comment, publishes the final regulations; (2) The Department identifies and retains accrediting entities; (3) The designated accrediting entities begin the process of evaluating those agencies and persons that applied by the "transitional application date" (see Section C, Subpart D—Application Procedures for Accreditation and Approval in this Preamble); (4) The Department will set and announce a "deadline for initial accreditation and approval" depending upon a number of factors, including the number of agencies and persons that apply by the transitional application date and the time the accrediting entities require to evaluate these first applicants for accreditation and approval; (5) The accrediting entities will send to the Department a list of agencies and persons that have been accredited or approved by the deadline for initial accreditation and approval; (6) The Department will deposit the instrument of ratification and identify those agencies and persons that are accredited or approved to provide adoption services for Convention adoptions. The Convention does not come into force for the United States until three to four months after the instrument of ratification is deposited.

In addition, section 505(b)(1) and (2) of the IAA provides special transition

¹ The Convention uses the terms private accredited bodies and bodies or persons to refer to adoption service providers. The IAA uses the terms agency and person and accredited agency and approved person to encompass such providers. The IAA terms—agency or person and accredited agency or approved person—will be used from this point forward in the Preamble and are defined in subpart A of part 96.

rules for adoption cases that are pending when the Convention enters into force for the United States. For immigrating children, the Convention and the IAA will not apply where a petition regarding adoption was filed with DHS before the Convention entered into force for the United States. For emigrating children, the Convention and the IAA do not apply if the prospective adoptive parent(s) have filed the appropriate application to initiate the adoption process in their country of residence before the Convention entered into force for the United States. The regulations elaborating on these IAA transition rules for Convention cases are not covered in this set of proposed regulations on accreditation and approval. Rather, the regulations for section 505(b)(1) and (2) of the IAA will be in part 97, which will cover intercountry adoption procedures and will be proposed in a future rulemaking.

IV. The Intercountry Adoption Act of 2000 (IAA)

A. Passage of the IAA

The IAA implements the Convention in the United States. In 2000, Congress considered and passed the IAA during approximately the same time period that the Senate was considering the Convention. The President transmitted the Convention to the Senate for its advice and consent on June 11, 1998. (S. Treaty Doc. 105-51 at III (1998)). The treaty was read for the first time and then transferred to the Senate Committee on Foreign Relations. To accompany the Convention, the Department, with the involvement of the INS (now part of DHS) and the Department of Health and Human Services (HHS), had drafted and transmitted to both houses of Congress proposed implementing legislation—entitled the Intercountry Adoption Act. That legislative proposal was not introduced in Congress but influenced the implementing legislation that was eventually introduced. On March 23, 1999, Senators Helms and Landrieu and other co-sponsors introduced the Intercountry Adoption Convention Implementation Act of 1999. (S. 682, 106th Cong. 1st Sess. (1999)). (A companion bill, identical to S. 682, was introduced in the House by Congressman Burr (H.R. 2342, 106th Cong. 1st Sess. (1999)). On September 22, 1999, Congressman Gilman, along with 36 co-sponsors, introduced the Intercountry Adoption Act of 1999. (H.R. 2909, 106th Cong. 1st Sess. (1999)). The Senate Foreign Relations Committee held hearings on October 5, 1999, and also issued a committee

report on S. 682 (Report of the Senate Committee on Foreign Relations on the Intercountry Adoption Act of 2000, 106th Cong. 2nd Sess., S. Rep. No. 106-276 (2000)). The House International Relations Committee held hearings on H.R. 2909 on October 29, 1999, and also issued a committee report. (Report of the House Committee on International Relations on the Intercountry Adoption Act, 106th Cong. 2nd Sess., H.R. Rep. No. 106-691 (2000)).

S. 682/H.R. 2342 and H.R. 2909 differed in some major provisions. In particular, S. 682 provided for the Department to have responsibility for oversight of the accreditation and approval process. In contrast, H.R. 2909 designated HHS as the Federal oversight agency, as proposed by the Administration. Ultimately, the Department was given the responsibility for establishing and overseeing the accreditation and approval process. A consensus was reached on other controversial issues and H.R. 2909, as amended, was passed by both the House and the Senate. It was signed by the President on October 6, 2000, and became Public Law No. 106-279.

B. Overview of Substantive Provisions

The IAA's purposes reflect and complement those of the Convention. They are: To protect the rights of, and prevent abuses against, children, birth families, and adoptive parents involved in adoptions (or prospective adoptions) subject to the Convention, and to ensure that such an adoption is in a child's best interests; and to improve the ability of the Federal government to assist U.S. citizens seeking to adopt children from abroad and residents of other countries party to the Convention seeking to adopt children from the United States. To accomplish these goals, the IAA provisions: (1) Set forth minimum standards and requirements for accreditation and approval; (2) make substantive changes to the Immigration and Nationality Act (INA) with respect to Convention adoptions; (3) set requirements for completing individual adoptions; and (4) confer specific responsibilities on the Department and other government entities for carrying out the mandates of the Convention and the IAA.

The IAA designates the Department as the Central Authority for the United States. As Central Authority, the Department has a number of important programmatic responsibilities, including: Acting as liaison with other Central Authorities; coordinating activities under the Convention; monitoring and facilitating individual cases involving U.S. citizens, where

necessary; and establishing and managing a Case Registry of intercountry adoptions. Some important functions related to the Convention are also vested in the Department of Justice, DHS, and State courts. The Secretary of Homeland Security will assume certain functions vested in the Attorney General and the INS by the IAA relating to the Immigration and Naturalization Service's responsibilities, pursuant to the Homeland Security Act of 2002, Public Law 107-296 (Nov. 25, 2002), as amended by section 105 of the Homeland Security Act Amendments of 2003. (See Consolidated Appropriations Resolution, Public Law 108-7, Feb. 20, 2003). The Department expects that the Attorney General will retain responsibility for enforcement of the criminal and civil penalties imposed by section 404 of the IAA. Once DHS has identified the specific bureau that will assume the functions delegated to the Attorney General or the INS under the IAA, the Department will provide that information.

Most relevant to these regulations, the IAA confers on the Department the authority and responsibility for establishing and overseeing a system for accrediting agencies and approving persons that wish to provide adoption services in Convention cases. Consistent with the Convention's acceptance of the use of private bodies, the IAA authorizes the use of accredited agencies and approved persons to complete certain case-specific Central Authority functions, rather than relying exclusively on Federal or State entities. The IAA provides detailed requirements for accreditation and approval. Rather than mandating direct Federal accreditation of agencies and persons, the IAA authorizes the Department to designate one or more accrediting entities to accredit agencies and to approve persons that meet the requirements for such entities set forth in these regulations.

The Convention and the IAA dramatically change the use of accreditation in the adoption field. Traditionally, accreditation has been a voluntary credentialing process used to encourage sound and ethical practices. Under the IAA, accreditation or approval pursuant to these regulations is now mandatory for agencies and persons that provide certain adoption services in Convention cases.

To enforce this mandatory accreditation and approval requirement, the IAA establishes civil and criminal penalties. (Pub. L. 106-279, section 404). With limited exceptions set forth in section 201(b) of the IAA and in subpart C of these regulations,

individuals or agencies that offer or provide adoption services in connection with a Convention adoption without either (a) becoming accredited or approved in accordance with these regulations, or (b) acting under the supervision and responsibility of an accredited agency or approved person are subject to civil money penalties of \$50,000 for the first violation and \$100,000 for succeeding violations under section 404(a) of the IAA. Under section 404(c), the knowing or willful failure to become accredited or approved or to act under supervision and responsibility, as required, carries a penalty of imprisonment for not more than five years or fines of up to \$250,000, or both. In promulgating these regulations, the Department believes that it is critical to alert all agencies and persons that the failure to obtain accreditation or approval or to act under the supervision and responsibility of an accredited agency or approved person could cause the imposition of the IAA's severe civil or criminal penalties. Subpart C of the regulations, which contains the rules on who must meet the accreditation and approval requirements and incorporates the narrow statutory exemptions from accreditation or approval, should be consulted and carefully studied for guidance.

C. Distinction Between "Agency" and "Person"

The Convention effectively differentiates between non-profit bodies and for-profit entities and individuals. The Convention favors the use of non-profit bodies, and Article 11 of the Convention requires that "accredited" bodies "pursue only non-profit objectives"—a requirement incorporated into these regulations by reference to non-profit tax treatment under section 501(c)(3) of the Internal Revenue Code or relevant State law. Notwithstanding this preference, the Convention in Article 22 also permits other bodies and persons—herein referred to as "for-profits"—to provide Convention adoption services. Persons (for-profit entities and individuals) must, however, meet the requirements of Article 22(2) of the Convention, which are not applicable to non-profit agencies. Article 22(2) requires persons to have the integrity, professional competence, experience, accountability, ethical standards, and training or experience to work in the field of intercountry adoption. Moreover, Article 22(4) of the Convention explicitly allows party states to declare that the adoption of their children may take place only if the functions of Central Authorities are performed by public authorities or

accredited agencies (effectively, for U.S. purposes, private non-profits) and not by approved persons (effectively, for U.S. purposes, "for-profits").

These regulations reflect the Convention distinction by utilizing different terms to describe non-profit agencies versus for-profit entities and individuals. Under these regulations, agency means a private, non-profit organization licensed to provide adoption services in at least one State. It does not include individuals or for-profit entities. Person means an individual or for-profit entity (including a corporation, company, association, firm, partnership, society, or joint stock company) providing adoption services—consistent with the definition in section 3(14) of the IAA. To be consistent with the Convention's requirement that only non-profit agencies be accredited, the IAA provides for the accreditation solely of agencies and uses a different term—approval—to describe the status of individuals and for-profit entities. (See Pub. L. 106-279, section 203). Therefore, under the IAA's rubric, agencies are eligible to seek accreditation while persons (individuals and for-profit entities) are eligible only to seek approval.

The Department has made every attempt within the given statutory framework to ensure that persons adhere to the same requirements as non-profit agencies. Thus, the standards in subpart F of part 96 (with limited exceptions to recognize the special circumstances of private individuals) apply both to agencies seeking accreditation and to persons seeking approval. Sections 96.31 and 96.35 also contain provisions unique to persons seeking approval. They mainly provide standards tailored to the different corporate structures used by such persons or contain more rigorous provisions than those applicable to agencies in light of the additional Article 22(2) provisions on professional competence that apply only to persons. Also, the Convention allows only accredited agencies, not persons, to assume responsibility for preparing a home study or a child background study. The proposed rules, therefore, provide that, when an approved person or a non-accredited agency, rather than an accredited agency, completes a home study or child background study, it must have the home study or child background study approved by an accredited agency. The approval requirement is included so as to comply with Article 22(5) of the Convention which requires that home studies and child background studies be prepared

under the responsibility of accredited agencies or public authorities.

Although the IAA allows approved persons to provide adoption services in Convention cases, some State laws do not. These regulations are not intended to affect any State laws that may prohibit such persons—either individuals or for-profit entities—from providing adoption services in a particular State. If a State does not allow persons (whether the prohibition is against individuals or for-profits or both) to operate in a particular State, these regulations do not in any way preempt such State law. The Department welcomes comments on the interplay between State law and the IAA provision for approval of persons. The Department's goal is to follow the IAA and allow persons to be approved without preempting State laws that may prohibit individuals or for-profit entities from providing adoption services in a particular State.

Persons seeking approval should note that these regulations require them to be licensed or otherwise authorized to provide adoption services in at least one State. If in the future all States were to prohibit for-profit entities from providing adoption services, then no for-profits could become approved under these regulations. Similarly, if in the future all States prohibited individuals from providing adoption services, then no individuals could become approved under these regulations.

According to Article 22(4) of the Convention, Convention countries may declare that adoptions of children habitually resident in their territory may take place only if the functions of the Central Authority in the receiving country are performed by public authorities or by non-profit accredited bodies. Thus, individual Convention countries may refuse altogether to work with approved persons and may be willing to work only with accredited agencies.

D. Federalism Issues

The Convention and the IAA for the first time require Federal regulation of agencies and persons for purposes of intercountry adoptions. Historically, State law alone regulated agencies and persons. The IAA contains a specific provision disfavoring preemption of State law unless State law provisions are inconsistent with the Convention or the IAA. (Pub. L. 106-279, section 503(a)). The Department throughout the regulations has been careful to defer to State law, especially in the case of U.S. emigrating children whose adoptions will continue to be covered mainly by

State law, even when not explicitly required by the IAA. In particular, the regulations require agencies and persons to comply with any applicable licensing and other laws and regulations in the States in which they operate, and do not supplant existing State licensing and other laws and regulations. For example, when a State requirement exceeds a standard in subpart F of part 96, the agency or person must also comply with the State requirement as necessary to ensure that it maintains its State license. Similarly, when the IAA standard for accreditation or approval is more stringent than a State requirement, the agency or person must meet the IAA standard as well as the State standard. Also, the regulations utilize State law definitions whenever possible. For example, the regulations defer to State law to define "best interests of the child" instead of developing a Federal definition that would replace existing State law definitions. Finally, a number of the standards, such as those relating to internet use, expressly require observance of State as well as Federal law.

The impact of the Convention and the IAA is clearest in cases of U.S. children emigrating from the United States to a Convention country in connection with their adoption. Previously, State law alone governed cases of children emigrating for adoption, whereas there has been Federal involvement (through the immigration laws) in incoming cases. Now adoptions involving emigration to Convention countries must comply with the procedures and safeguards of the Convention (such as those of Convention Articles 4 and 17) and the IAA, which include requirements that may not currently exist in State law. Under these regulations, the burden of making the majority of the Convention and the IAA determinations for emigrating children is unavoidably placed on State courts. The Department assumes that these determinations generally will be made in the context of adoption or placement proceedings that would occur in any event, and that the States may charge fees to cover the costs of these services. Nevertheless, the Department is sensitive about imposing additional burdens on States; therefore, the regulations do not call for State court action other than as strictly required to permit an adoption under the Convention or the IAA. States that do not wish to undertake even those minimal requirements may refrain from permitting Convention adoptions or placements in their jurisdictions.

Also, throughout the preliminary input phase, State agencies were asked

to submit comments on the draft regulations and such input was used in the drafting of the proposed regulations. The Department welcomes comments from State and local agencies and tribal governments on the proposed regulations and in particular seeks comment on the standards covering cases in which a child is emigrating from the United States in §§ 96.53, 96.54, and 96.55 of subpart F.

E. Economic Impact/Effect on Small Entities

One of the most challenging issues facing the Department was how comprehensive and stringent these standards should be, bearing in mind the desirability of minimizing the cost and burden on agencies and persons, especially on small entities. The Department throughout the development of the proposed regulations considered the economic burden of this completely new Federal level of regulation. Some groups called for extensive Federal regulation of agencies and persons without acknowledging the added costs such standards would entail. The Department has sought to strike a balance—using the IAA statutory standards as guidance—between the need to avoid costly over-regulation of what traditionally has been an area regulated almost exclusively by State law and the need to have comprehensive standards designed to ensure that Convention and IAA requirements are met and to improve the quality of services provided to birth families, adoptive families, and children. The Department believes that the overall economic impact of the proposed regulations has been minimized using this approach; therefore, there is not sufficient impact to warrant preparation of a regulatory impact analysis (RIA) under Executive Order 12866 or other similar mandates. In particular, the Department has analyzed the proposed regulations and concluded that they will not have an annual effect on the economy of \$100 million or more or adversely affect in any material way the economy, jobs, productivity, the environment, public safety, or health.

The Department arrived at this conclusion based on the information provided from adoption service providers, accrediting entities, and others in the adoption community during the preliminary consultation process. The Department also relied on its statistics regarding the number of intercountry adoptions per year and the number of intercountry adoptions per year with other Convention countries. The Department used the data on the

number of intercountry adoptions for FY 2002, FY2001, and FY 2000. Using the information on the range of costs of providing adoption services gathered during the consultative process and the Department's data on the number of intercountry adoptions per year, the Department was able to make some estimates about the current economic status of the non-profit, adoption service provider sector of the economy.

For FY October 2001 to September 2002, U.S. citizens adopted 21,378 children from other countries. For FY October 2000 to September 2001, U.S. citizens adopted 19,224 children from other countries. For FY October 1999 to September 2000, U.S. citizens adopted 18,477 children from other countries. Thus, using this historical data, the Department assumed that the typical number of intercountry adoptions per year is 20,000. The cost for intercountry adoption and related services to parents may range from \$20,000 to \$30,000 per case. Assuming 20,000 intercountry adoption cases per year, the Department estimates that the total expenditures for adoption services and related costs and the total annual gross revenues for non-profit adoption service providers could range from between \$400 to \$600 million per year (an estimate that includes the costs of travel and accommodations as well as charges imposed by the sending countries on the adoptive parents). The total costs of providing adoption services could vary from year to year depending upon the number of intercountry adoptions as well as other factors. However, even if the Department uses adoption services cost estimates that include travel and local services, the current total size for the non-profit sector to be regulated is small—that is, between \$400 to \$600 million.

Additionally, in intercountry adoption cases, a significant portion of the reported costs of providing services in a particular adoption case may include the costs of travel and accommodations for the parents and child during the adoption process as well as local costs imposed by the sending country. These costs are incurred directly by the adoptive parents or are charged by the adoption service provider as fees and passed on to the public or other entities in the sending country. The cost of providing intercountry adoption services, excluding the cost of travel and accommodations and the costs of local services, varies widely depending on the provider as well as the country of origin for the child. The travel and local services costs are unlikely to be affected by the implementation of this proposed

rule. The Department estimates that the cost of providing intercountry adoption services, excluding travel and local services costs, may be from 25% to 80% lower than the estimated range of \$20,000 to \$30,000 per adoption case. If it is assumed that the costs would be 25% less than the estimated range, then the costs of providing adoption services may range from between \$15,000 to \$22,500 per adoption case. If it is assumed that the costs would be 80% less than the estimated range, then the costs of providing adoption services may range from \$4,000 to \$6,000 per adoption case. It is this segment of adoption services costs (which excludes travel and local in-country services costs) that is most likely to be affected by the proposed rule. Thus, the total size of the non-profit sector to be regulated, rather than ranging from \$400 to \$600 million, may be viewed as ranging from \$80 million to \$450 million.

At least initially, the number of agencies and persons affected by the proposed rule is likely to be small because the current number of cases subject to the Convention is small. Currently, most intercountry adoptions to the United States are from non-Convention countries. For example, for FY 2002, the number of cases with Convention countries was 1,433; for FY 2001, the number of cases with Convention countries was 1,680; for FY 2000, the number of cases with Convention countries was 2,025. (The number of intercountry adoption cases from Convention countries to the United States to date has changed from year to year for a variety of reasons, including because new countries ratify or accede to the Convention, or sometimes a Convention country declares a moratorium on intercountry adoptions.) In future years, any increase in the cost of the rule may be incremental, as new countries join the Convention and agencies and persons that assist with adoptions in those countries are required to come into compliance.

Using the data on the number of adoptions from Convention countries, the Department notes as follows: For FY 2002, the percentage of Convention cases out of a total of 21,378 was 6.7%; for FY 2001, the percentage of Convention cases out of a total of 19,224 was 8.7%; for FY 2000, the percentage of Convention cases out of a total of 18,477 was 11.0%. It is only those agencies and persons who will be providing adoption services in cases where the other country is a party to the Convention that will have to comply immediately with the requirement to become accredited or approved.

Therefore, intercountry adoptions with countries party to the Convention account for adoption services costs in the range of \$28.6 million to \$43.0 million when estimated travel/accommodations and local services costs are included in the cost of providing adoption services in a case. Similarly, intercountry adoptions with countries party to the Convention account for adoption services revenues in the range of \$5.7 million to \$32.3 million when estimated travel/accommodations and local services costs are excluded. Under this analysis, the Department's estimates show that the total costs for adoption services provided (which could range from \$5.7 million to \$43.0 million) in the number of cases immediately subject to the proposed rule is very likely to be less than the \$100 million Executive Order 12866 threshold.

Furthermore, the Department expects the total cost burden of the rule to be substantially less than the current total estimated cost of providing adoption services regardless of which analysis is used to calculate the total yearly costs associated with providing adoption services. During the consultation process thus far, the Department has not received any information that would indicate that the cost to the adoption community of compliance with the proposed regulations would be near the current cost of providing adoption services. Rather, all indications are that the cost to comply will be a fraction increase in the current cost of providing adoption services. Therefore, the Department considers the total cost of adoptions to be a reasonable upper limit on the possible cost of the proposed rule. The Department, however, requests comments on its cost estimates and in particular requests that commenters address the following questions: (1) How many agencies are likely to seek full accreditation in accordance with subpart F rather than temporary accreditation under subpart N? (2) What are accrediting entities likely to charge the agencies and persons for the accreditation and approval process? (3) Is the estimated cost of providing adoption services (estimated to range from \$20,000 to \$30,000) in a particular case a current reasonable estimate? (4) What proportion of the costs of rendering adoption services are pass-through costs forwarded to foreign entities providing local services in the sending country? (5) What proportion of the costs for adoption services in a particular case is for the costs of travel and accommodations? (6) How many persons (for-profits and individuals)

plan to seek approval? (7) What are the estimated costs agencies and persons will have to expend to comply with the standards in subpart F? Specifically, commenters should provide information on the costs of obtaining insurance coverage as required by the standards in § 96.45 and § 96.46; the costs of retaining personnel that meet the professional and educational requirements in § 96.37; and the costs of providing the mandatory training to prospective adoptive parent(s) in § 96.48. Comments or concerns about the cost impact of any other standard in subpart F or subpart N are welcome. It would be helpful if commenters supply information and data to support any comments on these enumerated issues.

The Department also considered the potential impact of these regulations on small entities, as required by the Regulatory Flexibility Act and Executive Order 13272. The Department has sought to ensure that the standards do not unnecessarily or adversely affect the currently sound practices of small agencies and persons, especially since almost all of the agencies and persons covered would meet a Small Business Administration (SBA) definition of a small entity for this type of non-profit service provider. Concerns about minimizing any increases in the cost of intercountry adoption and any unnecessary adverse impact of these regulations on small entities were of utmost importance in the Department's decision-making process, and great care was taken to address these concerns while still seeking to ensure compliance with the Convention and the IAA mandate for comprehensive regulation of adoption service providers. To minimize the impact on small entities, the Department developed regulations that are performance-based accreditation standards (see subpart F) as opposed to design-oriented, licensing criteria. Consistent with the IAA, the regulations also provide a special tiering set-up and a different implementation timetable for small agencies by allowing for a temporary accreditation process (see subpart N). Also, again consistent with the IAA, the regulations contain exemptions for small providers, such as home study preparers, and permit agencies and persons to act as supervised providers rather than requiring them to complete the full accreditation or approval process (see subpart C).

The Department is cognizant that the cost of providing adoption services is closely related to the level and type of regulation. The Department is aware that ultimately the costs of accreditation and approval will be passed on to

adoptive parents and may increase the cost of providing services in each individual adoption. Moreover, the Department also weighed the difficulties for families of absorbing additional costs for adoption services against the requests, often from adoptive families, for better services and more public information about agencies and persons, so that families could compare providers before selecting an adoption service provider. The Department also took into consideration the relevant assistance available to families, such as the Federal adoption tax credit, to offset increased costs of services. Therefore, the Department sought at all times to strike the appropriate balance among competing objectives. The Department understands, however, that revision of these standards may be necessary after further public comment and particularly welcomes comment on the effect of these regulations on both non-profit and for-profit small entities. The Department requests that agencies or persons who submit such proposals provide information on their size, non-profit or for-profit status, and identify what specific standards should be added, modified, or deleted, and include justifications for any such suggestions.

F. The IAA Exemptions to the Paperwork Reduction Act

Pursuant to 44 U.S.C. 3506(c), 3507, and 3512, which were enacted by the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13, agencies normally are required to submit to OMB for review and approval new "collections of information," including any collections of information inherent in a final rule. Information collections under the PRA are defined, in 44 U.S.C. 3502(3), to include "obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public, of facts or opinions by or for an agency, regardless of form or format, calling for * * * answers to identical questions posed to, or identical reporting or recordkeeping requirements imposed on, ten or more persons." OMB has interpreted this definition to include information collections regardless of whether they are "mandatory, voluntary, or required to obtain or retain a benefit." (5 CFR 1320.3(c)).

Section 503(c) of the IAA specifically exempts sections 104, 202(b)(4), and 303(d) of the IAA from these PRA requirements. (Pub. L. 106-279, section 503(c)). Given these statutory exemptions to the PRA, the Department has determined that the collections of information in this proposed rule are exempt from PRA requirements, with

the exception of the collections in §§ 96.91 and 96.92 of subpart M, which are discussed in the PRA analysis in the Regulatory Review portion of the Preamble (Part VI, Section G).

The implications of the PRA exemptions in section 503(c) of the IAA are that, with respect to the exempted information collections, the Department is not required to follow the procedures established by 44 U.S.C. 3506(c) for reviewing information collections, allowing public comment on them, and then certifying that they meet the requirements set forth in that section. In addition, the exemption from 44 U.S.C. 3507 means that the Department may sponsor the exempted collections of information without complying with 44 U.S.C. 3506, and that the Department is not required to obtain a control number from OMB indicating its approval of the collections. Nor are the exempted information collections subject to the three-year validity period limitation imposed by 44 U.S.C. 3507(g), after which covered information collections must be revalidated. Finally, the exemption from 44 U.S.C. 3512 means that the Department may require compliance with the exempted information collections, and may impose penalties for failing to comply, even though the collections will not display an OMB control number. Consistent with the IAA's accreditation and approval scheme, the consequences of failing to provide or retain information, or of otherwise failing to comply with the requirements of an exempted information collection, will be felt through the accreditation and approval process itself (including, when appropriate, through denial of accreditation or approval or the imposition of adverse actions which can result in loss of accreditation or approval).

The IAA exemptions from the PRA were sought by the Department because of concerns that application of the normal PRA requirements would have been largely inconsistent or incompatible with the accreditation/ approval and oversight framework established by the IAA. First, the IAA mandates a number of reporting requirements, some of which are driven by the need to ensure U.S. compliance with the Convention. Without an exemption, the PRA and its three-year limitation on collections of information would have interposed a periodic justification process that would have been unnecessary in view of the IAA's permanent and very specific statutory reporting requirements and that could have impeded collection of information

necessary to meet our Convention obligations.

Second, the IAA leaves much of the responsibility for accreditation and approval to the private sector and adopts a private sector model for accreditation/approval that is fundamentally inconsistent with the information collection controls imposed by the PRA. An accreditation process by its nature requires the preparation and presentation of documentation to an accrediting entity to demonstrate qualifications. This process alone typically takes a year or more in existing accreditation contexts. Monitoring by an accrediting entity once accreditation or approval is granted, to determine whether accreditation or approval can be maintained, similarly requires the retention and sometimes the preparation of records for inspection by an accrediting entity. Consistent with an accreditation model, and with the decision to rely heavily on the private sector to implement the Convention in the United States, the IAA requires adoption services providers to be accredited or approved by a private, non-profit accrediting entity (or if so designated as an accrediting entity, by a State public body). The IAA, however, also ensures appropriate Federal oversight and compliance with the Convention by requiring any accrediting entity to act pursuant to regulations, including accreditation/approval standards, promulgated by the Department. As in other accreditation contexts, the IAA clearly contemplates an extended start-up period in which providers demonstrate to any one of the designated accrediting entities that they meet the standards for accreditation/ approval. The IAA also specifically provides that the accreditation/approval period will be three-to five-years, and that there will be continuous monitoring of accredited agencies and approved persons by an accrediting entity in light of the standards during their period of accreditation or approval.

Imposition of the PRA requirements on this process could have burdened it to the point where it could not function. It would be difficult to adapt the PRA process in a meaningful way to the IAA's accreditation/approval process, which fundamentally involves the ongoing measurement of performance against standards through document review. The PRA's provision for the expiration of collections of information after three years, unless reviewed and renewed, would also have directly interfered with the need for settled procedures and standards that both the accrediting entities and the providers could be sure would remain in effect

during both the period of application and any selected period of accreditation or approval. (Under the IAA, the Secretary may select an accreditation/approval period of three, four, or five years.)

The IAA exemptions from the requirements of the PRA must be understood in this context. The Department understands that the exemptions were intended to be construed broadly to facilitate implementation of an accreditation/approval process as envisioned by the IAA. At the same time, however, the IAA expressly requires that these regulations, including the standards for accreditation and approval, be published for notice and comment under the Administrative Procedure Act (APA). Thus, the IAA ensures public participation in the creation of all elements of these regulations, including those that could have effects of the kind normally addressed through PRA review.

As noted, the three provisions of the IAA exempt from the PRA provisions discussed above are sections 104, 202(b)(4), and 303(d). The following explains how these exemptions relate to the proposed regulations, to the extent that they include "information collections" under the PRA:

Section 104 of the IAA. Section 104 of the IAA requires the Department to make annual reports on intercountry adoptions to several congressional committees. The IAA lists the information and data that must be collected and conveyed annually to Congress. To ensure the availability of this information to the Secretary, the proposed regulations include standards addressing the information accredited agencies and approved persons must be prepared to provide to their accrediting entity and the information the accrediting entity must in turn provide to the Secretary. Within subpart F, § 96.43 of the regulations requires the agencies and persons to provide to the accrediting entity the information listed in section 104 of the IAA. Section 96.93 of subpart M of these regulations similarly mirrors the statutory requirements and mandates that the accrediting entity obtain the information from the agencies and persons.

Section 202(b)(4) of the IAA. Section 202(b)(4) of the IAA provides that the accrediting entity's responsibilities shall include "[c]ollection of data, maintenance of records, and reporting to the Secretary, the United States central authority, State courts, and other entities (including on persons and agencies granted or denied approval or accreditation), to the extent and in the

manner that the Secretary requires" (emphasis added). The Department understands the concept of "collection of data" by the accrediting entity "to the extent and in the manner that the Secretary requires" to encompass the Secretary's decisions regarding what data must be provided by the adoption service providers to the accrediting entities and what data may be collected by the accrediting entities in the course of performing any of their duties under the IAA, including deciding whether an adoption service provider can be accredited or approved, conducting oversight activities, and taking enforcement actions. (Pub. L. 106-279, section 202(b)(1)-(3)). The Department, as the lead agency responsible for interpreting the IAA and the IAA's exemptions to the PRA, believes that the IAA's expansive discretionary language (that is, information may be collected "to the extent and manner required by the Secretary") demonstrates that Congress intended the scope of this exemption to the PRA to be broad.

Thus, as developed in these regulations, the exemption covers determining the provider's compliance with the standards for accreditation/approval in subpart F (or, in the case of temporarily accredited agencies, in subpart N). It also covers obtaining information from adoption service providers as they apply for accreditation or approval and in the course of monitoring their performance under the standards. The exemption in section 202(b)(4) of the IAA also extends to information the accrediting entity is required to provide to the Secretary, any entity acting on behalf of the Secretary (including the Complaint Registry, to the extent that it will assist the Secretary in addition to the accrediting entities), and to law enforcement officials and State courts. The exemption thus extends to the portions of these regulations that require such disclosures or that otherwise are intended to ensure that the Department is able to perform its oversight responsibilities under the IAA. As a result of this exemption, the Department has determined that all of the information collections established by these regulations that are not covered by the exemption of IAA sections 104 (discussed above) and 303(d) (discussed below) are covered by the exemption in section 202(b)(4) of the IAA, with the exception of certain collections required under subpart M, as discussed below.

Section 303(d) of the IAA. Section 102(e) of the IAA requires the Secretary and the Attorney General to establish a case registry of all incoming and outgoing intercountry adoption cases,

regardless of whether they occur under the Convention. In furtherance of this requirement, section 303(d) of the IAA requires that all agencies and persons providing adoption services in connection with an "outgoing" intercountry adoption not subject to the Convention file certain information with the Case Registry as required by the Secretary and the Attorney General through joint regulations. (The Department expects these functions of the Attorney General to be assumed by the Secretary of Homeland Security.) The standards for accreditation/approval in these proposed regulations include standards in subpart F at § 96.43 and, for supervised providers, at §§ 96.45(b)(11) and 96.46(b)(11), relating to compliance with the joint regulations contemplated by section 303(d). (The joint regulations have not yet been proposed.) Because IAA section 503(c) exempts section 303(d) from the PRA requirements, these proposed standards, which are designed to promote observance of the requirement of section 303(d), are exempt.

V. The Proposed Implementing Regulations on Accreditation and Approval

A. Public Input on the Proposed Regulations

In the IAA itself, Congress explicitly required the Department, when developing these regulations, to consider the views of the adoption community. Specifically, the IAA provides:

[T]he Secretary shall consider any standards or procedures developed or proposed by, and the views of, individuals and entities with interest and expertise in international adoptions and family social services, including public and private entities with experience in licensing and accrediting adoption agencies. (Pub. L. 106-279, section 203(a)(2)).

The Department took this mandate very seriously and considered the views of the adoption community before drafting this proposed regulation. While a number of changes to current practice will be necessary and desirable to come into compliance with the Convention and the IAA, the Department looked to the adoption community for ideas as to how it should implement its responsibilities. In particular, to comply with the section 203(a)(2) mandate in the IAA, the Department issued a Scope of Work to identify a consulting firm with expertise in accreditation and intercountry adoption. After considering proposals from interested consultants, the Department retained the private firm of Acton Burnell, which undertook

consultations with the public and formulated suggestions for the proposed accreditation regulations in the form of an initial draft. Acton Burnell undertook extensive research and consultation that included review of current, private accreditation standards, analysis of applicable State regulations, and solicitation of input from members of the adoption community, including adoption service providers, professional membership organizations, advocacy groups, coalition groups, birth parents, adoptive parents, adoptees, legal, medical, and social work professionals, Federal and State public bodies, and standard-setting and regulatory professionals.

The Department requested that Acton Burnell establish a multi-disciplinary team of experts in accreditation and intercountry adoption and use an open process designed to ensure that all segments of the adoption community had a full opportunity to provide input at public meetings and to articulate their opinions and concerns. In response, Acton Burnell set up an interactive Web site to keep the public informed about the project. It also created and disseminated two surveys in conjunction with the public meetings—one for agencies and persons and one for prospective adoptive parents, adoptive parents, birth parents, and adoptees. Acton Burnell then announced and convened a public meeting on April 2, 2001, to gather input for the regulations. Any person was permitted to send in statements or other material prior to the first meeting, and copies of such statements were made available to attendees. Additionally, all interested persons were welcome to attend and had the opportunity to address the Acton Burnell team and other attendees. Acton Burnell received considerable public input, including actual proposed standards from various coalition groups as well as statements from adoption research organizations and input from other advocacy groups. It considered the input from all of these sources and used it to produce draft proposed regulations that were made available to the public on a Web site at <http://www.hagueregs.org>.

After publishing an initial draft of the regulations, Acton Burnell convened a second set of public meetings on June 18 and 19, 2001, and invited all interested persons to submit written statements. Department personnel attended these meetings. Submitted statements were circulated amongst the attendees and those that had been provided in electronic form were posted on the Web site. After considering all of

the input provided, including, but not limited to, the information from the surveys, the content from written statements sent, and the oral statements given at the public meetings, Acton Burnell produced another draft of the regulations which it submitted to the Department on July 31, 2001. The Acton Burnell team then engaged in extensive consultations with the Department and produced further revised recommended draft regulations. The Department permitted the revised draft regulations to be posted on the Web site in October and December of 2001. The revised draft regulations were posted on the Web site for informational purposes, but not for additional public comment. The multiple draft regulations produced by Acton Burnell and posted on its Web site were not subject to the notice and comment provisions of the APA, 5 U.S.C. 553, because it was understood that the Department would use the Acton Burnell product to formulate its own version of the proposed regulations, which would be subject to APA notice and comment.

B. The Department's Preparation of the Proposed Regulations

The Department has considered all of the public input and the substantive recommendations and proposed draft regulations published by Acton Burnell and submitted to the Department for review. The Department also relied heavily upon the standards for accreditation and approval listed in section 203(b) of the IAA to determine what performance and organizational standards to include in the regulations. It also looked to the legislative history of the IAA, as appropriate, and consulted with interested congressional staff. Most important, the Department looked to the guiding principles provided by the Convention. Where the Convention delineates certain tasks that must be completed for an adoption to proceed, the regulations set a standard governing how accredited agencies and approved persons must complete those tasks.

The Department also tried to ensure that the regulations fully reflect the Federal government's obligations under the Convention and the IAA. Further, the Department crafted the regulations to facilitate practical implementation. The Department also sought to ensure that the regulations protected birth parents, adoptive parents, and children involved in a Convention adoption. In particular, the regulations address certain undesirable and problematic practices that the Department has observed through its current work with intercountry adoptions.

Also, when considering the regulations applicable to accrediting entities, the Department kept in mind the need to find competent and willing accrediting entities. The Department did not want to create inflexible regulations that would discourage any accrediting entity from seeking to be designated. Therefore, the Department examined the current practices of accrediting entities and attempted to create uniform procedures without completely modifying current practice. As a variety of organizations, including State entities, may seek designation, the regulations are intended to be as flexible as feasible to encourage many entities to seek designation. The Department would prefer to have a number of accrediting entities, in order to expedite the initial accreditation and approval phase, to avoid a bottleneck of applicants, and to ensure geographical diversity and competition with respect to fees and services.

The Department recognizes that by proposing to regulate accrediting entities, in addition to entering into the anticipated Agreements between the Department and the accrediting entities, the Department is binding potential accrediting entities to certain practices in advance of their designation. Potential accrediting entities should be aware that they will be bound by the final regulations and that the Department's flexibility in negotiating Agreements will be limited by the final regulations. The Department is mindful that these procedures may be different from the practices that prospective accrediting entities use in other, non-Convention contexts. The Department welcomes public comment on the substance and level of the regulation of accrediting entities and the tasks expected of them, especially from any potential private accrediting entities or State entities that are considering becoming designated accrediting entities.

Finally, the Department considered the views of all members of the adoption community. The Department recognizes that there are many areas of consensus within the adoption community as well as a number of critical issues on which some elements of the community remain divided. The regulations had to draw a number of difficult compromises that are likely to evoke comment or dissent from one or more segments of the adoption community. While preparing the proposed regulations, the Department has tried to balance all the input received and also craft proposed regulations that are consistent with the Convention and the IAA. Also, the

Department had to adapt the work product of Acton Burnell into a Federal regulatory format and to address a number of issues that had not been raised or addressed during the preliminary public input phase. These regulations are now published for notice and comment under the APA, 5 U.S.C. 553, as required by the IAA.

C. Overview of the Proposed Regulations

These regulations contain the following sections: Subpart A contains the definitions governing the use of defined terms throughout these regulations. Subpart B sets forth the process by which the Department will designate one or more accrediting entities to perform the accreditation and approval functions and describes the authority and responsibilities of accrediting entities. Subpart C articulates the accreditation and approval requirements of the IAA by describing which entities are covered by the IAA's requirements, delineating the exceptions to those requirements, and addressing the responsibilities of public bodies that provide adoption services in Convention cases. Subparts D and E describe the process for seeking and being evaluated for accreditation or approval. Subpart F sets forth in detail the standards for accreditation and approval, including the parameters and requirements for working with entities or individuals in the United States or in other Convention countries that are not accredited or approved but will act under the supervision and responsibility of an agency or person accredited or approved in the United States. Subparts G and H address notification of accreditation and approval decisions and the process for renewing accreditation or approval. Subparts I, J, K, and L cover monitoring of and complaints against accredited agencies and approved persons, adverse actions against accredited agencies or approved persons by the accrediting entity, and suspension, cancellation, or debarment of accredited agencies or approved persons by the Secretary. Subpart M addresses how and under what circumstances the accrediting entities will disseminate and report information about accredited agencies and approved persons to the public and to the Secretary. Finally, subpart N sets forth the procedures and standards for temporary accreditation.

1. Subpart A—General Provisions

Subpart A contains the definitions for part 96. Most of the definitions are taken directly from the IAA. If a specific definition substantially affects a particular provision in the proposed

regulation, the definition typically is addressed below in the context of discussion of that provision. The IAA definition of Convention adoption, however, has ramifications throughout the regulations, and thus is addressed in this introductory section.

The definition for Convention adoption was difficult to draft because the Convention and the IAA contain differently worded rules for when the Convention will apply to a particular intercountry adoption. Article 2 of the Convention, provides: "the Convention shall apply where a child habitually resident in one Contracting State ('the State of origin') has been, is being, or is to be moved to another Contracting State ('the receiving State') either after his or her adoption in the State of origin by spouses or a person habitually resident in the receiving State, or for the purposes of such an adoption in the receiving State or in the State of origin." (S. Treaty Doc. 105-51, Art. 2). Under the IAA, however, a Convention adoption is defined as an adoption of a child resident in a foreign country party to the Convention by a U.S. citizen, or an adoption of a child resident in the United States by an individual residing in another Convention country. (Pub. L. 106-279, 3(10)).

The regulations attempt to clarify the IAA definition of Convention adoption and to harmonize the Convention and the IAA definitions. The IAA definition of Convention adoption, taken literally, would include every adoption in a Convention country by a U.S. citizen. For example, the definition would include children outside the United States adopted in accordance with a country's adoption procedures by a U.S. citizen parent who did not intend to move the child back to the United States. In such situations, the country of origin usually does not treat the adoption as an intercountry adoption covered by the Convention and thus requiring the use of accredited agencies or approved persons. The Department does not believe that the intent of the IAA or the Convention was to treat all adoptions of children in a Convention country by a U.S. citizen parent as intercountry adoptions covered by the Convention. Therefore, the definition of Convention adoption in § 96.2 construes the IAA definition of Convention adoption by specifying the requirement that the child, in connection with his or her adoption, must have moved, or there must be an intent to move the child, from one Convention country to another Convention country. This interpretation of the IAA definition of Convention adoption is intended to make clear that adoptions by a U.S. citizen residing

abroad, even in a country party to the Convention, are not always automatically intercountry adoptions covered by the Convention where the adopting parent is a U.S. citizen. The Department welcomes comment on the definition of Convention adoption, especially from those organizations or agencies and persons who assist U.S. citizens residing abroad with adoptions and from prospective and adoptive parents living abroad as well.

2. Subpart B—Selection, Designation, and Duties of Accrediting Entities

Subpart B addresses the Department's designation of accrediting entities. The Department will designate one or more private, non-profit organizations or State-based authorities to act as accrediting entities and enter into agreements with them for this purpose. Such entities will have responsibility for: Evaluating the eligibility of agencies and persons for accreditation or approval and granting or denying accreditation or approval; determining whether to renew accreditation or approval; monitoring and addressing complaints against accredited agencies and approved persons; taking adverse action against accredited agencies and approved persons; and disseminating and reporting information about accredited agencies and approved persons. Subpart B sets forth the eligibility criteria for designation as an accrediting entity, additional requirements for designation, the authorities and responsibilities of accrediting entities, the general content of the Agreement, and what actions the Department may take against an accrediting entity that fails to fulfill its responsibilities as set forth in these regulations or the Agreement.

Subpart B also sets forth the procedures and requirements accrediting entities must follow when setting a fee schedule. Accrediting entities may only charge fees on a cost-recovery basis, and the Department must approve the fee schedule. Additionally, an accrediting entity must make such fee schedules available to the public upon request and specify the fees to be charged to an applicant in a contract between the accrediting entity and the applicant.

Several aspects of the proposed regulations relating to fees deserve particular note. First, the Secretary may require a portion of the fee to cover the Complaint Registry. Second, applicants will pay a single fee that will cover both the pre- and post-accreditation/approval work of any accrediting entity. The fee will be non-refundable even if an application is denied.

The Department seeks comments from all parties, especially from potential accrediting entities, on the regulations governing the accreditation and approval process. In particular, potential accrediting entities should comment on the practical issues these regulations may present for them if they seek to become designated as accrediting entities.

3. Subpart C—Accreditation and Approval Requirements for the Provision of Adoption Services

(a) Authorized Providers. Subpart C explains what agencies and persons are subject to the IAA's accreditation and approval requirements and under what conditions they may provide adoption services in Convention cases. Section 201 of the IAA mandates that, once the Convention enters into force for the United States, no agency or person may offer or provide "adoption services," as defined § 96.2(e), in connection with a Convention adoption in the United States unless that agency or person is accredited or temporarily accredited or approved pursuant to these regulations. If the agency or person is not accredited, temporarily accredited, or approved, it must (1) be providing adoption services under the supervision and responsibility of an accredited agency, temporarily accredited agency, or approved person ("a supervised provider"); (2) be performing an activity that is exempted from the accreditation or approval requirements; or (3) be operating as a public body.

The requirement to be accredited, temporarily accredited, or approved applies regardless of the number of adoption cases for which the agency or person is offering or providing "adoption services." The provision of an adoption service in one Convention adoption case is sufficient to trigger this requirement. Conversely, if an agency or person does not provide "adoption services" in any cases subject to the Convention, this requirement does not apply. If an agency or person is providing adoption services in both Convention and non-Convention cases, the requirement applies.

It is critical to note that the requirements pertaining to accreditation and approval are triggered when an agency or person offers or provides any single one of the six services listed in the definition of "adoption services." (Pub. L. 106-279, section 3(3)). The IAA's definition, which is adopted by these regulations, lists six core, but limited functions, that it calls "adoption services." (Pub. L. 106-279, section 3(3)). Services that are not listed in the definition given in § 96.2(e) of these

regulations are not considered "adoption services" for the purpose of the IAA and therefore do not trigger the requirement that the agency or person providing the service be accredited, temporarily accredited, or approved or be operating under the supervision and responsibility of an accredited agency, temporarily accredited agency, or approved person. Therefore, for example, if an agency or person provides only services not listed in the definition of adoption services (such as post-placement counseling, a medical evaluation of a child's records or of a video of the child provided by the child's country of residence, pre-adoptive parent training courses or meetings, or post-adoption services for children whose adoptions were dissolved), that agency or person is not required to be accredited, temporarily accredited, or approved or to operate under the supervision and responsibility of an accredited agency, temporarily accredited agency or approved person. Conversely, if a service provided by an agency or person is listed as any one of the six adoption services in the definition of adoption services, the agency or person must be accredited, temporarily accredited, or approved or it must act under the supervision and responsibility of an accredited agency, temporarily accredited agency, or approved person (unless it is a public body or is only performing an exempted service). For example, securing necessary consents to termination of parental rights and to adoption is one of the defined six adoption services. Thus, a lawyer, who may provide this service now as a legal service, may not do so in Convention cases unless he or she is approved or is doing so as part of an accredited agency, temporarily accredited agency, or an approved person or is acting under the supervision and responsibility of an accredited agency, temporarily accredited agency, or approved person.

When determining whether an activity is included in the definition of adoption services, the reader must pay close attention to the language used in the list of services. For example, post-placement monitoring, but not post-placement counseling, is included in the definition of "adoption services." Therefore, the former triggers the requirement, but the latter does not. Similarly, one listed adoption service is "identifying and arranging an adoption." An agency or person that both identifies a child for adoption and arranges the adoption would be covered by the requirement. On the other hand, a magazine or TV show or newsletter,

which simply posts pictures and information about children waiting for adoptive placements on behalf of other agencies, persons, or public bodies, would not be covered. These media companies are not covered because they are only communicating information on a child awaiting placement, rather than both identifying a child for adoption and arranging the adoption.

Although some of the preliminary public input asserted that Congress did not intend for each single, named adoption service to trigger the accreditation, approval, or supervision requirement, the Department has rejected such an interpretation of the IAA. Instead, the Department interprets the IAA as mandating that the provision of any one of these six adoption services triggers the requirement that an agency or person be accredited, temporarily accredited, or approved or operate under the supervision and responsibility of an accredited agency, temporarily accredited agency, or approved person (unless it is a public body or is only performing an exempted service). The alternative reading—that the requirement is triggered only when an agency or person actually provides all six services—would nullify the protective intention, capacity, and effect of the IAA. Such a reading would permit an agency or person to decline to provide one of the enumerated adoption services and thereby evade the requirement.

(b) Accreditation and Approval Versus Acting as a Supervised Provider. Although the IAA is clear that an agency or person wishing to offer or provide adoption services in cases subject to the Convention must be accredited, temporarily accredited, or approved or operate under the supervision of an accredited agency, temporarily accredited agency, or approved person (unless it is a public body or providing only an exempted service), it does not provide guidance on how to choose between these options. The Department understands that each agency or person will face a difficult choice in making this decision and is not able to provide specific advice on what is best for each individual agency or person. However, the Department believes it is helpful to underscore the ramifications of choosing between being accredited/approved and being a supervised provider. First, agencies and persons that do not become accredited, temporarily accredited, or approved must be supervised by an accredited agency, temporarily accredited agency, or approved person (unless they are a public body or are providing only an exempted service in the case). Second,

agencies and persons that do not become accredited, temporarily accredited, or approved, and instead act as a supervised provider, are not subject to all of the standards in subpart F. They are, however, subject to the standards contained in § 96.45 (supervised providers in the United States) or § 96.46 (supervised providers in other Convention countries) of subpart F. Third, agencies and persons that do not become accredited, temporarily accredited, or approved cannot operate as the primary provider in a Convention case.

(c) Primary Providers. These regulations establish as a principle of accreditation and approval that an accredited agency, temporarily accredited agency, or an approved person must identify itself as the "primary provider" in each Convention case. The primary provider must be an accredited agency, temporarily accredited agency, or approved person. It cannot be a supervised provider. If there is only one accredited agency, temporarily accredited agency, or approved person among the agencies and persons providing the six adoption services (as defined), then that one inherently must act as the primary provider. Where more than one accredited agency, temporarily accredited agency, or approved person is providing services in the same Convention case, and therefore more than one agency or person is eligible to act as the primary provider, the agency or person performing the tasks listed in § 96.14(a)(1)–(4) must be designated as the primary provider. Whether the accredited or temporarily accredited agency or the approved person is providing all of the adoption services itself or is using supervised providers or other providers to provide the six adoption services, the regulations also establish, as a principle of accreditation and approval, that all six of the services listed in the definition of adoption services must be provided in each Convention adoption case.

The primary provider under the accreditation and approval standards has two principal responsibilities. First, the primary provider is responsible for ensuring that all six of the adoption services listed in the definition of "adoption services" are provided in each Convention case. Second, the primary provider is responsible for supervising non-accredited agencies and non-approved persons that are providing adoption services (as defined) in the case. The requirements and parameters for providing supervision can be found in §§ 96.45 and 96.46.

The primary provider principle is appropriate and necessary for a number of reasons. Although the IAA is clear that agencies and persons providing adoption services in a Convention case must either be accredited, temporarily accredited, or approved or supervised, it is silent on how supervision will be provided and how providers in the same Convention case must coordinate adoption service delivery. These regulations provide that framework through the creation of the primary provider requirement incorporated into the accreditation and approval standards as appropriate. Also, to provide clarity in response to the numerous inquiries about the requirement during the preliminary public input phase, the primary provider principle appears in the regulations as a freestanding provision in § 96.14, which is cross-referenced to the definition of primary provider in § 96.2(cc).

The Department is aware that this principle both reflects and changes current practice. This scheme allows agencies and persons, especially small agencies and persons, to continue to form the network of providers needed to complete each individual intercountry adoption. The Department does not want to interfere unnecessarily with how a network is formed to provide services in each particular adoption case. The Department understands that agencies with an adoption program in one country must be able to connect with potentially 50+ other agencies or persons because the prospective adoptive parent(s) to be matched with a child could be in any one of the 50 States or in other U.S. jurisdictions. Conversely, prospective adoptive parent(s) who seek to adopt a particular child identified as in need of an adoptive placement must be able to connect with an agency or person (which may not be located in the State where the prospective adoptive parent(s) resides) that has an adoption program in the country of origin from which they wish to adopt a child. In deference to the historically important role the formation of networks and the use of small agencies and persons have played in providing services that match children from many different countries of origin with prospective adoptive parent(s) in diverse and widely dispersed geographical areas, the Department has crafted regulations that allow such relationships among agencies or persons to continue. The Department's goal is to mirror current practices and to provide regulatory flexibility so that the regulations do not

negatively affect small agencies and persons and other providers.

The regulations through the accreditation and approval standards do require, however, an accredited agency, temporarily accredited agency, or approved person in every case be identified as the primary provider and formally assume responsibility for supervision of other providers in the case, both in the United States and overseas, that are not accredited or approved. Another important provision, in §§ 96.45(c) and 96.46(c), is that a primary provider must assume legal responsibility for the actions of supervised providers, both in the United States and overseas.

As stated, the Department is not seeking to alter current practice unnecessarily, particularly where current practice does not give rise to the types of abuses that the Convention and the IAA seek to curtail. In this case, however, while the concept of identifying a primary provider is not an established practice and is not provided for in the IAA, the Department has concluded that it is necessary to have an organizing principle to ensure that one agency or person has ultimate responsibility for proper and effective service provision. Close coordination is particularly important given the Convention's requirements that key tasks and determinations be undertaken and made before the adoption proceeds to ensure that the adoption is in the best interests of the individual child and in compliance with U.S. obligations to other Convention countries. The Department also believes that the primary provider requirement will improve practice without unduly changing the adoption community's current structure for providing adoption services. The Department also notes that, consistent with the IAA, the regulations provide for regulatory flexibility and enable all agencies or persons, including those that are small, to choose to become accredited, temporarily accredited, or approved (and act as a primary provider in a particular case where necessary) or to be supervised providers.

When acting as the primary provider and using supervised providers, the accredited agency, temporarily accredited agency, or approved person must comply with § 96.44 (Acting as Primary Provider), § 96.45 (Using Supervised Providers in the United States), and § 96.46 (Using Supervised Providers in Other Convention Countries) as well as all of the other standards in subpart F.

The primary provider may work with a variety of entities. In the United

States, the primary provider may work with: (1) Other U.S. accredited agencies, temporarily accredited agencies, and approved persons; (2) agencies and persons acting under its supervision and responsibility (U.S. supervised providers); (3) public bodies; and (4) exempted providers. In another Convention country, the primary provider may work with: (1) Agencies, persons, or other entities accredited by the other Convention country; (2) Convention country public authorities or competent authorities; and (3) agencies, persons, or other entities acting under the primary provider's supervision and responsibility ("foreign supervised providers"). As noted, the conditions on the use of these agencies, persons, or other entities, whether domestic or foreign, are listed in §§ 96.45 and 96.46.

(d) Supervised Providers. Agencies and persons that do not become accredited or approved may provide adoption services in the United States in cases subject to the Convention only under the supervision and responsibility of the accredited agency, temporarily accredited agency, or approved person that is acting as the primary provider in the case (unless they are a public body or are only performing an exempted service). These agencies or persons are called "supervised providers." Supervised providers are not required to be in substantial compliance with all of the accreditation and approval standards set forth in subpart F. However, these regulations do set forth requirements that apply when a primary provider uses a supervised provider to provide adoption services in a Convention case. Those requirements are set forth in §§ 96.45 and 96.46.

The following entities are not considered supervised providers: (1) Agencies or persons that are accredited, temporarily accredited, or approved in the United States; (2) public bodies; (3) agencies, persons, or entities accredited by other Convention countries; and (4) public authorities and competent authorities of other Convention countries. Such entities are not required to act as supervised providers; that is, they are not required to act under what in these regulations is referred to as the supervision and responsibility of the primary provider. Primary providers are not required to provide supervision and responsibility for them when they provide adoption services in a Convention case. Only non-accredited and non-approved entities that do not fall into one of these categories are considered supervised providers for the purpose of these regulations. While the

primary provider will have legal responsibility for the work of its supervised providers, it will not have legal responsibility for the work of other accredited/approved providers; public bodies; agencies, persons, or entities accredited by other Convention countries, and public authorities and competent authorities of other Convention countries, except to the extent that the primary provider must ensure that all six adoption services are provided.

(e) Activities That Do Not Require Accreditation, Approval, or Supervision. The IAA highlights four types of activities that, under specified circumstances, do not give rise to the requirement that an agency or person be accredited, temporarily accredited, or approved or operate under the supervision and responsibility of an accredited agency, temporarily accredited agency, or approved person. These activities are: (1) The completion of a home study or child background study; (2) the provision of child welfare services where the agency or person is not performing any other adoption service in the case; (3) the provision of legal services where the agency or person is not performing any adoption service in the case; or (4) activities undertaken by prospective adoptive parent(s) acting on their own behalf.

Home Study or Child Background Study. Even though it is listed as an adoption service in the IAA definition of adoption services, the performance of a home study or child background study, by itself, does not require the agency or person to be accredited, temporarily accredited, or approved or operate under the supervision and responsibility of the primary provider, where the agency or person is not performing any other adoption service (as defined) in the case. (Pub. L. 106-279, 3(3) and 201(b)(1)). The reader should note that this exception only applies where the agency or person is not also providing any other service listed as an adoption service in the case. (Pub. L. 106-279, 201(b)(1)). If the agency or person is performing another adoption service in addition to the home study or child background study, it must be accredited, temporarily accredited, or approved or it must perform the service under the supervision and responsibility of the primary provider. Agencies or persons that operate under the home study/child background study exemption are called "exempted providers." The home study or child background study, as well as any related reports or updates, from an exempted provider must be approved by an accredited agency or temporarily

accredited agency. This approval requirement is included to satisfy the requirements of Article 22(5) of the Convention and section 201(b)(1) of the IAA.

A number of practitioners suggested to Acton Burnell that the regulations should exempt agencies and persons (both individuals and for-profits) that perform both home studies and post-placement monitoring from the requirement to be accredited, temporarily accredited, or approved or operate under the supervision and responsibility of the primary provider. The Department does not read the IAA to permit such an expansion of the exemption. The language of section 201(b)(1) of the IAA on its face makes clear that providing another adoption service in addition to the home study or child background study triggers the requirement. Because post-placement monitoring (before the legal adoption takes place) is explicitly defined as an adoption service, those agencies and persons providing both the home study and post-placement monitoring must either be accredited, temporarily accredited, or approved, or operate under the supervision and responsibility of the primary provider.

Child Welfare Services and Legal Services. Child welfare services and legal services, in accordance with the IAA definitions, are not "adoption services." Therefore, they do not by themselves trigger the requirement that the agency or person be accredited, temporarily accredited, or approved or operate under the supervision and responsibility of the primary provider. The IAA specifically highlights that the provision of child welfare services and legal services does not trigger this requirement, so long as the agency or person is not also performing in the case a service listed as an adoption service.

If the agency or person is also providing an adoption service in the case, however, it must be accredited, temporarily accredited, approved, or supervised. Acton Burnell received some comments arguing that the provision of a home study and a child welfare service in the same case should not trigger this requirement. The Department nevertheless reads the IAA as not allowing the child welfare exemption to apply if any one of the adoption services, including the home study, in addition to a child welfare service, is provided. Thus, for example, if an agency provides post-adoption evaluations but does not provide the home study or any of the other six adoption services, it is not required to be accredited or supervised. In contrast, if an agency provides both the home

study and the post-adoption evaluations, it must be accredited or supervised because the home study is one of the six listed adoption services.

For clarity, the definitions section provides a non-exhaustive list of the types of services that would be considered "child welfare services" or "legal services." This list is simply illustrative, and meant to highlight those common child welfare and typical legal services provided in an adoption case and to provide reassurance that such services do not trigger the requirement that the agency or person be accredited, temporarily accredited, approved, or supervised. Since only the six services listed in the definition of adoption services trigger the requirement to become accredited, temporarily accredited, or approved, or to operate under the supervision and responsibility of an accredited, temporarily accredited, or approved provider, it is not necessary to have an exhaustive list of child welfare or legal services. If the service being provided is not one of the six listed in the definition of adoption services, the requirement is not triggered.

Regarding the provision of legal services, some of the preliminary public input noted that some States do not permit an individual to provide both legal services and adoption services in a case. These regulations as proposed are not intended to supplant or alter existing State law in this respect; therefore, an individual can only provide both adoption services and legal services in a case where not prohibited from doing so by the relevant State law. Similarly, some State authorities asked whether attorneys for public bodies must be approved persons. Under the proposed regulations, attorneys who are providing adoption services as part of their employment with public bodies are not required to be approved or to operate under the supervision and responsibility of a primary provider.

Prospective Adoptive Parent(s) Acting on Their Own Behalf. Prospective adoptive parent(s) may act on their own behalf without becoming approved or operating under the supervision of an accredited agency, temporarily accredited agency, or approved person, as long as acting on their own behalf is not prohibited by State law or the law of the other Convention country involved. More specifically, in a case where the child is immigrating to the United States, the conduct must be permissible under the laws of the State in which the prospective adoptive parent(s) reside and the laws of the Convention country from which the parent(s) seek to adopt. Conversely, in a

case where a child is emigrating from the United States, the conduct must be permissible under the laws of the State where the child resides and the laws of the Convention country in which the prospective adoptive parent(s) reside. Please note that this provision only provides an exemption from requirements related to accreditation and approval. The requirements for intercountry adoption procedures will address how prospective adoptive parent(s) acting on their own behalf must comply with the Convention, the provisions of the IAA, and other applicable laws when completing a Convention adoption.

(f) Public Bodies. Public bodies are not subject to the accreditation and approval requirements at all, and no provision is made in this regulation for them to seek accreditation voluntarily. Therefore, they are not required to be accredited or temporarily accredited or to operate under the supervision or responsibility of an accredited agency, temporarily accredited agency, or approved person to provide adoption services in Convention cases. This exemption for public bodies reflects the special status accorded public bodies by the Convention. The abuses that partially motivated creation of the Convention were attributed in part to malfeasance by private, non-accredited agencies and persons. Therefore, the Convention did not contemplate requiring public bodies to undergo the same evaluation and accreditation process. Also, the Department reads sections 3(14) and 201(a) of the IAA, which provide that persons to be accredited/approved shall not include an agency of government, as excluding public bodies from the accreditation and approval requirement.

Public bodies must, however, otherwise comply with the Convention, the IAA and other applicable law when providing services in Convention cases. As a non-accredited entity, a public body cannot provide supervision and responsibility for other entities providing services in a Convention case. The IAA and the regulations require that the entity providing supervision and responsibility be an accredited agency, temporarily accredited agency, or an approved person. Therefore, a public body must either provide all adoption services in a Convention case itself, or must use only other public bodies or agencies, competent authorities, or accredited, temporarily accredited, or approved entities to provide adoption services in a Convention case.

4. Subpart D—Application Procedures for Accreditation and Approval

Subpart D governs applications for full accreditation or approval. Full accreditation or approval refers to accreditation or approval granted when an agency or person is in substantial compliance with the comprehensive and detailed standards in subpart F. The IAA also permits small agencies to apply for temporary, as opposed to full, accreditation that will be for a period of one or two years after the Convention enters into force for the United States. Except as otherwise provided, the procedures in subpart D do not apply to applications for temporary accreditation. The rules on applications and the standards for temporary accreditation are in subpart N.

Subpart D contains special provisions for agencies and persons that seek to be accredited or approved by the time the Convention first enters into force for the United States. Such an agency or person must apply by what is called the "transitional application deadline" (TAD). The TAD will be published in the **Federal Register**. Since the Department expects there to be a bottleneck as agencies and persons apply for initial accreditation and approval, it established the TAD to manage the initial accreditation/approval phase and to ensure that all interested agencies and persons are on notice that they must apply by the TAD if they are seeking to become accredited or approved by the time the Convention enters into force for the United States. After the Department learns the number of agencies and persons that applied by the TAD, and has an estimate of how long it will take the accrediting entities to evaluate each applicant (including conducting site visits), it will announce a "deadline for initial accreditation or approval" (DIA). The DIA will be the date by which an agency or person must complete the accreditation or approval process so as to be accredited or approved when the Convention enters into force for the United States.

The regulations provide that the accrediting entity must use its best efforts to provide a reasonable opportunity for an agency or person that applied by the TAD to complete the process by the DIA. Only those agencies and persons that are accredited or approved by the DIA will be included on the Department's initial list of accredited agencies and approved persons sent to The Hague Conference Permanent Bureau. If an agency or person is not on this list once the Convention enters into force for the United States, it cannot provide

adoption services in Convention cases until it becomes accredited or approved, unless it acts under the supervision and responsibility of the primary provider in the case, or is a public body or exempted provider. If an agency or person does not comply with this requirement, it risks being subject to the civil and criminal penalties provided for in the IAA. If an agency or person is not seeking to be on this first list, it may submit an application for accreditation and approval at any time. Regardless of when an agency or person submits its application, a designated accrediting entity must evaluate the applicant in a timely fashion.

The regulations also cover how an agency or person selects a designated accrediting entity. The agency or person must apply to a designated accrediting entity with jurisdiction over its application. The Department, after evaluating potential accrediting entities, will designate selected accrediting entities and define their jurisdiction. An accrediting entity's jurisdiction may be limited by geography, type of applicant (agency or person), or other conditions determined by the Department.

The Department is aware that some agencies and persons have previously undergone voluntary accreditation. If the entity that granted such voluntary accreditation is eventually designated as an accrediting entity by the Department, any agency or person that has previously obtained voluntary accreditation from that entity may apply to that same entity for Convention accreditation under these regulations, but is not required to do so.² When an

² Throughout this Preamble and regulations, accreditation and approval refer to accreditation and approval under these regulations, not to any other system of accreditation. Acton Burnell received substantial comments in favor of a "deeming" mechanism, which would permit agencies that have already been voluntarily accredited under a different accreditation system to meet via "deeming" these new Federal regulatory standards when the standards are the same. The Department has decided not to permit deeming. The standards developed in subpart F differ substantially from the standards currently used by potential accreditors. The standards in this proposed regulation focus mainly on intercountry adoption practices and compliance with the Convention and IAA requirements rather than general corporate governance practices and quality assurance systems. These requirements are derived from newly enacted mandates, and currently used accreditation standards do not yet have this same focus. Therefore, the Department has concluded that its regulatory standards differ substantially from other standards and that the use of a "deeming" mechanism would have little practical utility and not ensure adequate compliance with the Convention and the IAA. In addition, deeming could give an advantage in the start-up phase to some providers over others. The Department welcomes public comment on this issue, especially from potential accreditors as well as agencies that have been voluntarily accredited. The Department

applicant applies for accreditation or approval for the first time under these regulations, an applicant may apply to any accrediting entity with jurisdiction over its application. Subsequent applications for accreditation or approval are subject to different rules that are also described in subpart D.

5. Subpart E—Evaluation of Applicants for Accreditation and Approval

Subpart E governs how accrediting entities must evaluate applicants for full accreditation or approval. The Department recognizes that accrediting entities currently use a variety of methods for voluntary accreditation of all types of social service providers, including adoption service providers. However, the Department chose in these regulations to mandate specific requirements so as to ensure that the processes used to scrutinize agencies and persons for compliance are fair and can be uniformly applied to all agencies and persons.

For example, the regulations require accrediting entities to do the following: (1) Use at least two qualified evaluators to assess an agency or person; (2) review all documentation submitted; (3) verify the information submitted; and (4) conduct appropriate site visits. The regulations also describe how site visits must be conducted, and include a requirement that at least one evaluator participate in the site visit. Before making its final decision, the accrediting entity may, in its discretion, advise an agency or person of any deficiencies that could prevent accreditation or approval. The accrediting entity may defer a final decision to allow the agency or person to correct the deficiencies.

The regulations also discuss how the accrediting entity must protect the information and documents disclosed to it at any stage of the accreditation and approval process. Specifically, the regulations address the protection of information from unauthorized disclosure, proper use of the information received, maintenance of accurate records, and safeguards for protecting identifying information from unauthorized use and disclosure. The regulations also require that the accrediting entity's officers, employees, contractors, and evaluators who have access to an agency's or person's documents or information sign a non-disclosure agreement.

requests that commenters in favor of deeming identify any current, non-regulatory standards that are sufficiently similar to particular standards in subpart F of this proposed regulation to warrant an automatic finding of compliance on the "matching" standard.

(a) Substantial Compliance. Section 96.27(a) mandates substantial compliance, not absolute compliance, with the standards in subpart F. There was considerable disagreement in the adoption community about which of the standards in subpart F—if any—should be made absolute. Some advocated that all the standards should be subject to strict compliance; others advocated that particular standards, but not others, should be subject to strict compliance. The Department believes that the use of an accreditation system based on substantial compliance and the opportunity to improve, rather than a strict licensing scheme, to regulate the agencies and persons is more consistent with the regulatory approach contemplated by the IAA. Thus, after careful deliberation, the Department has decided to mandate substantial compliance with all of the standards.

There are three additional reasons for the decision to use substantial compliance as the standard. First, in the absence of consensus among the experts, it was impossible to delineate which individual requirements should always be mandatory. Second, a number of these standards address a wide range of ethical and sound social work practices, rather than just Convention or IAA requirements. One-time failures to comply with such social work practice standards, which inherently are evolving, though unfortunate, should not form the sole basis for the imposition of the severe types of adverse action such as cancellation of accreditation or approval. Third, the Department considers it essential to give sufficient discretion to accrediting entities, which will be selected based on their expertise, to decide when non-compliance warrants denial of accreditation or approval or adverse action.

The Department recognizes that adherence to certain key individual standards is critical to protecting children and families and comporting with the requirements of the Convention and the IAA. Therefore, the regulations require that the standards or elements of certain standards will be assigned points by the accrediting entity. The accrediting entities will develop a scoring or weighting system that determines how a calculation is completed to determine if an agency or person is in substantial compliance with the standards. The Department has considered but rejected the idea of defining the scoring methods and listing the weighting criteria in this proposed rule. Instead, the Department intends to oversee the designated accrediting entities so that they may arrive at a

uniform and consistent method of assigning points and weighting different standards. The Department and the accrediting entities will consult on a point system and methods to weight the standards to ensure that certain standards are given greater weight than others as appropriate. The weighting of standards is typical of and consistent with current accreditation practice. The Department, however, did not think it was advisable to begin the process of having any accrediting entities ascribe points and weight the standards in subpart F when both the number and content of the standards may change subject to comments provided during the public comment period. Also, because the point system and the weighting criteria will be developed by the accrediting entities as internal procedures, the criteria will not be subject to the notice and comment rulemaking. Applicants will be advised of the system, however, when provided with application materials.

(b) Consideration of Capacity or Actual Performance. The Department anticipates that when evaluating an agency or person for initial accreditation or approval, the accrediting entity may not be able to evaluate actual compliance because the agency or person will not yet have had an opportunity to comply with the stated requirements. Therefore, the regulations permit the accrediting entity, when evaluating an initial application for accreditation or approval, to evaluate the capacity of the agency or person to achieve substantial compliance with the standards rather than the agency's or person's actual performance when evidence of actual performance is not yet available. Once the agency or person has been accredited or approved, however, the accrediting entity generally will, for the purposes of reapplication after adverse action, renewal, monitoring and enforcement, consider the agency's or person's actual performance when deciding whether it is in substantial compliance with the standards. In special, limited circumstances it may be necessary for the accrediting entity to continue to evaluate capacity, but in the absence of such special circumstances the accrediting entity will evaluate actual performance.

(c) Use of IAA Standards. Accrediting entities may use only the standards in subpart F. Accrediting entities may not impose standards that are not included in these regulations. Although the accrediting entity is limited to the standards in subpart F when determining whether to grant or maintain accreditation or approval,

there are three instances when other considerations may be taken into account. First, if an agency or person has been previously denied accreditation or approval under these regulations, has withdrawn its application in anticipation of denial, has had its temporary accreditation withdrawn, or is reapplying for accreditation or approval after certain adverse actions, the accrediting entity may take the circumstances of such actions into account when making its determination. The Department considers such past behavior relevant in accreditation or approval decisions. Second, if any agency or person that has an ownership or control interest in the applicant has been previously debarred, the accrediting entity may take the circumstances of the debarment into consideration when making its determination. The purpose of this provision is to prevent an agency or person that has been debarred from bypassing the debarment by merely reconstituting itself as another entity. Finally, a failure to provide information to the accrediting entity may be grounds for denial or other adverse action.

6. Subpart F—Standards for Convention Accreditation and Approval

(a) Overview of Standards. Subpart F contains the standards for accrediting and approving agencies and persons. The standards include the basic requirements necessary to comply with the IAA and the Convention, detailed standards addressing issues of particular concern to the adoption community, and generally recognized standards for sound and ethical practice in the intercountry adoption field.

The standards contained in subpart F are applicable at all stages of accreditation or approval. Specifically, the accrediting entity will use these standards: (1) When an agency or person applies for accreditation or approval; (2) during monitoring by the accrediting entity; (3) at the time renewal of accreditation or approval is sought; (4) during the investigation of complaints lodged against the agency or person; and (5) when the accrediting entity or the Department contemplates taking adverse action against the agency or person. If at any time an agency or person is believed to be out of substantial compliance with these standards, the client or other interested party may file a complaint. The accrediting entity will investigate the complaint in accordance with subpart J and, if non-compliance is established, take adverse action as appropriate in accordance with subpart K.

The standards in subpart F do not apply to agencies seeking temporary accreditation, except as otherwise provided in subpart N (Procedures and Standards Relating to Temporary Accreditation). Subpart N contains separate performance standards for small entities that wish to become temporarily accredited agencies under the IAA.

(b) Review of Certain Specific Standards. The Department does not believe it is necessary in this Preamble to review the contents of every standard in subpart F. However, there are a number of requirements that are specifically highlighted because the preliminary public input on such standards has been conflicting. For those standards, the Department believes that further explanation is warranted.

Section 96.33: Budget, Audit, Insurance, and Risk Assessment Requirements: The appropriate treatment of liability and insurance is one of the issues that elicited a range of intense comments during the development of the proposed regulation. Concerns centered in particular on the ability of an aggrieved party to seek redress from a single agency or person in the United States that would be responsible for the adoption. Input from congressional staff called for the regulations to assign civil liability to the accredited/approved provider for the acts of its U.S. supervised providers and its foreign supervised providers. To address these concerns, the regulations mandate in §§ 96.45(c), and § 96.46(c) that any accredited agency, temporarily accredited agency, or approved person acting as the primary provider assume legal responsibility vis-à-vis the adoptive parents for the acts of other agencies and persons in the United States or abroad acting under its supervision and responsibility, in addition to its own acts in connection with an adoption. The intent of this provision is to give the adoptive parents legal recourse against a single entity so far as is reasonable. The primary provider may, however, seek indemnification from its supervised providers for any liability it incurs vis-à-vis the adoptive parent. (No effort is made, however, to make the primary provider responsible for the acts of other accredited agencies or approved persons with which it handles an adoption.)

The Department recognizes that this provision may raise the costs of liability insurance for accredited agencies and approved persons and have an effect on civil litigation. The Department is satisfied, however, that it is consistent with the intent and overall purpose of

the IAA. As noted, the Department has concluded that there must be a single "primary provider" for each Convention adoption. Thus, under these regulations, if a supervised provider violates the standards, the primary provider's accreditation, temporary accreditation, or approval may be in jeopardy. It seems also appropriate that, in tort, contract, or similar legal action in which the performance of an adoption service provider is challenged, the primary provider should assume legal responsibility for the acts of the supervised providers (domestic and foreign) that it has chosen to work with. The Department believes that the primary provider will do a better job of supervising if it is deemed automatically to be legally responsible for the acts of its supervised providers in both the accreditation and approval context and with respect to tort, contract, and similar civil claims.

Through Acton Burnell and others, the Department has heard concerns that agencies and persons carry sufficient liability insurance to cover the risks of providing adoption services. The regulations require the agency or person to have a professional assessment of the risks it assumes, including the risk of assuming legal responsibility for its supervised providers in the United States and abroad, and to carry an amount of insurance that is reasonably related to that risk but in no event less than one million dollars per occurrence or claim. In addition, to protect against financial irregularities, the Chief Executive Officer, Chief Financial Officer, and all other officers and employees who have direct responsibility for financial transactions or financial management of the agency or person must be bonded.

The Department recognizes that these standards allocating legal risk, mandating insurance coverage, and setting the floor amount of one million dollars for insurance coverage are sensitive and will require changes in current practice. The Department welcomes public comment, including from insurance experts, actuaries, associations, and agencies and persons, on these issues. Agencies and persons may specifically wish to encourage their insurance providers to comment on these proposed regulations.

The Department also wishes to call special attention to the standard relating to cash reserves in § 96.33(e). A standard of a reserve of three months is proposed. Commenters may wish to address whether this period is too long or too short.

Section 96.35: Suitability of Agencies and Persons to Provide Adoption

Services Consistent with the Convention: An agency or person must demonstrate to the accrediting entity that it provides adoption services ethically and in accordance with the Convention's goals of ensuring that intercountry adoptions take place in the best interests of children and preventing the abduction, exploitation, sale of, or trafficking in children. To permit the accrediting entity to evaluate the suitability of an agency or person for accreditation or approval, the agency or person must disclose the specified information about itself and about its directors, officers, and employees. The Department believes that it is critical for the accrediting entity to have full information about the applicant before making a final decision. Because suitability is a matter of ongoing concern, the agency or person must also update the information required by this section within thirty business days of learning of a change in the information.

The standards do not require automatic disqualification of an agency or person for any particular behavior, activity, or event. Instead, consistent with the accreditation scheme employed, the standards give the accrediting entity the discretion and flexibility to examine the factual circumstances underlying the conduct and to determine whether accreditation or approval is appropriate. Where an agency or person has committed an egregious or illegal act, or has engaged in a pattern of behavior that is inconsistent with protecting the best interests of children, accreditation or approval is likely to be inappropriate. Yet it is impossible for the Department to list every type of non-conforming or unethical behavior that would fall into this category. Therefore, in addition to specific disclosures, the standards mandate disclosure of any other businesses or activities currently carried out by the agency or person, affiliate organizations, or any entity in which it has an ownership or control interest that are inconsistent with the principles of the Convention. These principles include the proposition that in no instance is the abduction, sale, exploitation, or trafficking of children permissible. Such activities would include, for example, distributing pornography or operating a Web site that contains pornography, regardless of whether such activity is legal or not, and trafficking in individuals, either into or out of the United States, for pernicious purposes.

Section 96.37: Education and Experience Requirements for Social Service Personnel: This section sets forth the required qualifications for

individuals performing adoption-related social service functions. The qualifications are divided into categories that correspond to the individual's function, role, and position. These standards substantially upgrade the requirements for social workers, both supervisors and non-supervisors, performing certain tasks by requiring them in many cases to have a master's degree from an accredited program of social work education or to meet other educational or work experience requirements. The required qualifications for individuals performing home studies or child background studies differ from those for individuals performing other social service functions. All individuals performing home studies or child background studies are subject to the requirements in § 96.37, unless they are exempt pursuant to § 96.13. The standards exceed the current qualifications required for home study preparers under the regulations for the INA (*see* 8 CFR 204.3(b) (home study preparer)). Specifically, the new rules as proposed require individuals performing home studies or child background studies to have a minimum of a master's degree in social work education.

Section 96.40: Fee Policies and Procedures: The standards in this section address fee practices. The preliminary public comment included complaints about the charging of large fees, last-minute fee changes that were not disclosed to clients in advance and practices that require prospective adoptive parent(s) to travel abroad with large amounts of cash to pay for adoption services to be rendered in the country of origin. In addition, frustrations were expressed with differences in the ways that fees are categorized, which makes it impossible for clients to compare fees for similar services.

The standards impose a number of requirements to address these concerns. In particular, they require prior disclosure of fees and provide guidelines for how and when fees may be charged. These standards help to ensure that agencies and persons disclose how fees are disbursed. There are also specific provisions governing when and how additional fees may be assessed beyond the original fee, and how unexpended fees must be refunded. The standards also require the agency or person to have a mechanism in place for transferring funds to other Convention countries whenever the financial institutions of that country so permit so that direct cash transactions by prospective adoptive parent(s) are

unnecessary. The Department is aware that many of the fees charged by public authorities in other Convention countries—for example, for passports, birth certificates, adoption certificates, or court documents—must be paid in currency. Therefore, these regulations strike a balance that takes into consideration the reliability and feasibility of using non-cash transactions in a particular Convention country, but requires agencies and persons to use available methods so that the need for direct cash transactions by prospective adoptive parent(s) is minimized.

Section 96.41: Procedures for Responding to Complaints and Improving Service Delivery: The Department recognizes that the handling of complaints against agencies and persons is one of the areas of greatest concern in the adoption community. To address this concern, the regulations provide for the Department to establish a Complaint Registry that may be funded in whole or in part by accreditation and approval fees or fees paid to the Department. The Complaint Registry's responsibilities and functions are described in subpart J of these regulations. In addition, the standards address requirements for the handling of complaints by agencies and persons. In particular, the standards require agencies and persons to have written complaint policies and procedures that are provided to clients at the time the adoption contract is signed. The procedures must permit any birth parent, prospective adoptive parent, or adoptee to lodge a complaint about services and activities that he or she believes are inconsistent with the Convention, the IAA, or the regulations implementing the IAA. The regulations also set forth time frames for responding to complaints. Some prospective adoptive parent(s) also indicated that fear of retaliation or other adverse action hampered their ability to make complaints about wrongful behavior. Thus, the regulations also explicitly prohibit retaliatory action or other conduct that would discourage clients from registering complaints.

Section 96.42: Retention, Preservation, and Disclosure of Adoption Records: This section addresses preservation of and access to adoption records. Adoption records are defined as the records held by agencies or persons or State public bodies and do not include records held by Federal government agencies. Records held by Federal government agencies are called Convention records, and will be addressed in a separate regulation to be published in part 98 of title 22 of the

CFR. The proposed rule for part 98 is also published in a separate rulemaking document in today's **Federal Register**.

The Department recognizes the wide range of views on access to records sealed in accordance with State law. Both the Senate and House committee reports on the IAA contain almost identical language stating that there was no intent to change current State law governing access to birth parent identifying information in adoption records. (See Report of the Senate Committee on Foreign Relations, S. Rep. No. 106-276 at 11 (2000); Report of the House Committee on International Relations, H.R. Rep. No. 106-691 at 30 (2000)). Moreover, section 401(c) of the IAA expressly states that access to adoption records that are not Convention records will be governed by applicable State law. Therefore, the standards in this section mirror the IAA's neutral position on access to adoption records and simply provide that agencies and persons follow applicable State law regarding access to identifying information.

On the issue of the preservation of adoption records, the Convention requires that a child's social and medical information be preserved, but it does not set a specific retention period. In response to the Convention's requirements, the regulations require that an agency or person preserve adoption records, including personal effects, for any period of time required by applicable State law. The Department seeks comment on the adoption records preservation standard. Commenters should address the issue of whether or not a uniform Federal time frame for the retention of adoption records should be included in the standards. Commenters should provide suggestions on what the adoption records preservation standard should be and provide information on the costs and burden of maintaining adoption records, including personal items, for a period of time that they believe would be appropriate.

Section 96.43: Case Tracking, Data Management, and Reporting: This section addresses the IAA's extensive reporting requirements. The Department is required to report to Congress all of the information contained in this section. Some of this information, as indicated, is required for both incoming and outgoing cases, and for both Convention and non-Convention cases. There also is a provision requiring agencies and persons to provide information directly to the Department about outgoing cases to non-Convention countries, even though those cases are not subject to the Convention.

Sections 96.45 and 96.46: Using Supervised Providers in the United States; Using Supervised Providers in Other Convention Countries: The standards in §§ 96.45 and 96.46 apply when a primary provider is using a supervised provider to provide services in a Convention case. As is noted earlier, such supervised providers are not required to be accredited or approved, and hence need not be in substantial compliance with all of the accreditation and approval standards set forth in subpart F. However, §§ 96.45 and 96.46 do set forth specific procedures and requirements that must be followed when a primary provider uses a supervised provider. Non-compliance by the supervised provider with these requirements may jeopardize the accreditation or approval status of the primary provider.

As is noted above, if public bodies, public authorities, competent authorities, or agencies, persons, or other entities accredited or approved by the United States or another Convention country are used to provide services, the primary provider is not required to comply with §§ 96.45 and 96.46 for those entities or individuals. The IAA does not require such supervision and primary providers cannot practically supervise these entities, especially those in another Convention country. For this reason, these regulations do not make the primary provider responsible for the acts of these entities for the purposes of accreditation or approval or legal responsibility to the client. This distinction is particularly important where the primary provider is required by the other Convention country to use its public authorities, competent authorities, or accredited bodies. Because the primary provider has no control over these entities, it is appropriate to exclude them from the supervision and responsibility rubric. Problems originating from public or competent authorities or from bodies accredited by the other Convention countries may, of course, be addressed by the Department, as U.S. Central Authority, with other Central Authorities as appropriate.

On the other hand, supervised providers, while not subject to all of the accreditation and approval standards listed in subpart F, nevertheless must provide adoption services in Convention cases in a manner that is consistent with the principles of the Convention, the IAA, and sound and ethical practice. The Department has heard significant concerns about the behavior of individuals and organizations used by adoption service providers to assist them in providing

services. The concerns were especially acute about service providers in other countries.

The Department shares these concerns but at the same time recognizes that the ability to work with providers in other countries to obtain services that must be rendered abroad is a critical and essential part of intercountry adoption practice. Moreover, many such providers do provide sound and ethical services. The Department does not wish to render it overly difficult to work with these providers, or unnecessarily to penalize those providers that are not the object of these complaints. Furthermore, the Department recognizes that there are limits to its ability to monitor and control the practice of entities abroad not governed by our laws.

To address these issues, the regulations set forth specific requirements governing the use of supervised providers in Convention cases. The primary provider may work with one or more other entities that will act under its supervision and responsibility; however, such work is conditioned on compliance with the requirements in § 96.45 (Using Supervised Providers in the United States) and § 96.46 (Using Supervised Providers in Other Convention Countries). This Preamble does not review all of the requirements contained in these sections, but generally the primary provider must: (1) Screen supervised providers to ensure that they have a general understanding of the Convention and do not engage in practices inconsistent with its principles and requirements; (2) before entering into an agreement for the provision of adoption services, obtain information about the supervised provider's history of practice and suitability to provide services consonant with the Convention; and (3) enter into a written agreement that binds the supervised provider to adhere to a range of specified performance standards.

The requirements on supervised providers are bifurcated into two sections—§ 96.45 and § 96.46—so that the standards for foreign supervised providers can be tailored to address specific concerns. This bifurcation is useful for three reasons. First, some of the requirements for domestic supervised providers simply are not apposite for service providers operating in other countries and had to be modified accordingly. Second, the requirements for foreign supervised providers include specific provisions for the types of services those entities are most likely to provide (for example, in cases of immigrating children, the provision of medical records). Third,

and most important, the requirements for foreign supervised providers reflect the heightened concern expressed by some members of the adoption community about problematic practices by foreign providers.

The primary provider is responsible for ensuring that the supervised providers with whom it chooses to work comply with these requirements. Failure to do so may be grounds for adverse action against the primary provider and may jeopardize its accreditation or approval status.

Sections 96.47 and 96.53: Preparation of Home Studies in Incoming Cases; Background Studies on the Child and Consents in Outgoing Cases: These sections address the home study and child background study requirements. The Department wishes to highlight that all U.S. home studies and child background studies that are not prepared in the first instance by an accredited agency or temporarily accredited agency must be reviewed and approved by an accredited agency or temporarily accredited agency. It is not sufficient for the home study or child background study to be reviewed and approved by an approved person. Home studies or child background studies done by an exempted provider or by an approved person must be reviewed and approved by an accredited agency or temporarily accredited agency.

The reason that it is not sufficient for an approved person to approve the home study or child background study is that Article 22(5) of the Convention requires the home study or child background study to be prepared in every case by or under the responsibility of the Central Authority, public authorities, or by an accredited body. The Department recognizes that the IAA only requires that a home study or child background study prepared by an exempted provider be approved by an accredited agency or temporarily accredited agency. However, the Convention requires that in every case the preparation of the home study or child background study be performed or supervised by an accredited agency. Therefore, the regulations require all home studies or child background studies to be prepared or approved by an accredited agency or temporarily accredited agency.

Section 96.49: Provision of Medical and Social Information in Incoming Cases: The Department recognizes that the provision of accurate medical records on the child is one of the most important issues facing birth parents, prospective adoptive parent(s) and adoptees and that current practice has often been unsatisfactory. The

Department in this standard tried to balance the need for more detailed and accurate medical information on a particular child against the difficulties inherent in obtaining such information in many foreign countries.

The Department considered the following issues: First, the Department is aware that in many, if not most, Convention countries, given current practices and the limited resources of the public authorities or competent authorities, it is extremely difficult for such authorities to obtain all information that may exist on a child prior to an adoption. Second, some members of the public pointed out that, under Article 16 of the Convention, responsibility for preparing the child background study, which must include the medical history of the child, including any special needs of the child, is with the Central Authority of the child's country of origin (or its accredited bodies), rather than with the receiving country. Third, the Department is aware that, because the health care provided to many children in public care has historically been inadequate, medical care may not have been provided to a particular child, or care may have been provided but the medical records simply may not have been created or may not provide the same types of information available in the United States. Fourth, the Department is concerned that any impractical standards in this area will negatively affect the adoption of children with medical problems or special needs because agencies and persons will be less likely to assume the risks of placing such children absent extensive information, which typically is difficult to obtain. On the other hand, the Department received input that agencies and persons: (1) Do not aggressively push the public authorities or competent authorities in the child's country of origin to produce what records they do have; or (2) withhold medical information that they do obtain.

Resolving all these issues in a way that would meet the concerns of the diverse members of the adoption community was not possible. The Department has thus written several compromises into the regulations. The regulations require that all available medical information be forwarded in a timely fashion. In particular, agencies and persons must make all reasonable efforts to provide all of the listed information and, if such information cannot be provided, document all efforts made to obtain the information and explain why it is not obtainable. The standards also require the provision of contact information for the physician in

the country of origin who provided the information. The standards also mandate that, when a summary of a medical record is sent, the agency or person must ask the public or competent authority or other entity that provided the summary to produce a copy of the original medical record on which the summary is based. Additionally, the standards set time requirements for the advance provision of medical information to prospective adoptive parent(s). In accordance with the IAA, the child's medical records must be provided at least two weeks before either the adoption or the date on which the prospective adoptive parent(s) commence travel to the country of origin for the adoption, whichever is earlier. Finally, to ensure that prospective adoptive parent(s) have adequate time to consider such records, the standards require the agency or person to give the prospective adoptive parent(s) at least one week—unless there are extenuating circumstances involving the child's best interests that require a more expedited decision—to consider the records before a referral can be withdrawn.

(c) Review of Standards Related to Performance of Central Authority Functions in Incoming and Outgoing Cases. There are a number of sections that include standards with which agencies and persons must comply when performing Central Authority functions in either incoming or outgoing cases. The standards for incoming cases are in §§ 96.47 through 96.52. The standards for outgoing cases are in §§ 96.53 through 96.55. These standards are intended to ensure that agencies and persons are evaluated on their performance of those Convention tasks for which they are responsible. The Department will not review in the Preamble the content of each of these sections but wishes to highlight that these sections do not necessarily require the agency or person to perform the stated function in every case. Some of these functions may not be required in a case because the function is being performed by a public body, public authority, or competent authority, because the function is not applicable in the other Convention country, or because the factual circumstances of the case make the function unnecessary. For the purpose of accreditation and approval, the agency or person must further demonstrate that, when such functions have been performed, performance has been in accordance with the standards.

7. Subpart G—Decisions on Applications for Accreditation and Approval

Subpart G addresses how the accrediting entity must make and communicate decisions about accreditation and approval. Most important, for agencies or persons who applied by the TAD and who were accredited or approved by the DIA, the accrediting entity must notify such agencies and persons in writing on a "uniform notification date" (UND) to be set by the Department. The regulations state that the accrediting entity is not to provide any information on the agency's or person's status to the public or to the agency or person in question until the UND.

The Department has adopted this special procedure to ensure that no particular agency or person in this initial accreditation and approval phase gains any advantage by being notified earlier than other applicants. The accrediting entity or entities, which will have a limited number of evaluators to review applications and documents and conduct site visits, will necessarily finish evaluating some agencies or persons early and other agencies or persons closer to the DIA. The Department seeks to prevent those first qualifying from prematurely seeking acceptance by other Convention countries or from soliciting clients by using positive accreditation or approval decisions before the others have had an opportunity to complete the process during this start-up phase. The UND is designed to create an equitable starting point for all agencies and persons that applied by the TAD.

This regulation on communication during the start-up phase does not prohibit an accrediting entity from communicating with agencies or persons that applied by the TAD about their status for the sole purpose of affording them an opportunity to correct deficiencies before the DIA. Likewise, the Department may obtain interim status information from the accrediting entity.

Similarly, the regulations deal with the problem that all the agencies and persons that were accredited or approved during this start-up phase could come due for renewal at the same time. To avoid an ever-repeating bottleneck, the regulation provides that the accrediting entity, in consultation with the Secretary, may accredit or approve some agencies and persons that applied by the TAD for a period of three, four, or five years for just the first accreditation or approval cycle. The Secretary must approve the criteria used

to assign accreditation or approval periods to such agencies or persons.

Also in subpart G, the Department selects a four-year accreditation or approval period. The IAA provides that the accreditation or approval period should not be less than three years and not more than five years. (Pub. L. 106–279, section 203(b)(3)). The Department weighed the costs and benefits of different periods and chose the period of four years. There was substantial public concern about the recurring fees accrediting entities would charge for each renewal cycle and the costs incurred internally when agencies and persons must make changes in staffing, training, and other operations to comply with the standards set by the regulations. There was also public concern that these costs would be passed along to prospective adoptive parent(s) and could make the cost of adoption services beyond the reach of many families. On the other hand, others in the public were eager to ensure that the compliance of agencies and persons was checked often. Therefore, the Department selected the four-year cycle to balance the desire to minimize costs while ensuring sufficiently frequent renewal evaluations, which will be more extensive than the routine monitoring required during the accreditation or approval period.

8. Subpart H—Renewal of Accreditation and Approval

Subpart H, which mainly regulates the accrediting entities, governs the renewal of accreditation or approval. To determine whether to renew accreditation or approval, the accrediting entity must evaluate the agency or person to determine if it is in substantial compliance with the standards in subpart F. Before making a renewal decision, the accrediting entity in its discretion may advise the agency or person of any deficiencies that may hinder or prevent its renewal and defer a decision to allow the agency or person to correct the deficiencies. The accrediting entity must process the renewal application in a timely fashion.

Agencies or persons in good standing may apply for renewal from a different accrediting entity than the one that handled its prior application. If an agency or person decides not to seek renewal, it must notify the accrediting entity and take the necessary steps to transfer its pending Convention adoption cases and adoption records appropriately.

9. Subpart I—Routine Oversight by Accrediting Entities

Subpart I covers routine oversight of accredited agencies and approved persons. The accrediting entity is expected to take a more assertive role than is typically the case in the current, purely voluntary accreditation process in monitoring accredited agencies and approved persons. For example, the accrediting entity must monitor the accredited agencies and approved persons at least annually to ensure that they may maintain their accreditation or approval. The accrediting entity must also investigate complaints in accordance with subpart J. As part of its oversight, the accrediting entity may conduct random site visits and consider any information that becomes available about the agency's or person's compliance.

10. Subpart J—Oversight Through Review of Complaints

Subpart J sets out extensive procedures for making complaints about accredited agencies or approved persons. Subpart J was added to the regulations specifically in response to requests from elements of the adoption community asking for more avenues to express complaints about unsatisfactory practices and to reduce the potential for litigation by giving parties a complaint resolution mechanism. The Department recognizes that the handling of complaints against agencies and persons is a major concern to some members of the adoption community. The Department has heard claims that State-licensing authorities and accrediting entities do not respond adequately to complaints about intercountry adoption practices and that current complaint processes are not sufficiently transparent. The Department has been urged to establish a mechanism through which the Department would itself, outside of the IAA-mandated accreditation and approval process, investigate complaints and penalize unacceptable conduct.

The IAA does not give the Department the authority to set up an entirely separate enforcement scheme with non-statutory remedies outside of the accreditation and approval process and use of adverse action and the IAA civil and criminal penalties. In particular, the IAA specifically developed a structure under which the Department for the most part would not directly regulate agencies or persons. Instead, it relies on private or State-based accrediting entities to regulate agencies and persons using the standards developed by the Department. Where those entities do not

act, the IAA provides for the Department to suspend or cancel accreditation or approval by acting directly. Furthermore, the IAA permits the Department temporarily or permanently to debar agencies or persons.

These enforcement devices, along with the adverse actions that may be imposed by the accrediting entity, are sufficient to enforce the standards without creating a duplicative process. In any event, the Department could not manage such additional proposed responsibilities given its primary mission as a foreign affairs agency responsible for the conduct of diplomatic and consular relations. Moreover, the funding for such a major, non-statutorily mandated role for the Department would be uncertain. The Department lacks the capacity to create and assume such a role in dispute resolution and imposition of remedies. The Department therefore believes that the enforcement scheme established in the IAA should be given a chance to work.

The Department does, however, take the community's request for a complaint process very seriously. Thus, the regulations adopt a suggestion that the Department establish a complaint service to receive, screen, and monitor action on complaints. Specifically, the regulations provide for the establishment of a Complaint Registry, which may be funded in whole or in part by fees collected by the accrediting entities or the Department. The Complaint Registry will record complaints that are not resolved through the internal processes of the service providers and ensure that they are brought to the attention of the accrediting entities or others as appropriate. The accrediting entity is obligated to report the outcome of complaints it receives to the Complaint Registry so that the Department can monitor whether and how the accrediting entity is addressing complaints. The Complaint Registry will also be charged with identifying any patterns of complaints and other egregious behavior and reporting them as appropriate for further action. The precise functions of the Complaint Registry will be detailed in an agreement between the Department and the Complaint Registry.

The regulations prescribe how the complaint process will work. Generally, complaining parties, other than Federal agencies, public bodies, law enforcement or licensing authorities, or foreign Central Authorities must first file their complaints with the agency or person providing adoption services and,

if the agency or person is a supervised provider, with the primary provider in the case. If the complaint is not resolved at this level, then the complaint may be filed with the Complaint Registry, which will screen and record the complaints and refer them, as appropriate, to the accrediting entity or other authorities. Federal agencies, public bodies, law enforcement or licensing authorities, or foreign Central Authorities may make complaints directly to the Complaint Registry or the accrediting entity. The accrediting entity must investigate the complaint and may conduct a site visit if necessary. If an accrediting entity determines that the agency or person is out of compliance, it must take adverse action pursuant to subpart K. When an accrediting entity has completed its investigation, it must provide written notification to the complainant, the Complaint Registry, and any other entity that referred the complaint and include information on the outcome and any actions taken. The accrediting entity must also establish written procedures to respond to complaints. Finally, the accrediting entity must refer certain types of substantiated complaints to the Secretary or appropriate law enforcement authorities. The regulations prescribe the standard for determining when to make such referrals.

The Department believes that one critical benefit of these complaint procedures will be to promote the resolution of complaints about adoption service providers in a way that will minimize, if not eliminate, the need for an accrediting entity or the Department to take adverse action, which may be challenged by an affected agency or person in Federal court. Thus, the procedures may also have the effect of reducing litigation.

11. Subpart K—Adverse Action by Accrediting Entities

Subpart K describes how and when an accrediting entity may impose an adverse action. To enforce the accreditation and approval standards in subpart F, the IAA gives both designated accrediting entities and the Department the power to impose adverse actions. An accrediting entity is authorized to take certain actions against agencies and persons. The Department has the authority to take some of the same adverse actions as an accrediting entity, along with the additional authority to temporarily or permanently debar an agency or person. The Department's enforcement authorities are addressed in subpart L.

An accrediting entity, whether it is a private, non-profit accrediting entity or

a State entity, may impose the following adverse actions: Suspend accreditation or approval; cancel accreditation or approval; refuse to renew accreditation or approval; require specific corrective action to improve deficiencies; or impose other sanctions. Under the IAA, these specific adverse actions are not subject to any type of administrative review (*i.e.*, they are not subject to review by the Department), and the regulations reinforce this point. The IAA does provide, however, that these specific adverse actions are subject to judicial review in a United States district court.

Denial of an agency's or person's initial request for accreditation or approval is not listed as an adverse action in the IAA. (Pub. L. 106-279, 202(3)). Clearly, however, there is the possibility that agencies and persons will be denied accreditation or approval. Thus, the regulations permit the accrediting entity to deny accreditation or approval and make clear that, because denial is not listed as an adverse action under section 202(3) of the IAA, it is subject to neither judicial review nor administrative review. This approach is consistent with the Department's understanding that the IAA distinguishes, intentionally, between agencies and persons actively providing Convention adoption services pursuant to accreditation or approval, on the one hand, and agencies and persons not so engaged. Adverse actions imposed on the former are, in effect, sanctions, whereas denial to the latter is not a sanction, but merely a decision that certain standards have not been met, leaving open the possibility that they will be met later. The former have interests in preserving their ability to continue their work, and the IAA protects these interests by providing judicial review of the enumerated adverse actions. The IAA does not similarly protect the interests of agencies and persons in the second category, *i.e.*, those not engaged in providing Convention adoption services pursuant to accreditation or approval. To permit agencies and persons judicial review of denial decisions would significantly add to the costs of accreditation and approval. Limiting access to judicial review to agencies and persons that have already been accredited or approved, and that have developed the resources to provide adoption services, will conserve the accrediting entity's limited resources. This limitation will enable the accrediting entity to focus on and monitor the performance of agencies and persons actually providing adoption

services on an ongoing basis rather than devoting its resources to defending in time-consuming litigation its decisions to deny accreditation or approval. This limitation will also reduce the number of cases in this new area of Federal regulation subject to the jurisdiction of the Federal courts. The regulations, however, do permit the agency or person to petition the accrediting entity for reconsideration of the denial, pursuant to the accrediting entity's internal review procedures.

Denial of a reapplication for accreditation or approval after cancellation or refusal to renew is treated the same as denial of an initial application. In both instances, the applicant will not be currently engaged in providing Convention adoption services pursuant to accreditation or approval, and thus will not have the kind of interest in providing continued services that the IAA protects by making judicial review available. In contrast, an accrediting entity may cancel or refuse to renew the accreditation or approval of an agency or person, but the agency or person in that case has an interest in providing continued services and, under the IAA, may seek judicial review of the cancellation or the refusal to renew. Alternatively, that agency or person, instead of seeking judicial review of the cancellation or refusal to renew, may choose to reapply for accreditation or approval. If the accrediting entity denies that reapplication for accreditation or approval, the denial is not subject to administrative or judicial review. Again, the regulations permit the agency or person to petition the accrediting entity for reconsideration of the denial, pursuant to the accrediting entity's internal review procedures.

In summary, all adverse actions (suspension, cancellation, refusal to renew, corrective action, or other sanction) are subject to judicial review, consistent with the fact that all affect an accredited agency or approved person with an interest in continuing the provision of Convention adoption services pursuant to previously granted accreditation or approval. Prior to seeking judicial review and consistent with the normal requirements for judicial review under the APA, the regulations require agencies and persons to exhaust non-judicial remedies before the accrediting entity. Specifically, the agency or person must petition the accrediting entity to terminate the adverse action on the grounds that the deficiencies necessitating the adverse action have been corrected. If the deficiencies that led to the adverse action have been corrected, the accrediting entity may terminate the

adverse action. It is only when the accrediting entity does not terminate the adverse action that the agency or person may seek judicial review.

If an agency or person challenges cancellation of or refusal to renew its accreditation or approval in Federal court, its only remedy if the court denies its petition is to reapply to an accrediting entity for accreditation or approval. Permission to reapply, however, is not automatic. The accrediting entity may grant such permission only if the agency or person demonstrates that the specific deficiencies that led to the cancellation or refusal to renew have been corrected. Any denial of these re-applications, as noted previously, is not subject to judicial review.

If an agency or person is challenging the imposition of a suspension, corrective action, or other sanction by an accrediting entity in Federal court, it has no avenue for reversing such action other than review by a United States district court, which must review any challenged adverse actions in accordance with the APA, 5 U.S.C. 706. For purposes of judicial review, the accrediting entity will be treated as a Federal agency as defined in 5 U.S.C. 701.

12. Subpart L—Oversight of Accredited Agencies and Approved Persons by the Secretary

The Department may impose the following adverse actions: suspension, cancellation, or temporary or permanent debarment. Under the IAA, these specific adverse actions are not subject to any type of administrative review by the Department or otherwise, and the regulations reinforce this point. Under the IAA, these final adverse actions are subject to judicial review in a United States district court.

The IAA administrative enforcement scheme provides, in section 204(b)(1) of the IAA, that the Department may suspend or cancel accreditation or approval when the accrediting entity has failed or refused to act. The IAA does not give the Secretary a role in reviewing or changing the adverse action decisions or denial actions actually imposed by the accrediting entity. The Department must, however, suspend or cancel the accreditation or approval granted by the accrediting entity when the Department finds that agency or person is substantially out of compliance with the standards in subpart F and the accrediting entity has failed or refused, after consultation with the Department, to take action. (Pub. L. 106-279, section 204(b)(1)).

In addition to this IAA statutory requirement, the Department has included in the proposed regulation another basis for suspension or cancellation by the Department. The Department may suspend or cancel accreditation or approval when such action will further U.S. foreign policy or national security interests, protect the ability of U.S. citizens to adopt children under the Convention, or protect the interests of children. The Department believes that this additional basis for suspending or canceling a particular agency's or person's accreditation or approval is a natural corollary of the Department's foreign affairs authority and is consistent with the IAA because it will enable the Department in specific situations to meet two of the stated IAA goals, which are:

[T]o protect the rights of, and prevent abuses against, children, birth families, and adoptive parents involved in adoptions (or prospective adoptions) subject to the Convention, and to ensure that such adoptions are in the children's best interests; and

[T]o improve the ability of the Federal Government to assist United States citizens seeking to adopt children from abroad and residents of other countries party to the Convention seeking to adopt children from the United States. (Pub. L. 106-279, 2(b)(2) and 2(b)(3)).

This authority could be used, for example, if the practices of a particular accredited agency were to cause a Convention country to undertake action that could adversely affect the ability of United States citizens generally to adopt children from the country in question.

To obtain relief from the Department's suspension or cancellation, an agency or person must demonstrate to the Secretary that the deficiencies or circumstances that led to the adverse action have been corrected or are no longer applicable. In the case of suspension, the Department may terminate the suspension. In the case of cancellation, the Department may give the agency or person permission to reapply to the accrediting entity for accreditation or approval.

The Department, at its discretion, may also temporarily or permanently debar an agency or person on the Department's own initiative, at the request of DHS, or at the request of an accrediting entity. The standard for debarment is drawn directly from section 204(c) of the IAA and requires that there be substantial evidence that the agency or person is out of compliance and that there has been a pattern of serious, willful, or grossly negligent failures to comply, or other aggravating circumstances indicating

that continued accreditation or approval would not be in the best interests of the children and families concerned.

In the case of temporary debarment, the Department's order, as required by the IAA, may not be for less than three years. The order must state the time frame for the temporary debarment and list the date on which the agency or person may petition the Department for withdrawal of the temporary debarment. If the Department withdraws the temporary debarment, the agency or person may then apply for accreditation or approval to an accrediting entity. In the case of permanent debarment, the agency or person is not permitted to petition the Department for withdrawal and may not apply for accreditation or approval again.

As provided in the IAA, a United States district court may review any challenged final adverse action of the Secretary in accordance with the APA, 5 U.S.C. 706.

13. Subpart M—Dissemination and Reporting of Information by Accrediting Entities

Subpart M requires the accrediting entity to make information about accredited agencies and approved persons publicly available. The provisions of subpart M on public disclosure of information will take effect only after the Convention enters into force for the United States. Specifically, the accrediting entity must disclose the name, address, and contact information for each accredited agency or approved person, and the names of agencies and persons denied accreditation or approval. It must also provide the names of those who have been subject to withdrawal of temporary accreditation, suspension, cancellation, refusal to renew, or debarment.

The accrediting entity must also make certain other information available to the public upon specific request. This includes confirming whether an agency or person has a pending application and the status of that application. It also includes indicating whether an agency or person has been subject to withdrawal of temporary accreditation, suspension, cancellation, refusal to renew, or debarment and providing a brief statement of the reasons for the action. Most important, the accrediting entity must make available a summary of the accreditation or approval study for each accredited agency or approved person in a format to be approved by the Department.

The accrediting entity must also maintain and disseminate certain information about complaints. In particular, when a complaint is filed,

the accrediting entity must maintain a written record of it and must verify certain information about the complaint upon request. The accrediting entity must have procedures for disclosing information about complaints that are substantiated and not substantiated.

The Department is placing these additional burdens on the accrediting entity in response to suggestions that such information should be made accessible so that parents can compare the performance of agencies and persons. The Department realizes that requiring the accrediting entity to perform this additional task will add to the costs of accreditation and approval and that these costs will ultimately be passed on to parents. There will be a substantial benefit, however, to parents in having available information that allows them to make informed decisions when selecting a service provider. The publication and dissemination of this information will also give agencies and persons another incentive to meet the standards set in subpart F.

The Department also intends to convene a working group that will include the accrediting entity(s) and other Federal government bodies, including DHS. The working group will meet on a regular basis to facilitate the exchange of information about the accreditation and approval process and to discuss how the agencies and persons are complying with these regulations.

14. Subpart N—Procedures and Standards Relating to Temporary Accreditation

The IAA permits the temporary accreditation of small agencies for a one- or two-year period starting on the date that the Convention enters into force for the United States. Agencies, but not persons, may apply to become temporarily accredited. The regulations in subpart N apply only to temporary accreditation.

To be eligible for temporary accreditation, an agency must show that it has provided adoption services in fewer than 100 intercountry adoption cases in the calendar year preceding the year in which the TAD falls (see subpart D for an explanation of the "transitional application deadline"). An agency may be eligible for a one- or two-year period of accreditation, depending upon the number of intercountry adoptions the agency has handled. An agency that has provided adoption services in 50-99 intercountry adoptions in the calendar year preceding the year in which the TAD falls may apply for a one-year period of temporary accreditation. An agency that has provided adoption services in fewer than 50 intercountry

adoptions in the calendar year preceding the year in which the TAD falls may apply for a two-year period of temporary accreditation. Both the one- and the two-year periods commence on the date that the Convention enters into force for the United States.

To become temporarily accredited, an agency must demonstrate that: (1) It is a non-profit agency licensed by State law to provide adoption services in at least one State; (2) it is, and, for the last three years prior to the TAD has been providing intercountry adoption services; (3) it has the capacity to comply with the Department's and the accrediting entity's reporting requirements; and (4) it has not been involved in any improper conduct related to providing intercountry adoption services. To prove that it has not been involved in any prior improper conduct, the agency must provide evidence that it has continually maintained its State license without suspension or cancellation for misconduct and it has not been subject to any fault or liability decisions or criminal findings of fraud or financial misconduct for the three years preceding the TAD. The agency also must demonstrate that it has a comprehensive and realistic plan for achieving full accreditation and is actively taking steps to execute that plan.

To maintain temporary accreditation, the agency must: (1) Follow all applicable licensing and regulatory requirements; (2) refrain from any improper conduct, including but not limited to, maintaining its State license; (3) avoid any findings of fault or liability in any administrative or judicial action; (4) ensure that it is not subject to any criminal findings of fraud or financial misconduct; (5) adhere to the prohibition against child-buying in § 96.36; (6) respond to complaints in accordance with § 96.41; (7) comply with the maintenance of records requirements in § 96.42; (8) provide data in accordance with § 96.43; (9) comply with the home study, child background study, and consents requirements in §§ 96.47 and 96.53; and (10) plan for the transfer of its cases when necessary. Furthermore, when acting as the primary provider using supervised providers, the agency must comply with the requirements on primary providers in §§ 96.44, 96.45, and 96.46. When performing Convention functions in either incoming or outgoing cases, it must adhere to the standards in §§ 96.52 (incoming cases) and 96.55 (outgoing cases). These standards and others are listed in § 96.104.

These standards for obtaining or maintaining temporary accreditation (subpart N) are much less comprehensive than the standards for full accreditation (Subpart F). The reason for this difference is that the IAA mandates that small agencies, which initially might be unable to meet the more detailed standards applicable to full accreditation, be allowed to provide services during an initial phase-in period for Convention implementation while developing the resources to comply with the accreditation standards. The temporary accreditation provisions are designed to avoid prematurely disqualifying small, community-based agencies from providing Convention adoption services. These regulations take into account the concern that, if too many small, non-profit agencies were unable to meet the standards and consequently stopped providing adoption services, then parents and children in some geographical areas of the United States would find it difficult to obtain services. On the other hand, the Department also considered the goal of ensuring that temporarily accredited agencies could provide satisfactory adoption services to families served. Thus, the Department struck a balance between these competing concerns and developed a list of performance-based standards applicable to temporarily accredited agencies, but also incorporated by reference certain key standards from the accreditation provisions in subpart F.

Moreover, some of the accrediting entity's procedures for evaluating an agency for temporary accreditation differ from the procedures for evaluating an agency for full accreditation. For example, an accrediting entity must conduct a site visit before granting full accreditation; however, for temporary accreditation, an accrediting entity may, in its discretion, conduct a site visit if necessary. The costs for site visits for full accreditation will be wrapped into the initial accreditation fee disclosed to the agency. Only if the accrediting entity decides to conduct a site visit for temporary accreditation, however, will it then assess the agency additional fees for the site visit costs. Also, the accrediting entity must monitor the agency's progress in implementing the plan for full accreditation and require the agency to make continual progress toward completing the process of obtaining full accreditation. These are just a few examples of the special procedures applicable to temporary accreditation. The reader is encouraged to consult subpart N for a detailed listing.

Finally, an accrediting entity may deny temporary accreditation, or withdraw temporary accreditation after it is granted, when the agency is not in substantial compliance with the applicable standards. Under the regulations, there is no administrative or judicial review of an accrediting entity's decision to deny temporary accreditation. This is consistent with the fact that the IAA does not treat denial as an adverse action. The Department believes, however, that withdrawal of temporary accreditation is an adverse action subject to judicial review under the IAA. Withdrawal of temporary accreditation is similar to cancellation and other adverse actions that are subject to judicial review in that an agency or person that was already permitted to provide adoption services under the Convention will lose the ability to provide such services. An agency whose temporary accreditation has been withdrawn may continue to seek full accreditation or may withdraw its pending application and apply for full accreditation at a later time. The circumstances of the withdrawal of its temporary accreditation may be taken into account when evaluating the agency for full accreditation.

VI. Regulatory Review

A. Regulatory Flexibility Act/Executive Order 13272: Small Business

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the APA or any other statute unless the agency certifies, pursuant to 5 U.S.C. 605(b), that the rule will not have a significant economic impact on a substantial number of small entities. An initial regulatory flexibility analysis is required to “describe the impact of the proposed rule on small entities.” (5 U.S.C. 603(a)). “Small entities” include “small organizations,” which the RFA defines as any non-profit enterprise that is independently owned and operated and not dominant in its field. (5 U.S.C. 601(4), 601(6)).

This proposed rule directly affects all adoption service providers, whether agencies or persons, who are providing intercountry adoption services in cases involving other Convention countries. The estimate of the number of such entities, which are mainly non-profits, is between 410 and 600. The Department estimates that the vast majority of these adoption service providers are small entities under the RFA; therefore, the Department has determined that this proposed rule will

have an impact on a substantial number of small entities.

The Department also has determined, however, that the impact on small entities affected by the proposed rule will not be significant. First, the effect of the proposed rule will be to allow agencies and persons the flexibility to choose to be accredited or approved or to act as supervised providers. Supervised providers are not required to become accredited or approved and thus they can largely avoid the economic impact of becoming accredited or approved. Second, certain types of very small providers, specifically home study and child background study preparers, are exempt. Third, the IAA and the regulations provide for a tiering system that includes a special temporary accreditation procedure just for small agencies (defined in the IAA as agencies providing services in less than 100 intercountry adoption cases a year). Small agencies eligible for temporary accreditation will pay less in accreditation fees than applicants for full accreditation and will not be required to meet the standards for full accreditation. Fourth, the IAA and the regulations use an accreditation model, and a substantial compliance structure that provides agencies and persons with ample opportunity to correct deficiencies before accreditation or approval is denied. Thus, the accreditation model used in this proposed rule allows for the majority of the standards to be performance-based. Substantial compliance, which is typical of regulations based on an accreditation scheme, inherently provides for regulatory flexibility because entities are not required to comply perfectly with every single standard. Overall, these four features of the proposed regulations minimize the burden on small entities.

Finally, the Department notes that failing to establish an accreditation/approval process under the Convention and the IAA could adversely affect small entities by closing off opportunities for intercountry adoptions with countries party to the Convention. Thus, there are major benefits for adoption service providers, as well as birth parents, adoptive parents, and children, from an accreditation and approval process designed to comply with the Convention. Many members of the public advocated during the preliminary input phase that the Department should complete these proposed regulations as quickly as possible to minimize the risk of other Convention countries refusing to work with U.S. adoption service providers to place children with U.S. parents.

Accordingly, the Department hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities. Although the Department does not think these regulations will have a significant economic impact on a substantial number of small entities, it would like to solicit comment from the public on the following questions: (1) Will most small agencies be eligible for temporary accreditation under the criteria provided in subpart N? (2) How many agencies are likely to seek temporary accreditation rather than full accreditation? (3) What are accrediting entities likely to charge the agencies for the temporary accreditation process? (4) What are the estimated costs agencies will have to expend to comply with the standards in Subpart N? (5) Will small agencies be negatively impacted if they are unable to qualify for temporary accreditation? It would be helpful if commenters supply information and data to support their comments on these enumerated issues.

Under Executive Order 13272, an agency must notify the SBA of draft rules that may have a significant economic impact on a substantial number of small entities. These proposed rules were submitted to the Office of Advocacy for the SBA for review and comment prior to publication of the rules, as required by Executive Order 13272.

B. The Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by 5 U.S.C. 804, for purposes of congressional review of agency rulemaking under the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104-121. This rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign based companies in domestic and import markets.

C. The Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (UFMA), Public Law 104-4; 109 Stat. 48; 2 U.S.C. 1532, generally requires agencies to prepare a statement, including cost-benefit and other analyses, before proposing any rule that may result in an annual expenditure of \$100 million or more by State, local, or tribal governments, or by the private sector.

Section 4 of UFMA, 2 U.S.C. 1503, excludes legislation necessary for implementation of treaty obligations. The IAA falls within this exclusion because it is the implementing legislation for the Convention. In any event, this rule will not result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any year. Moreover, because this rule will not significantly or uniquely affect small governments, section 203 of the UFMA, 2 U.S.C. 1533, does not require preparation of a small government agency plan in connection with it.

D. Executive Order 13132: Federalism

A rule has federalism implications under Executive Order 13132 if it has 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. The federalism implications of the proposed regulation in light of the requirements of the IAA are discussed in Section IV paragraph (D) of the Preamble. In light of that analysis, the Department finds that this regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the Department has determined that this rule does not have sufficient federalism implications to require consultations or to warrant the preparation of a federalism summary impact statement under section 6 of Executive Order 13132.

E. Executive Order 12866: Regulatory Review

Under section 3(f) of Executive Order 12866, proposed regulations that meet the definition of "significant regulatory action" generally must be submitted to OMB for review. Section 3 of Executive Order 12866 exempts from this requirement "rules that pertain to a military or foreign affairs function of the United States, other than procurement regulations and regulations involving import or export of non-defense articles and services." These rules, through which the Department provides for the conduct of U.S. Central Authority responsibilities under the Convention, directly pertain to foreign affairs functions of the United States. On the other hand, they were expressly made subject to notice and comment rulemaking requirements under the APA by section 203(a)(3) of the IAA.

After reviewing the proposed rule under the criteria listed in section 3(f) of the Executive Order, the Department has determined that the regulations will not have a cumulative annual effect of \$100 million or more on the economy. They will not create a serious inconsistency or otherwise interfere with any action taken or planned by another agency, because no other Federal agency has overlapping authority with respect to the subject matter of the regulation. They will not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof, because they have no implications for recipients of such Federal funding. Also, the Department believes that the regulations do not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866. Accordingly, the proposed rules are not a "significant regulatory action" within the meaning of the Executive Order 12866. The Department recognizes, however, that these regulations do address matters of considerable public interest. Therefore, although the Department does not consider this rule to be a "significant regulatory action," the Department consulted with DHS, HHS, and the SBA during the formulation of the rule. The rule was sent for review to OMB and SBA.

F. Executive Order 12988: Civil Justice Reform

The Department has reviewed these proposed regulations in light of sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden. The Department has made every reasonable effort to ensure compliance with the requirements in Executive Order 12988.

G. The Paperwork Reduction Act of 1995

As noted above in the Preamble (Part IV, Section F), the Department has determined that § 96.91 and § 96.92 of subpart M, which cover dissemination of information about agencies and persons to the general public, constitute the type of "third-party disclosures to the general public" that are "information collections" covered by the PRA. The Department has concluded that these sections are not covered by the IAA exemptions to the PRA. Accordingly, the Department will submit an information collection request to OMB for review and clearance in conjunction with this notice of proposed rulemaking, as

required by 44 U.S.C. 3507(d) and 5 CFR 1320.11.

Section 96.91—Dissemination of Information to the Public about Accreditation and Approval Status—requires the accrediting entity to disseminate information on an agency's or person's accreditation/approval status. Section 96.92—Dissemination of Information to the Public About Complaints Against Accredited Agencies and Approved Persons—requires the accrediting entity to disseminate information on complaints about agencies and persons. The requirements of these sections specifically include:

- Requiring an accrediting entity to make available the names of agencies and persons that have been granted or denied accreditation or approval and those that have been subject to enforcement actions by the accrediting entity or the Department.
- Requiring an accrediting entity to provide information about agencies and persons that have pending applications for accreditation or approval.
- Requiring an accrediting entity to provide a summary of the accreditation/approval study on the agency or person.
- Requiring an accrediting entity to identify those agencies or persons that have been the subject of an enforcement action and provide a brief statement of the reasons for the action.
- Requiring an accrediting entity to verify information about the status of complaints received against accredited agencies or approved persons and identify whether the complaint was substantiated or not.

These proposed rules are intended to improve significantly the amount and type of information on adoption agencies and persons available to prospective adoptive parent(s) when they are in the process of selecting an adoption service provider. They are neither required nor expressly authorized by the IAA, but the Department believes that they are in furtherance of the oversight and enforcement functions of accrediting entities provided for in IAA subsections 202(b)(2) and (3). Accrediting entities may provide the information in any format, including using a Web site to publish such information about accredited agencies or approved persons.

The Department is seeking a three-year approval for these collections. The Department requests written comments and suggestions from the public and

affected accrediting entities concerning this proposed collection of information. Comments are being solicited to permit the Department to:

- (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;
- (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- (3) Enhance the quality, utility, and clarity of the information to be collected;
- (4) Minimize the burden of the collection of the information, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

Overview of this information collection:

Type of Information Collection: New.
Title: Accrediting Entity

Dissemination of Information About Accredited Agencies and Approved Persons to the Public.

Affected Public & Abstract: Designated Accrediting Entities (non-profit institutions or State public bodies).

The IAA requires that the Department designate accrediting entities to accredit agencies or approve persons to provide adoption services for intercountry adoptions covered under the Convention. This information collection requires any such designated accrediting entities to disseminate information to prospective adoptive parent(s) and the public on the accreditation/approval status of agencies and persons. This information collection requires accrediting entities to disclose to prospective adoptive parent(s) and the public information on complaints filed against accredited agencies and approved persons. This third-party disclosure requirement is in furtherance of section 202(b) of the IAA, which charges accrediting entities with responsibility for oversight and review of complaints against accredited agencies and approved persons.

An Estimate of the Number of Respondents and the Amount of Time Required to Comply: The number of accrediting entities to be designated by the Department after publication of the final rule is unknown. The Department estimates that the number of designated accrediting entities is likely to be less than 10, but may constitute all or a substantial majority of the relevant accrediting industry. (See 5 CFR 1320.3(c)(4)(ii)).

Burden and an Estimate of the Total of Public Burden (in hours) Per Year Associated with the Collection: 60

minutes multiplied by 365 days; approximately 365 burden hours per accrediting entity; for an estimated annualized total of 3,285 hours.

We request and welcome comments on the accuracy of the estimates. Comments on the collection of information should be sent to OMB, Attn: Desk Officer for the Department of State, Office of Information and Regulatory Affairs, Room 10202, New Executive Office Building, Washington, DC 20503 who may be reached on 202-395-3897; also send copies to Department of State at the address provided for in the Addresses section of this preamble. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this proposed rule. Consequently, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days after publication of this proposed rule.

H. The Treasury and General Government Appropriations Act of 1999—Assessment of Federal Regulations and Policies on Families

In light of the subject matter of these proposed regulations, and section 654 of the Treasury and General Government Appropriations Act of 1999, Public Law 105-277, 112 Stat. 2681 (1998), the Department has assessed the impact of these proposed regulations on family well-being in accordance with section 654(c) of that act. This rule implements the Convention and the IAA requirements related to the accreditation and approval of adoption service providers who provide adoption services to families involved in an intercountry adoption. This proposed rule will promote child safety, child and family well-being, and stability for children in need of a permanent family placement through intercountry adoption. The rule will help to ensure that adoption service providers are taking appropriate steps to protect children and to strengthen and support families involved in the intercountry adoption process.

List of Subjects in 22 CFR Part 96

Adoption and foster care, International agreements, Reporting and recordkeeping requirements.

Accordingly, the Department proposes to add new part 96 to title 22 of the CFR, chapter I, subchapter J to read as follows:

PART 96—ACCREDITATION OF AGENCIES AND APPROVAL OF PERSONS UNDER THE INTERCOUNTRY ADOPTION ACT OF 2000 (IAA)

Subpart A—General Provisions

- Sec.
96.1 Purpose.
96.2 Definitions.
96.3 [Reserved]

Subpart B—Selection, Designation, and Duties of Accrediting Entities

- 96.4 Designation of accrediting entities by the Secretary.
96.5 Requirement that accrediting entity be a non-profit or public entity.
96.6 Performance criteria for designation as an accrediting entity.
96.7 Authorities and responsibilities of an accrediting entity.
96.8 Fees charged by accrediting entities.
96.9 Agreement between the Secretary and the accrediting entity.
96.10 Suspension or cancellation of the designation of an accrediting entity by the Secretary.
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Subpart C—Accreditation and Approval Requirements for the Provision of Adoption Services

- 96.12 Authorized adoption service providers.
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96.14 Providing adoption services using supervised providers, exempted providers, public bodies, or public authorities.
96.15 Public bodies.
96.16 Effective date of accreditation and approval requirements.
96.17 [Reserved]

Subpart D—Application Procedures for Accreditation and Approval

- 96.18 Scope.
96.19 Special provisions for agencies and persons seeking to be accredited or approved at the time the convention enters into force for the United States.
96.20 First-time application procedures for accreditation and approval.
96.21 Choosing an accrediting entity.
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- 96.23 Scope.
96.24 Procedures for evaluating applicants for accreditation or approval.
96.25 Access to information and documents requested by the accrediting entity.
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Subpart F—Standards for Convention Accreditation and Approval

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- 96.30 State licensing.

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- 96.33 Budget, audit, insurance, and risk assessment requirements.
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Professional Qualifications and Training for Employees

- 96.37 Education and experience requirements for social service personnel.
96.38 Training requirements for social service personnel.

Information Disclosure, Fee Practices, and Quality Control Policies and Practices

- 96.39 Information disclosure and quality control practices.
96.40 Fee policies and procedures.

Responding to Complaints and Records and Reports Management

- 96.41 Procedures for responding to complaints and improving service delivery.
96.42 Retention, preservation, and disclosure of adoption records.
96.43 Case tracking, data management, and reporting.

Service Planning and Delivery

- 96.44 Acting as primary provider.
96.45 Using supervised providers in the United States.
96.46 Using supervised providers in other Convention countries.

Standards for Cases in Which a Child is Immigrating to the United States

- 96.47 Preparation of home studies in incoming cases.
96.48 Preparation and training of prospective adoptive parent(s) in incoming cases.
96.49 Provision of medical and social information in incoming cases.
96.50 Placement and post-placement monitoring until final adoption in incoming cases.
96.51 Post-adoption services in incoming cases.
96.52 Performance of Hague Convention communication and coordination functions in incoming cases.

Standards for Cases in Which a Child is Emigrating From the United States

- 96.53 Background studies on the child and consents in outgoing cases.
96.54 Placement standards in outgoing cases.
96.55 Performance of Hague Convention communication and coordination functions in outgoing cases.
96.56 [Reserved]

Subpart G—Decisions on Applications for Accreditation or Approval

- 96.57 Scope.

- 95.58 Notification of accreditation and approval decisions.
 96.59 Review of decisions to deny accreditation or approval.
 96.60 Length of accreditation or approval period.
 96.61 [Reserved]

Subpart H—Renewal of Accreditation or Approval

- 96.62 Scope.
 96.63 Renewal of accreditation or approval.
 96.64 [Reserved]

Subpart I—Routine Oversight by Accrediting Entities

- 96.65 Scope.
 96.66 Oversight of accredited agencies and approved persons by the accrediting entity.
 96.67 [Reserved]

Subpart J—Oversight Through Review of Complaints

- 96.68 Scope.
 96.69 Filing of complaints against accredited agencies and approved persons.
 96.70 Review of complaints about accredited agencies and approved persons by the Complaint Registry.
 96.71 Review of complaints against accredited agencies and approved persons by the accrediting entity.
 96.72 Referral of complaints to the Secretary and other authorities.
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Subpart K—Adverse Action by the Accrediting Entity

- 96.74 Scope.
 96.75 Adverse action against accredited agencies or approved persons not in substantial compliance.
 96.76 Procedures governing adverse action by the accrediting entity.
 96.77 Responsibilities of the accredited agency, approved person, and accrediting entity following adverse action by the accrediting entity.
 96.78 Petitions to terminate adverse action by the accrediting entity.
 96.79 Administrative or judicial review of adverse action by the accrediting entity.
 96.80 [Reserved]

Subpart L—Oversight of Accredited Agencies and Approved Persons by the Secretary

- 96.81 Scope.
 96.82 The Secretary's response to actions by the accrediting entity.
 96.83 Suspension or cancellation of accreditation or approval by the secretary.
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 96.87 Responsibilities of the accredited agency, approved person, and accrediting entity following suspension, cancellation, or debarment by the Secretary.

- 96.88 Review of suspension, cancellation, or debarment by the Secretary.
 96.89 [Reserved]

Subpart M—Dissemination and Reporting of Information by Accrediting Entities

- 96.90 Scope.
 96.91 Dissemination of information to the public about accreditation and approval status.
 96.92 Dissemination of information to the public about complaints against accredited agencies and approved persons.
 96.93 Reports to the Secretary about accredited agencies and approved persons and their activities.
 96.94 [Reserved]

Subpart N—Procedures and Standards Relating to Temporary Accreditation

- 96.95 Scope.
 96.96 Eligibility requirements for temporary accreditation.
 96.97 Application procedures for temporary accreditation.
 96.98 Length of temporary accreditation period.
 96.99 Converting an application for temporary accreditation to an application for full accreditation.
 96.100 Procedures for evaluating applicants for temporary accreditation.
 96.101 Notification of temporary accreditation decisions.
 96.102 Review of temporary accreditation decisions.
 96.103 Oversight by accrediting entities.
 96.104 Performance standards for temporary accreditation.
 96.105 Adverse action against a temporarily accredited agency by an accrediting entity.
 96.106 Review of the withdrawal of temporary accreditation by an accrediting entity.
 96.107 Adverse action against a temporarily accredited agency by the Secretary.
 96.108 Review of the withdrawal of temporary accreditation by the Secretary.
 96.109 Effect of the withdrawal of temporary accreditation by the accrediting entity or the Secretary.
 96.110 Dissemination and reporting of information about temporarily accredited agencies.
 96.111 Fees charged for temporary accreditation.

Authority: The Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (done at the Hague, May 29, 1993), S. Treaty Doc. 105–51 (1998), 1870 U.N.T.S. 167 (Reg. No. 31922 (1993)); The Intercountry Adoption Act of 2000, 42 U.S.C. 14901–14954.

Subpart A—General Provisions

§ 96.1 Purpose.

This part provides for the accreditation and approval of adoption service providers pursuant to the Intercountry Adoption Act of 2000 (Pub. L. 106–279, 42 U.S.C. 14901–14954). Subpart B of this part provides for the

procedures for the selection and designation of accrediting entities to perform the accreditation and approval functions. Subparts C through H establish the general procedures and standards for accreditation and approval of adoption service providers (including renewal of accreditation or approval). Subparts I through M address the oversight of accredited or approved adoption service providers. Subpart N establishes special rules relating to small adoption service providers that wish to seek temporary accreditation.

§ 96.2 Definitions.

As used in this part, the term:

Accredited agency means an agency that has been accredited by an accrediting entity, in accordance with the standards in subpart F of this part, to provide adoption services in the United States in cases subject to the Convention. It does not include a temporarily accredited agency.

Accrediting entity means an entity designated by the Secretary to accredit agencies (including temporarily accredit) and/or to approve persons for purposes of providing adoption services in the United States in cases subject to the Convention.

Adoption means the formal act that establishes the legal parent-child relationship between a minor and an adult who is not already the minor's legal parent, so that as a result of the formal act the adoptive parent is the adoptive child's legal parent for all purposes and the legal parent-child relationship between the adoptive child and any former parent(s) is terminated.

Adoption record means any record, information, or item related to a specific Convention adoption of a child received or maintained by an agency, person, or public body, including, but not limited to, photographs, videos, correspondence, personal effects, medical and social information, and any other information about the child. An adoption record does not include a record generated by an agency, person, or a public body to comply with the requirement to file information with the Case Registry on adoptions not subject to the Convention pursuant to section 303(d) of the IAA (Pub. L. 106–279, 303(d), 42 U.S.C. 14932(d)).

Adoption service means any one of the following six services:

- (1) Identifying a child for adoption and arranging an adoption;
- (2) Securing the necessary consent to termination of parental rights and to adoption;
- (3) Performing a background study on a child or a home study on a prospective

adoptive parent(s), and reporting on such a study;

(4) Making non-judicial determinations of the best interests of a child and the appropriateness of an adoptive placement for the child;

(5) Monitoring a case after a child has been placed with prospective adoptive parent(s) until final adoption; or

(6) When necessary because of a disruption before final adoption, assuming custody and providing (including facilitating the provision of) child care or any other social service pending an alternative placement.

Agency means a private, non-profit organization licensed to provide adoption services in at least one State. (For-profit entities and individuals that provide adoption services are considered "persons" as defined in this section.)

Approved home study means a review of the home environment of a child's prospective adoptive parent(s) that has been:

(1) Completed by an accredited agency or temporarily accredited agency; or

(2) A home study that has been completed by an approved person or exempted provider and approved by an accredited agency or a temporarily accredited agency.

Approved person means a person that has been approved, in accordance with the standards in subpart F of this part, by an accrediting entity to provide adoption services in the United States in cases subject to the Convention.

Best interests of the child shall have the meaning given to it by the law of the State with jurisdiction to decide whether a particular adoption or adoption-related action is in a child's best interests.

Case Registry means the tracking system jointly established by the Secretary and DHS to comply with section 102(e) of the IAA (Pub. L. 106-279, section 102(e), 42 U.S.C 14912).

Central Authority means the entity designated as such under Article 6(1) of the Convention by any Convention country (in the case of the United States, the United States Department of State).

Central Authority function means any duty required under the Convention to be carried out, directly or indirectly, by a Central Authority.

Child welfare services means services, other than those defined as "adoption services" in this section, that are designed to promote and protect the well-being of a family or child. Such services include, but are not limited to, recruiting and identifying adoptive parent(s) in cases of disruption (but not assuming custody of the child),

arranging or providing temporary foster care for a child in connection with a Convention adoption, or providing educational, social, cultural, medical, psychological assessment, mental health, or other health-related services for a child or family in a Convention adoption case.

Competent authority means a court or governmental authority of a foreign country that has jurisdiction and authority to make decisions in matters of child welfare, including adoption.

Complaint Registry means the entity established by the Secretary pursuant to § 96.70 as responsible for receiving complaints about accredited agencies, temporarily accredited agencies, and approved persons and performing such other services as the Secretary may determine.

Convention means the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption done at The Hague on May 29, 1993.

Convention adoption means the adoption of a child resident in another Convention country by a United States citizen, or an adoption of a child resident in the United States by an individual or individuals residing in another Convention country when, in connection with the adoption, the child has moved or will move from one Convention country to another Convention country.

Convention country means a country that has become a party to the Convention and with which the Convention has come into force for the United States.

Country of origin means the country in which a child is resident and from which a child is emigrating in connection with his or her adoption.

Debarment means the loss of accreditation or approval by an agency or person as a result of an order of the Secretary under which the agency or person is temporarily or permanently barred from accreditation or approval.

Department of Homeland Security encompasses the former Immigration and Naturalization Service (INS) or any successor agency entity designated by the Secretary of Homeland Security to assume the functions vested in the Attorney General by the IAA relating to the Immigration and Naturalization Service's responsibilities.

Disruption means the interruption of a placement for adoption before the adoption has become final.

Dissolution means the termination of an adoption after it has become final.

Exempted provider means a social work professional or organization that performs a home study on prospective adoptive parent(s) or a child background

study in connection with a Convention adoption (including any reports or updates), but that does not provide any other adoption service in the case.

IAA means the Intercountry Adoption Act of 2000, Public Law 106-279 (2000) (42 U.S.C. 14901-14954).

Legal custody means having legal responsibility for a child under the order of a court of law, a public body, competent authority, public authority, or by operation of law.

Legal services means services, other than those defined as "adoption services" in this section, that relate to the provision of legal advice and information and to the drafting of legal instruments. Such services include, but are not limited to, drawing up contracts, powers of attorney, and other legal instruments; providing advice and counsel to adoptive parent(s) on completing DHS or Central Authority forms; and providing advice and counsel to accredited agencies, temporarily accredited agencies, approved persons, or prospective adoptive parent(s) on how to comply with the Convention, the IAA, and the regulations implementing the IAA.

Person means an individual or a private, for-profit entity (including a corporation, company, association, firm, partnership, society, or joint stock company) providing adoption services. It does not include public bodies or public authorities.

Primary provider means the accredited agency, temporarily accredited agency, or approved person that is identified pursuant to § 96.14 as responsible for ensuring that all six adoption services are provided and for supervising and being responsible for supervised providers where used.

Public authority means an authority operated by a national or subnational government of a Convention country.

Public body means a body operated by a State, local, or tribal government within the United States.

Secretary means the Secretary of State, the Assistant Secretary of State for Consular Affairs, or any other Department of State official exercising the Secretary of State's authority under the Convention, the IAA, or any regulations implementing the IAA, pursuant to a delegation of authority.

State means the fifty States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, and the U.S. Virgin Islands.

Supervised provider means an agency, person, or other non-governmental entity, including a foreign entity, that is providing one or more adoption services

in a Convention case under the supervision and responsibility of the accredited agency, temporarily accredited agency, or approved person that is acting as the primary provider in the case.

Temporarily accredited agency means an agency that has been accredited on a temporary basis by an accrediting entity, in accordance with the standards in subpart N of this part, to provide adoption services in the United States in cases subject to the Convention. It does not include an accredited agency.

§ 96.3 [Reserved]

Subpart B—Selection, Designation, and Duties of Accrediting Entities

§ 96.4 Designation of accrediting entities by the Secretary.

(a) The Secretary will solicit applications from eligible private non-profit and public entities for designation as an accrediting entity through a request for statements of interest that will be publicly announced. Announcements soliciting statements of interest will be published on the Department of State's Web site, at <http://www.state.gov>. The Secretary will designate one or more entities that meet the criteria set forth in § 96.5 to perform the accreditation (including temporary accreditation) and/or approval functions. Each accredited entity's designation will be set forth in an Agreement between the Secretary and the accrediting entity that will govern the entity's operations. The Agreement will be published in the **Federal Register**.

(b) The Secretary's designation may authorize an accrediting entity to accredit (including temporarily accredit) agencies, to approve persons, or to both accredit agencies and approve persons. The designation may also limit the accrediting entity's geographic jurisdiction or impose other limits on the entity's jurisdiction.

(c) A public entity may only be designated to accredit agencies and approve persons that are located in the public entity's State.

§ 96.5 Requirement that accrediting entity be a non-profit or public entity.

An accrediting entity must qualify as either:

(a) An organization described in section 501(c)(3) of the Internal Revenue Code of 1986, as amended, that has expertise in developing and administering standards for entities providing child welfare services; or

(b) A public entity (other than a Federal entity), including, but not limited to, any State or local

government or governmental unit or any political subdivision, agency, or instrumentality thereof, that is responsible for licensing adoption agencies in a State and that has expertise in developing and administering standards for entities providing child welfare services.

§ 96.6 Performance criteria for designation as an accrediting entity.

An entity that seeks to be designated as an accrediting entity must demonstrate to the Secretary:

(a) That it has a governing structure, the human and financial resources, and systems of control adequate to ensure its reliability;

(b) That it is capable of performing the accreditation or approval functions or both on a timely basis and of administering any renewal cycle selected by the Secretary;

(c) That it can monitor the performance of agencies it has accredited and persons it has approved to ensure their continued compliance with the Convention, the IAA, and the regulations implementing the IAA;

(d) That it has the capacity to take appropriate adverse actions against agencies it has accredited and persons it has approved and appropriate enforcement action against agencies to which it has granted temporary accreditation;

(e) That it can perform the required data collection, reporting, and other similar functions;

(f) Except in the case of a public entity, that it operates independently of any agency or person that provides adoption services, and of any membership organization that includes agencies or persons that provide adoption services;

(g) That it has the capacity to conduct its accreditation, temporary accreditation, and approval functions fairly and impartially; and

(h) That it can comply with any conflict-of-interest prohibitions set by the Secretary in the request for statements of interest.

§ 96.7 Authorities and responsibilities of an accrediting entity.

(a) An accrediting entity may be authorized by the Secretary to perform some or all of the following functions:

(1) Determining whether agencies are eligible for accreditation and/or temporary accreditation;

(2) Determining whether persons are eligible for approval;

(3) Overseeing accredited agencies, temporarily accredited agencies, and/or approved persons by monitoring their compliance with applicable requirements;

(4) Investigating and responding to complaints about accredited agencies, temporarily accredited agencies, and approved persons;

(5) Taking adverse action against an accredited agency, temporarily accredited agency, or approved person, and/or referring an accredited agency, temporarily accredited agency, or approved person for possible action by the Secretary;

(6) Determining whether the accredited agencies and approved persons that it oversees are eligible for renewal of their accreditation or approval on a cyclical basis consistent with § 96.60;

(7) Collecting data from accredited agencies, temporarily accredited agencies, and approved persons, maintaining records, and reporting information to the Secretary, State courts, and other entities; and

(8) Assisting as required by the Secretary in transferring adoption cases and adoption records of agencies or persons that cease to provide or are no longer permitted to provide adoption services in Convention cases.

(b) The Secretary may require an accrediting entity:

(1) To enter into an agreement with the Complaint Registry for services in screening complaints and performing other services relevant to the accrediting entity's functions; and

(2) Pursuant to such agreement, to remit to the Complaint Registry a portion of the accrediting entity's fees collected under its approved schedule of fees, to cover the costs of such services. Any such agreement between the accrediting entity and the Complaint Registry and the portion of accreditation/approval fees to be remitted to the Complaint Registry shall be subject to the approval of the Secretary.

(c) An accrediting entity must perform these responsibilities in accordance with the Convention, the IAA, the regulations implementing the IAA, and its Agreement with the Secretary.

§ 96.8 Fees charged by accrediting entities.

(a) An accrediting entity may charge fees for accreditation or approval services under this part only in accordance with a schedule of fees approved by the Secretary. Before approving a schedule of fees proposed by an accrediting entity, or subsequent proposed changes to an approved schedule, the Secretary will require the accrediting entity to demonstrate:

(1) That its proposed schedule of fees reflects appropriate consideration of the relative size and geographic location

and volume of Convention cases of the agencies and persons it expects to serve;

(2) That the total fees the accrediting entity expects to collect under the schedule of fees will not exceed the full costs of accreditation and approval under this part (including, but not limited to, costs for completing the accreditation or approval process, complaint review and investigation, routine oversight and enforcement, and other data collection and reporting activities).

(b) The schedule of fees must: (1) Establish separate non-refundable fees for Convention accreditation and Convention approval;

(2) Include in each fee for full Convention accreditation or approval the costs of all activities associated with the accreditation or approval cycle, including but not limited to, costs for completing the accreditation or approval process, complaint review and investigation, routine oversight and enforcement, and other data collection and reporting activities, except that separate fees based on actual costs incurred may be charged for the travel and maintenance of evaluators; and

(3) If the accrediting entity provides temporary accreditation services, include fees as required by § 96.111 for agencies seeking temporary accreditation under subpart N of this part.

(c) An accrediting entity must make its approved schedule of fees available to the public, including prospective applicants for accreditation or approval, upon request. At the time of application, the accrediting entity must specify the fees to be charged to the applicant in a contract between the parties and must provide notice to the applicant that no portion of the fee will be refunded if the applicant fails to become accredited or approved.

(d) Nothing in this section shall be construed to provide a private right of action to challenge any fee charged by an accrediting entity pursuant to a schedule of fees approved by the Secretary.

§ 96.9 Agreement between the Secretary and the accrediting entity.

An accrediting entity must perform its functions pursuant to a written Agreement with the Department of State that will be published in the **Federal Register**. The Agreement will address:

(a) The responsibilities and duties of the accrediting entity;

(b) The method by which the costs of delivering the accreditation, temporary accreditation, and approval services may be recovered through the collection of fees from those seeking accreditation,

temporary accreditation, or approval, and how the entity's schedule of fees will be approved;

(c) How the accrediting entity will address complaints about accredited agencies, temporarily accredited agencies, approved persons, and the accrediting entity itself;

(d) Data collection requirements;

(e) Matters of communication and accountability between both the accrediting entity and the applicant(s) and between the accrediting entity and the Secretary; and

(f) Other matters upon which the parties have agreed.

§ 96.10 Suspension or cancellation of the designation of an accrediting entity by the Secretary.

(a) The Secretary will suspend or cancel the designation of an accrediting entity if the Secretary concludes that it is substantially out of compliance with the Convention, the IAA, the regulations implementing the IAA, other applicable laws, or the Agreement with the Secretary. Complaints regarding the performance of the accrediting entity may be submitted to the Department of State, Bureau of Consular Affairs. The Secretary will consider complaints in determining whether an accrediting entity's designation should be suspended or canceled.

(b) An accrediting entity may be considered substantially out of compliance under circumstances that include, but are not limited to:

(1) Failing to act in a timely manner when presented with evidence that an accredited agency or approved person is substantially out of compliance with the standards in subpart F of this part or a temporarily accredited agency is substantially out of compliance with the standards in § 96.104;

(2) Accrediting or approving significant numbers of agencies or persons whose performance results in intervention of the Secretary for the purpose of suspension, cancellation, or debarment;

(3) Failing to perform its responsibilities fairly and objectively;

(4) Violating prohibitions on conflicts of interest;

(5) Failing to meet its reporting requirements;

(6) Failing to protect information or documents that it receives in the course of performing its responsibilities; and

(7) Failing frequently and carefully to monitor the compliance of accredited agencies, temporarily accredited agencies, and approved persons with the home study requirements of the Convention, section 203(b)(1)(A)(ii) of the IAA (Pub. L. 106-279, 42 U.S.C.

14923(b)(1)(A)(ii)), and § 96.47 of these regulations.

(c) An accrediting entity that is subject to a final action of suspension or cancellation may petition the United States District Court for the District of Columbia or the United States district court in the judicial district in which the accrediting entity is located to set aside the action as provided in section 204(d) of the IAA (Pub. L. 106-279, 42 U.S.C. 14924(d)).

§ 96.11 [Reserved]

Subpart C—Accreditation and Approval Requirements for the Provision of Adoption Services

§ 96.12 Authorized adoption service providers.

Once the Convention has entered into force for the United States, an agency or person may not offer, provide, or facilitate the provision of any adoption service in the United States in connection with a Convention adoption unless it is:

(a) An accredited agency, a temporarily accredited agency, or an approved person;

(b) A supervised provider;

(c) An exempted provider; or

(d) A public body.

§ 96.13 Activities that do not require accreditation, approval, or supervision.

(a) *Home studies and child background studies.* A social work professional or organization that is performing a home study on the prospective adoptive parent(s) or a child background study (including any reports or updates) in connection with a Convention adoption but is not providing any other adoption service in the case is an "exempted provider." Exempted providers do not have to be accredited, temporarily accredited, approved, or operate as a supervised provider. If the agency or person provides another adoption service in the case in addition to the home study or child background study, it must be accredited, temporarily accredited, approved, or operate as a supervised provider. The home study or child background study prepared by an exempted provider must be submitted to an accredited agency or temporarily accredited agency, not an approved person, for review and approval. An accredited agency or temporarily accredited agency must approve an exempted provider's home study in accordance with § 96.47(c) and an exempted provider's child background study in accordance with § 96.53(b).

(b) *Child welfare services.* An agency or person does not need to be

accredited, temporarily accredited, approved, or operate as a supervised provider if it is providing only child welfare services, and not providing any adoption services, in connection with a Convention adoption. If the agency or person provides both a child welfare service and any one of the six "adoption services" defined in § 96.2 in a Convention adoption case (including a home study or child background study), it must be accredited, temporarily accredited, or approved or operate as a supervised provider.

(c) *Legal services.* An agency or person does not need to be accredited, temporarily accredited, approved, or operate as a supervised provider if it is providing only legal services, and not providing any adoption services, in connection with a Convention adoption. If the agency or person provides both legal services and any one of the six "adoption services" defined in § 96.2 in a Convention adoption case (including a home study or child background study), it must be accredited, temporarily accredited, approved, or operate as a supervised provider. Nothing in this part shall be construed:

(1) To permit an attorney to provide both legal services and adoption services in an adoption case where doing so is prohibited by State law, or

(2) To require any attorney who is providing one or more adoption services as part of his or her employment by a public body to be accredited or approved or operate as a supervised provider.

(d) *Prospective adoptive parent(s) acting on own behalf.* Prospective adoptive parent(s) may act on their own behalf unless acting on their own behalf is prohibited by State law or the law of the Convention country. In the case of a child immigrating to the United States in connection with his or her adoption, such conduct must be permissible under the laws of the State in which the prospective adoptive parent(s) reside and the laws of the Convention country from which the parent(s) seek to adopt. In the case of a child emigrating from the United States in connection with his or her adoption, such conduct must be permissible under the laws of the State where the child resides and the laws of the Convention country in which the parent(s) reside.

§ 96.14 Providing adoption services using supervised providers, exempted providers, public bodies, or public authorities.

(a) Accreditation, temporary accreditation, and approval under this part requires that, in each Convention adoption case, an accredited agency, a temporarily accredited agency, or an

approved person will be identified and act as the primary provider. If one accredited agency, temporarily accredited agency, or approved person is providing all six "adoption services" listed in § 96.2 by itself, it must act as the primary provider. If just one accredited agency, temporarily accredited agency, or approved person is involved in providing some of the six "adoption services" listed in § 96.2, and the other providers are supervised providers, public bodies, public authorities, or exempted providers, the sole accredited agency, temporarily accredited agency, or approved person must act as the primary provider. If adoption services in the Convention case are being provided by more than one accredited agency, temporarily accredited agency, or approved person, the agency or person that has child placement responsibility, as evidenced by the following, must act as the primary provider throughout the case:

(1) Entering into placement contracts with prospective adoptive parent(s) to provide child referral and placement;

(2) Accepting custody from a birth parent or other legal custodian in another Convention country for the purpose of placement for adoption;

(3) Assuming responsibility for liaison with another Convention country's Central Authority or its designees with regard to arranging an adoption; or

(4) Receiving from or sending to another Convention country information about a child that is under consideration for adoption, unless acting as a local service provider that conveys such information to parent(s) on behalf of the primary provider.

(b) Pursuant to § 96.44, in the case of accredited agencies or approved persons, and § 96.104(g), in the case of temporarily accredited agencies, the primary provider may only use the following to provide adoption services in the United States:

(1) An accredited agency, temporarily accredited agency, or approved person;

(2) An exempted provider if the exempted provider's home study or child background study will be reviewed and approved by an accredited agency or temporarily accredited agency;

(3) A supervised provider; or

(4) A public body.

(c) Pursuant to § 96.44, in the case of accredited agencies or approved persons, and § 96.104(g), in the case of temporarily accredited agencies, the primary provider may only use the following to provide adoption services in another Convention country:

(1) A competent authority, a public authority, or an entity accredited by that

Convention country to provide services under the Convention; or

(2) An agency, person, or other entity that will act under the primary provider's supervision and responsibility (a foreign supervised provider).

(d) The primary provider is not required to provide supervision or assume responsibility for:

(1) Public bodies and agencies and persons accredited or approved in the United States pursuant to subpart F of this part; and

(2) Competent authorities and public authorities of other Convention countries, and entities accredited by other Convention countries.

(e) Public bodies, competent authorities, public authorities, and accredited agencies and approved persons are not required to operate under the supervision and responsibility of the primary provider.

(f) The primary provider must adhere to the standards contained in § 96.45 (U.S. supervised providers) when using supervised providers in the United States and the standards contained in § 96.46 (foreign supervised providers) when using supervised providers in other Convention countries.

§ 96.15 Public bodies.

Public bodies are not required to become accredited to be able to provide adoption services in Convention adoption cases, but must comply with the Convention, the IAA, and other applicable law when providing services in a Convention adoption case.

§ 96.16 Effective date of accreditation and approval requirements.

The Secretary will publish a document in the **Federal Register** announcing the date on which the Convention will enter into force for the United States. As of that date, the regulations in subpart C of this part will govern Convention adoptions between the United States and other Convention countries, and agencies or persons providing adoption services must comply with § 96.12 and applicable Federal regulations. The Secretary will maintain for the public a current listing of Convention countries.

§ 96.17 [Reserved]

Subpart D—Application Procedures for Accreditation and Approval

§ 96.18 Scope.

(a) Agencies are eligible to apply for "accreditation" or "temporary accreditation." Persons are eligible to apply for "approval." Temporary accreditation is governed by the

provisions in subpart N of this part. Unless otherwise provided in subpart N, the provisions of this subpart do not apply to agencies seeking temporary accreditation. Applications for full accreditation rather than temporary accreditation will be processed in accordance with § 96.20 and § 96.21.

(b) An agency or person seeking to be accredited or approved at the time the Convention enters into force for the United States, and to be included on the initial list of accredited agencies and approved persons that the Secretary will deposit with the Permanent Bureau of the Hague Conference on Private International Law, must follow the special provisions contained in § 96.19.

(c) If an agency or person is reapplying for accreditation or approval following cancellation of its accreditation or approval by an accrediting entity or refusal by an accrediting entity to renew its accreditation or approval, it must comply with the procedures in § 96.78.

(d) If an agency or person that has been accredited or approved is seeking renewal, it must comply with the procedures in § 96.63.

§ 96.19 Special provisions for agencies and persons seeking to be accredited or approved at the time the Convention enters into force for the United States.

(a) The Secretary will establish and announce, by public notice in the *Federal Register*, a “transitional application deadline.” An agency or person seeking to be accredited or approved at the time the Convention enters into force for the United States must submit an application to an accrediting entity, with the required fee(s), by the transitional application deadline. The Secretary will subsequently establish and announce a date by which such agencies and persons must complete the accreditation or approval process in time to be accredited or approved at the time the Convention enters into force for the United States (“deadline for initial accreditation or approval”).

(b) The accrediting entity must use its best efforts to provide a reasonable opportunity for an agency or person that applies by the transitional application deadline to complete the accreditation or approval process by the deadline for initial accreditation or approval. Only those agencies and persons that are accredited or approved by the deadline for initial accreditation or approval will be included on the initial list of accredited agencies and approved persons that the Secretary will deposit with the Permanent Bureau of the Hague

Conference on Private International Law.

(c) The accrediting entity may, in its discretion, permit an agency or person that fails to submit an application by the transitional application deadline to attempt to complete the accreditation or approval process in time to be included on the initial list; however, such an agency or person is not assured an opportunity to complete the accreditation or approval process in time to be included on the initial list. The accrediting entity must give priority to applicants that filed by the transitional application deadline. If such an agency or person succeeds in completing the accreditation or approval process in time to be included on the initial list, it will be treated as an agency or person that applied by the transitional application deadline for the purposes of § 96.58 and § 96.60(b).

§ 96.20 First-time application procedures for accreditation and approval.

(a) Agencies or persons seeking accreditation or approval for the first time may submit an application at any time, with the required fee(s), to an accrediting entity with jurisdiction to evaluate the application. If an agency or person seeks to be accredited or approved by the deadline for initial accreditation or approval, an agency or person must comply with the procedures in § 96.19.

(b) The accrediting entity must establish and follow uniform application procedures and must make information about those procedures available to agencies and persons that are considering whether to apply for accreditation or approval. The accrediting entity must evaluate the applicant for accreditation or approval in a timely fashion.

§ 96.21 Choosing an accrediting entity.

(a) An agency that seeks to become accredited must apply to an accrediting entity that is designated to provide accreditation services and that otherwise has jurisdiction over its application. A person that seeks to become approved must apply to an accrediting entity that is designated to provide approval services and otherwise has jurisdiction over its application. The agency or person may apply to only one accrediting entity at a time.

(b)(1) If the agency or person is applying for accreditation or approval pursuant to this part for the first time, it may apply to any accrediting entity with jurisdiction over its application. However, the agency or person must apply to the same accrediting entity that handled its prior application when it

next applies for accreditation or approval, if the agency or person:

- (i) Has been denied accreditation or approval;
- (ii) Has withdrawn its application in anticipation of denial;
- (iii) Has had its accreditation or approval cancelled by an accrediting entity or the Secretary;
- (iv) Has been temporarily debarred by the Secretary; or
- (v) Has been refused renewal of its accreditation or approval by an accrediting entity.

(2) If the prior accrediting entity is no longer providing accreditation or approval services, the agency or person may apply to any accrediting entity with jurisdiction over its application.

§ 96.22 [Reserved]

Subpart E—Evaluation of Applicants for Accreditation and Approval

§ 96.23 Scope.

The provisions in this subpart govern the evaluation of agencies and persons for accreditation or approval. Temporary accreditation is governed by the provisions in subpart N of this part. Unless otherwise provided in subpart N, the provisions in this subpart do not apply to agencies seeking temporary accreditation.

§ 96.24 Procedures for evaluating applicants for accreditation or approval.

(a) The accrediting entity must designate at least two evaluators to evaluate an agency or person for accreditation or approval. The accrediting entity’s evaluators must have expertise in intercountry adoption or standards evaluation and must also meet any additional qualifications required by the Secretary in the Agreement with the accrediting entity.

(b) To evaluate the agency’s or person’s eligibility for accreditation or approval, the accrediting entity must:

- (1) Review the agency’s or person’s written application and supporting documentation;
- (2) Verify the information provided by the agency or person by examining underlying documentation; and
- (3) Conduct site visit(s).

(c) The site visit(s) may include, but need not be limited to, interviews with birth parents, adoptive parent(s), prospective adoptive parent(s), and adult adoptee(s) served by the agency or person, interviews with the agency’s or person’s employees, and interviews with other individuals knowledgeable about the agency’s or person’s provision of adoption services. It may also include a review of on-site documents. The accrediting entity must, to the extent

practicable, advise the agency or person in advance of the type of documents it wishes to review during the site visit. The accrediting entity must require at least one of the evaluators to participate in each site-visit. The accrediting entity must determine the number of evaluators that participate in a site visit in light of factors such as the agency's or person's size, the number of adoption cases it handles, the number of sites the accrediting entity decides to visit, and the number of individuals working at each site.

(d) Before deciding whether to accredit an agency or approve a person, the accrediting entity may, in its discretion, advise the agency or person of any deficiencies that may hinder or prevent its accreditation or approval and defer a decision to allow the agency or person to correct the deficiencies.

§ 96.25 Access to information and documents requested by the accrediting entity.

(a) The agency or person must give the accrediting entity access to all information and documents, including case files and proprietary information, that it requires to evaluate an agency or person for accreditation or approval and to perform its oversight, enforcement, renewal, data collection, and other functions. The agency or person must also cooperate with the accrediting entity by making employees available for interviews upon request.

(b) If an agency or person fails to provide requested documents or information, or to make employees available as requested, the accrediting entity may deny accreditation or approval or, in the case of an accredited agency, temporarily accredited agency, or approved person, take appropriate adverse action against the agency or person solely on that basis.

§ 96.26 Protection of information and documents by the accrediting entity.

(a) The accrediting entity must protect from unauthorized use and disclosure all documents and information about the agency or person it receives including, but not limited to, documents and proprietary information about the agency's or person's finances, management, and professional practices received in connection with the performance of its accreditation or approval, oversight, enforcement, renewal, data collection, and other functions under its Agreement and this part. Unless otherwise authorized by the agency or person in writing, or required pursuant to subpart M of this part, the documents and information received may not be disclosed to the public and

may be used only for the purpose of performing the accrediting entity's accreditation and approval and related functions under its Agreement and this part, or to provide information to the Secretary, the Complaint Registry, or an appropriate Federal, State, or local agency or law enforcement entity.

(b) Unless the names and other information that identifies birth parent(s), prospective adoptive parent(s), and adoptee(s) is requested by the accrediting entity for an articulated reason, the agency or person may withhold from the accrediting entity such information and substitute individually assigned codes in the documents it provides. The accrediting entity must have appropriate safeguards to protect from unauthorized use and disclosure any information in its files that identifies birth parent(s), prospective adoptive parent(s), and adoptee(s). The accrediting entity must ensure that its officers, employees, contractors, and evaluators who have access to information or documents provided by the agency or person have signed a non-disclosure agreement reflecting the requirements of § 96.26(a) and (b). The accrediting entity must maintain an accurate record of the agency's or person's application, the supporting documentation, and the basis for its decision.

§ 96.27 Substantive criteria for evaluating applicants for accreditation or approval.

(a) The accrediting entity may not grant an agency accreditation or a person approval, or permit an agency's or person's accreditation or approval to be maintained, unless the agency or person demonstrates to the satisfaction of the accrediting entity that it is in substantial compliance with the standards in subpart F of this part.

(b) When the agency or person makes its initial application for accreditation or approval under the standards contained in subpart F of this part, the accrediting entity may measure the capacity of the agency or person to achieve substantial compliance with these standards where relevant evidence of its actual performance is not yet available. Once the agency or person has been accredited or approved pursuant to this part, the accrediting entity must, for the purposes of monitoring, renewal, enforcement, and reapplication after adverse action, consider the agency's or person's actual performance in deciding whether the agency or person is in substantial compliance with the standards contained in subpart F of this part, unless the accrediting entity determines that it is still necessary to measure capacity because adequate

evidence of actual performance is not available.

(c) The standards contained in subpart F of this part apply during all stages of accreditation and approval, including, but not limited to, when the accrediting entity is evaluating an applicant for accreditation or approval, when it is determining whether to renew an agency's or person's accreditation or approval, when it is monitoring the performance of an accredited agency or approved person, and when it is taking adverse action against an accredited agency or approved person. Except as provided in § 96.25 and paragraphs (e) and (f) of this section, the accrediting entity may only use the standards contained in subpart F of this part when determining whether an agency or person may be granted or permitted to maintain Convention accreditation or approval.

(d) The accrediting entity will assign points to each different standard, or to each element of a standard, depending on the relative importance of the particular standard (or element) to compliance with the Convention and the IAA. The points to be given to the standard, or to elements of the standard, must be determined by the accrediting entity in consultation with the Secretary. The accrediting entity must advise applicants of the points assigned to the standards (or elements of the standards) at the time it provides them with the application materials.

(e) If an agency or person has previously been denied accreditation or approval, has withdrawn its application in anticipation of denial, has had its temporary accreditation withdrawn, or is reapplying for accreditation or approval after cancellation, refusal to renew, or temporary debarment, the accrediting entity may take the reasons underlying such actions into account when evaluating the agency or person for accreditation or approval, and may deny accreditation or approval on the basis of the previous action.

(f) If an agency or person that has an ownership or control interest in the applicant, as that term is defined in section 1124(a)(3) of the Social Security Act (42 U.S.C. 1320(a)(3)), has been debarred pursuant to § 96.85, the accrediting entity may take into account the reasons underlying the debarment when evaluating the agency or person for accreditation or approval, and may deny accreditation or approval or refuse to renew accreditation or approval on the basis of the debarment.

(g) The standards contained in subpart F of this part do not eliminate the need for an agency or person to comply fully with the laws of the

jurisdictions in which it operates. An agency or person must provide adoption services in Convention cases consistent with the laws of any State in which it operates and with the Convention and the IAA. Persons that are approved to provide adoption services may only provide such services in States that do not prohibit persons from providing adoption services. Nothing in the application of the standards in subparts E and F should be construed to require a State to allow persons to provide adoption services if State law does not permit them to do so.

§ 96.28 [Reserved]

Subpart F—Standards for Convention Accreditation and Approval

§ 96.29 Scope.

The provisions in this subpart provide the standards for accrediting agencies and approving persons. Temporary accreditation is governed by the provisions in subpart N of this part. Unless otherwise provided in subpart N of this part, the provisions in subpart F of this part do not apply to agencies seeking temporary accreditation.

Licensing and Corporate Governance

§ 96.30 State licensing.

(a) The agency or person is properly licensed or otherwise authorized by State law to provide adoption services in at least one State.

(b) The agency or person follows applicable State licensing and regulatory requirements in all jurisdictions in which it provides adoption services.

(c) If it provides adoption services in a State in which it is not itself licensed or authorized to provide such services, the agency or person does so only through agencies, persons, or other entities that are licensed or authorized by State law to provide adoption services in that State.

(d) In the case of a person, the individual or for-profit entity is not prohibited by State law from providing adoption services in any State where it is providing adoption services, and does not provide adoption services in Convention countries that prohibit individuals or for-profit entities from providing adoption services.

§ 96.31 Corporate structure.

(a) The agency qualifies for non-profit tax treatment under section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or for non-profit status under the laws of any State.

(b) The person is an individual or is a for-profit entity organized as a

corporation, company, association, firm, partnership, society, or joint stock company, or other legal entity under the laws of any State.

§ 96.32 Internal structure and oversight.

(a) The agency or person has a chief executive officer or equivalent official who is qualified by education, adoption service experience, and management credentials to ensure effective use of resources and coordinated delivery of the services provided by the agency or person, and has authority and responsibility for management and oversight of the staff in carrying out the adoption-related functions of the organization. This standard does not apply where the person is an individual practitioner.

(b) The agency or person has a board of directors or similar governing body that establishes and approves its mission, policies, budget, and programs; provides leadership to secure the resources needed to support its programs; and appoints and oversees the performance of its chief executive officer or equivalent official. This standard does not apply where the person is an individual practitioner.

(c) The agency or person keeps permanent records of the meetings and deliberations of its governing body and of its major decisions affecting the delivery of adoption services.

Financial and Risk Management

§ 96.33 Budget, audit, insurance, and risk assessment requirements.

(a) The agency or person operates under a budget approved by its governing body, if applicable, for management of its funds.

(b) The agency's or person's finances are subject to independent annual audits.

(c) The agency or person submits copies of each audit, as well as any accompanying management letter or qualified opinion letter, for inspection by the accrediting entity.

(d) The agency or person meets the financial reporting requirements of Federal and State laws and regulations.

(e) The agency's or person's balance sheets show that it operates on a sound financial basis and generally maintains sufficient cash reserves or other financial resources to meet its operating expenses for three months, taking into account its projected volume of cases.

(f) If it accepts donations, the agency or person has safeguards in place to ensure that such donations do not influence child placement decisions in any way.

(g) The agency or person uses an independent professional assessment of

the risks it assumes as the basis for determining the type and amount of professional, general, directors' and officers', and other liability insurance to carry. The risk assessment includes an evaluation of the risks of using supervised providers as provided for in § 96.45 and § 94.46 and of providing adoption services to clients who, consistent with § 96.39(d), will not sign blanket waivers of liability.

(h) The agency or person maintains insurance in amounts reasonably related to its exposure to risk, including the risks of providing services through supervised providers, but in no case in an amount less than \$1,000,000 per occurrence.

(i) The agency's or person's chief executive officer, chief financial officer, and other officers or employees with direct responsibility for financial transactions or financial management of the agency or person are bonded.

§ 96.34 Compensation.

(a) The agency or person does not compensate any individual providing intercountry adoption services with incentive fees for each child placed for adoption or on a similar contingent fee basis.

(b) The agency or person compensates its directors, officers, employees, and supervised providers who provide intercountry adoption services only for services actually rendered and only on a fee-for-service, hourly wage, or salary basis rather than a contingent fee basis.

(c) The agency or person does not make any payments, promise payment, or give other consideration to any individual directly or indirectly involved in provision of adoption services in a particular case, except for salaries or fees for services actually rendered and reimbursement for costs incurred. This does not prohibit an agency or person from providing in-kind or other donations not intended to influence or affect a particular adoption.

(d) The fees, wages, or salaries paid to the directors, officers, and employees of the agency or person are not unreasonably high in relation to the services actually rendered, taking into account the location, number, and qualifications of staff, workload requirements, budget, and size of the agency or person, and available norms for compensation within the intercountry adoption community.

(e) Any other compensation paid to the agency's or person's directors or members of its governing body is not unreasonably high in relation to the services rendered, taking into account the same factors listed in paragraph (d)

of this section and its for-profit or non-profit status.

Ethical Practices and Responsibilities

§ 96.35 Suitability of agencies and persons to provide adoption services consistent with the Convention.

(a) The agency or person provides adoption services ethically and in accordance with the Convention's principles of:

(1) Ensuring that intercountry adoptions take place in the best interests of children; and

(2) Preventing the abduction, exploitation, sale, or trafficking of children.

(b) In order to permit the accrediting entity to evaluate the suitability of an agency or person for accreditation or approval, the agency or person discloses to the accrediting entity the following information relating to the agency or person under its current or any former names:

(1) Any instances in which the agency or person has permanently lost the right to provide adoption services in any State or a country, including the basis for such action(s);

(2) Any instances in which the agency or person was debarred or otherwise denied the authority to provide adoption services, including the basis and disposition of such action(s);

(3) Any licensing suspensions for cause or other negative sanctions by oversight bodies against the agency or person, including the basis and disposition of such action(s);

(4) For the prior ten-year period, any disciplinary action(s) against the agency or person by a licensing or accrediting body, including the basis and disposition of such action(s);

(5) For the prior ten-year period, any written complaint(s) against the agency or person, relating to the provision of adoption-related services, including the basis and disposition of such complaint(s);

(6) For the prior ten-year period, any past or pending investigation(s) by Federal or State authorities, criminal charge(s), child abuse charge(s), malpractice complaint(s), or lawsuit(s) against the agency or person, related to the provision of adoption-related services, and the basis and disposition of such action(s);

(7) Any instances where the agency or person has been found guilty of any crime under Federal, State, or foreign law or any civil or administrative violations under Federal, State, or foreign law involving financial irregularities;

(8) For the prior five-year period, any instances where the agency or person has filed for bankruptcy; and

(9) Descriptions of any businesses or activities that are inconsistent with the principles of the Convention and that are currently carried out by an agency or person, affiliate organizations, or by any entity in which the agency or person has an ownership or control interest.

(c) In order to permit the accrediting entity to evaluate the suitability of an agency or person for accreditation or approval, the agency or person also discloses to the accrediting entity the following information about its individual directors, officers, and employees:

(1) For the prior ten-year period, any conduct by any such individual related to the provision of adoption-related services that was subject to external disciplinary proceeding(s);

(2) Any convictions or current investigations of any such individual who is in a senior financial management position for acts involving financial irregularities;

(3) The results of a State criminal background check and a child abuse clearance for any such individual in the United States in a senior management position or who works directly with parent(s) and/or children (unless such checks have been included in the State licensing process); and

(4) A completed FBI Form FD-258 for each such individual in the United States in a senior management position or who works directly with parent(s) and/or children, which the agency or person must keep on file in case future allegations warrant submission of the form for a Federal criminal background check of any such individual.

(5) Descriptions of any businesses or activities that are inconsistent with the principles of the Convention and that are currently carried out by individual directors, officers, or employees of the agency or person.

(d) In order to permit the accrediting entity to evaluate the suitability of a person who is an individual practitioner for approval, the individual does as follows:

(1) Provides the results of a State criminal background check and a child abuse clearance to the accrediting entity;

(2) Completes and retains a FBI Form FD-258 on file in case future allegations warrant submission of the form for a Federal criminal background check; and

(3) If the individual is a lawyer, for every jurisdiction in which he or she has ever been admitted to the Bar, provides a certificate of good standing

or an explanation of why he or she is not in good standing, accompanied by any relevant documentation.

(e) Any disciplinary action considered by a State Bar Association, including consideration of an action to disbar an attorney, must immediately be reported by the attorney to the accrediting entity, regardless of whether the action relates to intercountry adoption.

(f) In order to permit the accrediting entity to monitor the suitability of an agency or person, the agency or person must disclose any changes in the information required by § 96.35 within thirty business days of learning of the change.

§ 96.36 Prohibition on child buying.

(a) The agency or person prohibits its employees and agents from giving money or other consideration, directly or indirectly, to a child's parent(s), other individual(s), or an entity as payment for the child or as an inducement to release the child. If permitted or required by the child's country of origin, an agency or person may remit reasonable payments for activities related to the adoption proceedings, pre-birth and birth medical costs, the care of the child, the care of the birth mother while pregnant and immediately following birth of the child, or the provision of child welfare and child protection services generally. Permitted or required contributions shall not be remitted as payment for the child or as an inducement to release the child.

(b) The agency or person has written policies and procedures in place reflecting the prohibitions in paragraph (a) of this section and reinforces them in its employee training programs.

Professional Qualifications and Training for Employees

§ 96.37 Education and experience requirements for social service personnel.

(a) The agency or person only uses employees with appropriate qualifications and credentials to perform, in connection with a Convention adoption, adoption-related social service functions that require the application of clinical skills and judgment (home studies, child background studies, counseling, parent preparation, post-placement, and other similar services).

(b) The agency's or person's employees meet any State licensing or regulatory requirements for the services they are providing.

(c) The agency's or person's executive director, the supervisor overseeing a case, or the social service employee providing adoption-related social services that require the application of

clinical skills and judgment (home studies, child background studies, counseling, parent preparation, post-placement, and other similar services) have experience in the professional delivery of intercountry adoption services.

(d) Supervisors. The agency's or person's social work supervisors have prior experience in family and children's services, adoption, or intercountry adoption and either:

(1) A master's degree from an accredited program of social work education;

(2) A master's degree (or doctorate) in a related human service field, including, but not limited to, psychology, psychiatry, psychiatric nursing, counseling, rehabilitation counseling, or pastoral counseling; or

(3) In the case of a social work supervisor who is or was an incumbent at the time the Convention enters into force for the United States, the supervisor has significant skills and experience in intercountry adoption and has regular access for consultation purposes to an individual with the qualifications listed in paragraph (d)(1) or paragraph (d)(2) of this section.

(e) Non-supervisory employees. The agency's or person's non-supervisory employees providing adoption-related social services that require the application of clinical skills and judgment other than home studies or child background studies:

(1) Have a master's degree from an accredited program of social work education or in another human service field; or

(2) Have a bachelor's degree from an accredited program of social work education; a combination of a bachelor's degree in another human service field and prior experience in family and children's services, adoption, or intercountry adoption; or a bachelor's degree in any field and extensive experience in intercountry adoption. Additionally, the non-supervisory employees are supervised by an employee of the accredited agency or approved person who meets the requirements for supervisors in paragraph (d) of this section.

(f) Home studies. The agency's or person's employees who conduct home studies:

(1) Have a minimum of a master's degree from an accredited program of social work education or a master's degree (or doctorate) in a related human service field, including, but not limited to, psychology, psychiatry, psychiatric nursing, counseling, rehabilitation counseling, or pastoral counseling;

(2) Are authorized to complete a home study under the laws of the State of the child's proposed residence; and

(3) Meet the INA requirements for home study preparers in 8 CFR 204.3(b) covering home studies in Convention cases.

(g) Child background studies. The agency's or person's employees who prepare child background studies have a minimum of a master's degree from an accredited program of social work education or a master's degree (or doctorate) in a related human service field, including, but not limited to, psychology, psychiatry, psychiatric nursing, counseling, rehabilitation counseling, or pastoral counseling.

§ 96.38 Training requirements for social service personnel.

(a) The agency or person provides newly hired employees who have adoption-related responsibilities involving the application of clinical skills and judgment (home studies, child background studies, counseling services, parent preparation, post-placement and other similar services) with a comprehensive orientation to intercountry adoption that includes training on:

(1) The requirements of the Convention, the IAA, the regulations implementing the IAA, and other applicable Federal regulations;

(2) The INA regulations applicable to the immigration of children adopted from a Convention country;

(3) The adoption laws of any Convention country where the agency or person provides adoption services;

(4) Relevant State laws;

(5) Prohibitions on child-buying;

(6) The agency's or person's goals, ethical and professional guidelines, organizational lines of accountability, policies, and procedures; and

(7) The cultural diversity of the population(s) served by the agency or person.

(b) The agency or person provides initial training to employees who provide adoption-related social services that involve the application of clinical skills and judgment (home studies, child background studies, counseling services, parent preparation, post-placement and other similar services) that addresses:

(1) The factors in the countries of origin that lead to children needing adoptive families;

(2) Feelings of separation, grief, and loss experienced by the child with respect to the family of origin;

(3) Attachment and post-traumatic stress disorders;

(4) Psychological issues facing children who have experienced abuse or

neglect and/or whose parents' rights have been terminated because of abuse or neglect;

(5) The impact of institutionalization on child development;

(6) Outcomes for children placed for adoption internationally, and the most frequent medical and psychological problems experienced by children from the countries of origin served by the agency or person;

(7) The process of developing emotional ties to an adoptive family;

(8) Acculturation and assimilation issues, including those arising from factors such as race, ethnicity, religion, and culture and the impact of having been adopted internationally; and

(9) Child, adolescent, and adult development.

(c) The agency or person ensures that employees who provide adoption-related social services that involve the application of clinical skills and judgment (home studies, child background studies, counseling services, parent preparation, post-placement and other similar services) also receive, in addition to the orientation and initial training described in paragraphs (a) and (b) of this section, no less than 20 hours of training each year, or more if required by State law, on current and emerging adoption practice issues through participation in seminars, conferences, and other similar programs.

(d) The agency or person exempts employees from elements of the orientation and training required in paragraphs (a) and (b) of this section only where the employee has prior experience with intercountry adoption and knowledge of the Convention and the IAA.

Information Disclosure, Fee Practices, and Quality Control Policies and Practices

§ 96.39 Information disclosure and quality control practices.

(a) The agency or person fully discloses in writing to the general public upon request and to prospective client(s) upon initial contact:

(1) Its adoption service policies and practices, including general eligibility criteria, fees, and the mutual rights and responsibilities of clients and the agency or person;

(2) A sample of a contract substantially like the one that the prospective client(s) will be expected to sign should they proceed; and

(3) The entities with whom the prospective client(s) can expect to work in the United States and in the child's country of origin and the usual costs associated with their services.

(b) The agency or person maintains and makes available upon request to client(s) and prospective client(s) information on:

(1) The number of its adoption placements per year for the prior three calendar years, and the number and percentage of those placements that remain intact, are disrupted, or have been dissolved as of the time the information is provided;

(2) The number of parents who apply to adopt on a yearly basis, based on data for the prior three calendar years; and

(3) The number of children awaiting adoption, when available.

(c) The agency or person does not give preferential treatment to its board members, contributors, volunteers, employees, agents, consultants, or independent contractors with respect to the placement of children for adoption and has a written policy to this effect.

(d) The agency or person does not require a client or prospective client to sign a blanket waiver of liability in connection with the provision of adoption services in Convention cases.

(e) The agency or person cooperates with reviews, inspections, and audits.

(f) The agency or person uses the internet to place particular children for adoption only where:

(1) Such use is not prohibited by applicable State or Federal law or by the laws of the child's country of origin;

(2) Such use is subject to controls to avoid misuse and links to any sites that reflect practices that involve the sale, abduction, exploitation, or trafficking of children;

(3) Such use, if it includes photographs, is designed to identify children either who are currently waiting for adoption or who have already been adopted or placed for adoption (and who are clearly so identified); and

(4) Such use does not serve as a substitute for the direct provision of adoption services, including services to the child, the prospective adoptive parent(s), and/or the birth parent(s).

§ 96.40 Fee policies and procedures.

(a) The agency or person provides to all applicants, prior to application, a written schedule of estimated fees and expenses and an explanation of the conditions under which fees or expenses may be charged, waived, reduced, or refunded and of when and how the fees and expenses must be paid.

(b) Before providing any adoption service to prospective adoptive parent(s), the agency or person itemizes and discloses in writing the following information for each separate category

of fees and expenses that the prospective adoptive parent(s) will be charged in connection with a Convention adoption:

(1) *Home Study*. The expected total fees and expenses for home study preparation, whether the home study is to be prepared directly by an accredited agency or temporarily accredited agency, or prepared by a supervised provider, exempted provider, or approved person and reviewed and approved by an accredited agency or temporarily accredited agency;

(2) *Adoption expenses in the United States*. The expected total fees and expenses for all adoption services other than the home study that will be provided in the United States. This category includes, but is not limited to, personnel costs, administrative overhead, training and education, communications and publications costs, and any other costs related to providing adoption services in the United States;

(3) *Foreign country program expenses*. The expected total fees and expenses for all adoption services that will be provided in the child's Convention country. This category includes, but is not limited to, costs for care of the child prior to adoption, costs for personnel, administrative overhead, training, education, and communications, and any other costs related to providing adoption services in the child's Convention country;

(4) *Translation and document expenses*. The expected total fees and expenses for obtaining any necessary documents and for any translation of documents related to the adoption, along with information on whether the prospective adoptive parent(s) will be expected to pay such costs directly, either in the United States or in the child's Convention country, or through the agency or person. This category includes, but is not limited to, costs for obtaining or copying records or documents required to complete the adoption, costs for the child's Convention court documents, passport, adoption certificate and other documents related to the adoption, and costs for notarizations and certifications;

(5) *Travel and accommodation expenses*. The expected total fees and expenses for any travel and accommodation services arranged by the agency or person for the prospective adoptive parent(s);

(6) *Contributions*. Any fixed contribution amount that the prospective adoptive parent(s) will be expected or required to make to child protection or child welfare service programs in the child's Convention country or in the United States, along

with an explanation of the intended use of the contribution and the manner in which the transaction will be recorded and accounted for; and

(7) *Post-placement and post-adoption reports*. The expected total fees and expenses for any post-placement or post-adoption reports that the agency or person or parent(s) must prepare in light of any requirements of the expected country of origin.

(c) The agency or person also specifies in its written adoption contract when and how funds advanced to cover fees or expenses will be refunded if adoption services are not provided.

(d) When the agency or person uses part of its fees to provide special services, such as cultural programs for adoptee(s), scholarships or other services, it discloses this policy to the prospective adoptive parent(s) in advance of providing any adoption services and gives the prospective adoptive parent(s) an explanation of the use of such funds.

(e) The agency or person has mechanisms in place for transferring funds to Convention countries when the financial institutions of the Convention country so permit and for obtaining written receipts for such transfers, so that direct cash transactions by the prospective adoptive parent(s) to pay for adoption services provided in the other Convention country are minimized or unnecessary.

(f) The agency or person does not customarily charge additional fees and expenses beyond those disclosed in the adoption contract and has a written policy to this effect. In the event that unforeseen additional fees and expenses are incurred in the other Convention country, the agency or person charges additional fees and expenses only under the following conditions:

(1) It discloses the fees and expenses in writing to the prospective adoptive parent(s);

(2) It obtains the specific consent of the prospective adoptive parent(s) prior to expending any funds in excess of \$800 for which the agency or person will hold the prospective adoptive parent(s) responsible or gives the prospective adoptive parent(s) the opportunity to waive the notice and consent requirement in advance. If the prospective adoptive parent(s) has the opportunity to waive the notice and consent requirement in advance, this policy is reflected in the written policies and procedures of the agency or person; and

(3) It provides written receipts to the prospective adoptive parent(s) for fees and expenses paid in the Convention

country and retains copies of such receipts.

(g) When its delivery of services is completed, the agency or person gives the prospective adoptive parent(s) an accounting of both the total fees and expenses incurred within thirty days of the completion of the delivery of the services.

(h) The agency or person returns any funds to which the prospective adoptive parent(s) may be entitled at the same time that the agency or person provides the accounting required in paragraph (g) of this section.

Responding to Complaints and Records and Reports Management

§ 96.41 Procedures for responding to complaints and improving service delivery.

(a) The agency or person has written complaint policies and procedures that incorporate the standards in paragraphs (b) through (h) of this section and provides a copy of such policies and procedures, including contact information for the Complaint Registry, to client(s) at the time the adoption contract is signed.

(b) The agency or person permits any birth parent, prospective adoptive parent, or adoptee to lodge a complaint or appeal about any of the services or activities of the agency or person that he or she believes are inconsistent with the Convention, the IAA, or the regulations implementing the IAA.

(c) The agency or person responds in writing to complaints within thirty days of receipt, and provides expedited review of complaints that are time-sensitive or that involve allegations of fraud.

(d) The agency or person maintains a written record of each complaint and the steps taken to investigate and respond to it and makes this record available to the accrediting entity, the Complaint Registry, or the Secretary upon request.

(e) The agency or person does not take any action to discourage a client or prospective client from, or retaliate against a client or prospective client for, making a complaint, expressing a grievance, questioning the conduct of, or expressing an opinion about the performance of an agency or person.

(f) The agency or person provides to the accrediting entity and the Complaint Registry, on a quarterly basis, a summary of all complaints received during the preceding quarter (including the number of complaints received and how each complaint was resolved) and an assessment of any discernible patterns in complaints received against the agency or person, along with

information about what systemic changes, if any, were made or are planned by the agency or person in response to such patterns.

(g) The agency or person provides such other information about complaints received as may be requested by the accrediting entity, the Complaint Registry, or the Secretary.

(h) The agency or person has a quality improvement program appropriate to its size and circumstances through which it makes systematic efforts to improve its adoption services as needed. The agency or person uses quality improvement methods such as reviewing complaint data, using client satisfaction surveys, or comparing the agency's or person's practices and performance against the data contained in the Secretary's annual reports to Congress on intercountry adoptions.

§ 96.42 Retention, preservation, and disclosure of adoption records.

(a) The agency or person retains or archives adoption records in a retrievable manner for the period of time required by applicable State law.

(b) The agency or person makes readily available to the adoptee or the adoptive parent(s) upon request all non-identifying information in its custody about the adoptee's health history or background.

(c) The agency or person preserves and discloses information in its custody about the adoptee's origin, social history, and birth parents' identity in accordance with applicable State law.

(d) The agency or person protects the privacy of birth parent(s), prospective adoptive parent(s), and adoptee(s) to whom adoption services were provided and safeguards sensitive information.

(e) The agency or person ensures that personal data gathered or transmitted in connection with an adoption is used only for the purposes for which the information was gathered.

(f) The agency or person has a plan that is consistent with the provisions of this section and applicable State law for transferring custody of adoption records that are subject to retention or archival requirements to an appropriate custodian, and ensuring the accessibility of those adoption records, in the event that the agency or person ceases to provide or is no longer permitted to provide adoption services under the Convention.

(g) The agency or person notifies the accrediting entity and the Secretary in writing within thirty days of the time it ceases to provide or is no longer permitted to provide adoption services and provides information about the transfer of its adoption records.

§ 96.43 Case tracking, data management, and reporting.

(a) When acting as the primary provider, the agency or person maintains all the data required in this section in a format approved by the accrediting entity and provides it to the accrediting entity on an annual basis.

(b) When acting as the primary provider, the agency or person routinely generates and maintains reports as follows:

(1) For cases involving children immigrating to the United States, information and reports on the total number of intercountry adoptions undertaken by the agency or person each year in both Convention and non-Convention cases and, for each case:

(i) The Convention country or other country from which the child emigrated;

(ii) The State to which the child immigrated;

(iii) The State, Convention country, or other country in which the adoption was finalized;

(iv) The age of the child; and

(v) The date of the child's placement for adoption.

(2) For cases involving children emigrating from the United States, information and reports on the total number of intercountry adoptions undertaken by the agency or person each year in both Convention and non-Convention cases and, for each case:

(i) The State from which the child emigrated;

(ii) The Convention country or other country to which the child immigrated;

(iii) The State, Convention country, or other country in which the adoption was finalized;

(iv) The age of the child; and

(v) The date of the child's placement for adoption.

(3) For each disrupted placement involving a Convention adoption, information and reports about the disruption, including information on:

(i) The Convention country from which the child emigrated;

(ii) The State to which the child immigrated;

(iii) The age of the child;

(iv) The date of the child's placement for adoption;

(v) The reason(s) for and resolution(s) of the disruption of the placement for adoption, including information on the child's re-placement for adoption and final legal adoption;

(vi) The names of the agencies or persons that handled the placement for adoption; and

(vii) The plans for the child.

(4) Wherever possible, for each dissolution of a Convention adoption, information and reports on the dissolution, including information on:

(j) The Convention country from which the child emigrated;

(ii) The State to which the child immigrated;

(iii) The age of the child;

(iv) The date of the child's placement for adoption;

(v) The reason(s) for and resolution(s) of the dissolution of the adoption, to the extent known by the agency or person;

(vi) The names of the agencies or persons that handled the placement for adoption; and

(vii) The plans for the child.

(5) Information on the shortest, longest, and average length of time it takes to complete a Convention adoption, set forth by the child's country of origin, calculated from the time the child is matched with the prospective adoptive parent(s) until the time the adoption is finalized by a court, excluding any period for appeal;

(6) Information on the range of adoption fees, including the lowest, highest, average, and the median of such fees, set forth by the child's country of origin, charged by the agency or person for Convention adoptions involving children immigrating to the United States in connection with their adoption.

(c) If the agency or person provides adoption services in cases not subject to the Convention that involve a child emigrating from the United States for the purpose of adoption or after an adoption has been finalized, it provides such information directly to the Secretary and as required by the Secretary and demonstrates to the accrediting entity that it has provided this information.

(d) The agency or person provides any of the information described in paragraphs (a) through (c) of this section to the accrediting entity or the Secretary within thirty days of request.

Service Planning and Delivery

§ 96.44 Acting as primary provider.

(a) When required by § 96.14(a), the agency or person acts as primary provider and adheres to the provisions in § 96.14(b) through (e). When acting as the primary provider, the agency or person provides, either directly or through arrangements with other accredited agencies, temporarily accredited agencies, approved persons, supervised providers, exempted providers, public bodies, competent authorities, or public authorities, all six "adoption services" listed in § 96.2, and develops and implements a service plan for providing all six of the required adoption services.

(b) The agency or person has an organizational structure, financial and

personnel resources, and policies and procedures in place that demonstrate that the agency or person is capable of acting as a primary provider in any Convention adoption case and, when acting as the primary provider, provides appropriate supervision to supervised providers in accordance with §§ 96.45 and 96.46.

§ 96.45 Using Supervised Providers in the United States.

(a) The agency or person, when acting as the primary provider and using supervised providers in the United States to provide adoption services, ensures that each such supervised provider:

(1) Is in compliance with applicable State licensing and regulatory requirements in all jurisdictions in which it provides adoption services;

(2) Does not engage in practices inconsistent with the Convention's principles of furthering the best interests of the child and preventing the sale, abduction, exploitation, or trafficking of children; and

(3) Before entering into an agreement with the primary provider for the provision of adoption services, discloses to the primary provider the suitability information listed in § 96.35.

(b) The agency or person, when acting as the primary provider and using supervised providers in the United States to provide adoption services, ensures that each such supervised provider operates under a written agreement with the primary provider that:

(1) Clearly identifies the adoption service(s) to be provided by the supervised provider and requires that the service(s) be provided in accordance with the applicable service standard(s) for accreditation and approval (for example: home study (§ 96.47), parent training (§ 96.48), child background studies and consents (§ 96.53));

(2) Requires the supervised provider to comply with the following standards regardless of the type of adoption services it is providing: § 96.36 (prohibition on child-buying), § 96.34 (compensation), § 96.38 (employee training), § 96.39(d) (blanket waivers of liability), and § 96.41(a) through (e) (complaints).

(3) Identifies specifically the lines of authority between the primary provider and the supervised provider, the employee of the primary provider who will be responsible for supervision, and the employee of the supervised provider who will be responsible for ensuring compliance with the written agreement;

(4) Clearly states the compensation arrangement for the services to be

provided and the fees and expenses to be charged by the supervised provider;

(5) Specifies whether the supervised provider's fees and expenses will be billed to and paid by the client(s) directly or billed to the client through the primary provider;

(6) Provides that, if billing the client(s) directly for its service, the supervised provider will give the client(s) an itemized bill of all fees and expenses to be paid, with a written explanation of how and when such fees and expenses will be refunded if the service is not completed, and will return any funds collected to which the client(s) may be entitled within thirty days of the completion of the delivery of services;

(7) Requires the supervised provider to meet the same personnel qualifications as accredited agencies and approved persons, as provided for in § 96.37;

(8) Provides that the primary provider will retain legal responsibility for each case in which adoption services are provided, as required by paragraph (c) of this section;

(9) Requires the supervised provider to protect the privacy of the individuals it serves, safeguard sensitive information, and ensure that personal data gathered or transmitted in connection with an adoption is used only for the purposes for which the information was gathered;

(10) Requires the supervised provider to respond within a reasonable period of time to any request for information from the primary provider, the Secretary, or the accrediting entity that issued the primary provider's accreditation or approval;

(11) Requires the supervised provider to provide the primary provider on a timely basis any data that is necessary to comply with the primary provider's reporting requirements;

(12) Requires the supervised provider to disclose promptly to the primary provider any changes in the suitability information required by § 96.35;

(13) Permits suspension or termination of the agreement on reasonable notice if the primary provider has grounds to believe that the supervised provider is not in compliance with the agreement or the requirements of this section.

(c) The agency or person, when acting as the primary provider and using supervised providers in the United States to provide adoption services, does the following in relation to risk management:

(1) Assumes tort, contract, and other civil liability to the prospective adoptive parent(s) for the supervised

provider's provision of the contracted adoption services and its compliance with the standards in this subpart F; and

(2) Maintains a bond, escrow account, or liability insurance in an amount sufficient to cover the risks of liability arising from its work with supervised providers.

(d) Nothing in this section shall be construed as prohibiting the primary provider from obtaining indemnification or from seeking damages or other redress from a supervised provider for breach of contract, or from pursuing any other legal claim against such supervised provider arising from the provision of contracted adoption services.

§ 96.46 Using supervised providers in other Convention countries.

(a) The agency or person, when acting as the primary provider and using foreign supervised providers to provide adoption services in other Convention countries, ensures that each such foreign supervised provider:

(1) Is in compliance with the laws of the Convention country in which it operates;

(2) Does not engage in practices inconsistent with the Convention's principles of furthering the best interests of the child and preventing the sale, abduction, exploitation, or trafficking of children;

(3) Before entering into an agreement with the primary provider for the provision of adoption services, discloses to the primary provider the suitability information listed in § 96.35, taking into account the authorities in the Convention country that are analogous to the authorities identified in that section; and

(4) Does not have a pattern of licensing suspensions or other sanctions and has not lost the right to provide adoption services in any jurisdiction for reasons germane to the Convention.

(b) The agency or person, when acting as the primary provider and using foreign supervised providers to provide adoption services in other Convention countries, ensures that each such foreign supervised provider operates under a written agreement with the primary provider that:

(1) Clearly identifies the adoption service(s) to be provided by the foreign supervised provider;

(2) Requires the foreign supervised provider, if responsible for obtaining medical or social information on the child, to comply with the standards in § 96.49(d) through (j).

(3) Requires the foreign supervised provider to prohibit child buying by any of its employees and agents; to have a

written policy prohibiting its employees and agents from giving money or other consideration, directly or indirectly, to a child's parent(s), other individual(s), or an entity as payment for the child or as an inducement to release the child, other than reasonable or required payments for activities related to the adoption proceedings, pre-birth and birth medical costs, the care of the child, or the provision of child welfare and child protection services generally; and to provide training to its employees and agents on this policy;

(4) Requires the foreign supervised provider to compensate its directors, officers, and employees who provide intercountry adoption services on a fee-for-service, hourly wage, or salary basis, rather than based on whether a child is placed for adoption or on a similar contingent fee basis;

(5) Identifies specifically the lines of authority between the primary provider and the foreign supervised provider, the employee of the primary provider who will be responsible for supervision, and the employee of the supervised provider who will be responsible for ensuring compliance with the written agreement;

(6) Clearly states the compensation arrangement for the services to be provided and the fees and expenses to be charged by the foreign supervised provider;

(7) Specifies whether the foreign supervised provider's fees and expenses will be billed to and paid by the client(s) directly or billed to the client through the primary provider;

(8) Provides that, if billing the client(s) directly for its service, the foreign supervised provider will give the client(s) an itemized bill of all fees and expenses to be paid, with a written explanation of how and when such fees and expenses will be refunded if the service is not completed, and will return any funds collected to which the client(s) may be entitled within thirty days of the completion of the delivery of services;

(9) Provides that the primary provider will retain legal responsibility for each case in which adoption services are provided, as required by paragraph (c) of this section;

(10) Requires the foreign supervised provider to respond within a reasonable period of time to any request for information from the primary provider, the Secretary, or the accrediting entity that issued the primary provider's accreditation or approval;

(11) Requires the foreign supervised provider to provide the primary provider on a timely basis any data that is necessary to comply with the primary provider's reporting requirements;

(12) Requires the foreign supervised provider to disclose promptly to the primary provider any changes in the suitability information required by § 96.35; and

(13) Permits suspension or termination of the agreement on reasonable notice if the primary provider has grounds to believe that the foreign supervised provider is not in compliance with the agreement or the requirements of this section.

(c) The agency or person, when acting as the primary provider and using foreign supervised providers to provide adoption services in other Convention countries, does the following in relation to risk management:

(1) Assumes tort, contract, and other civil liability to the prospective adoptive parent(s) for the foreign supervised provider's provision of the contracted adoption services and its compliance with the standards in this subpart F; and

(2) Maintains a bond, escrow account, or liability insurance in an amount sufficient to cover the risks of liability arising from its work with foreign supervised providers.

(d) Nothing in this section shall be construed as prohibiting the primary provider from obtaining indemnification or from seeking damages or other redress from a foreign supervised provider for breach of contract, or from pursuing any other legal claim against such supervised provider arising from the provision of contracted adoption services.

Standards for Cases in Which a Child Is Immigrating to the United States (Incoming Cases)

§ 96.47 Preparation of home studies in incoming cases.

(a) The agency or person ensures that a home study on the prospective adoptive parent(s) is completed that includes the following:

(1) Information about the prospective adoptive parent(s)' identity, eligibility and suitability to adopt, background, family and medical history, social environment, reasons for adoption, ability to undertake an intercountry adoption, and the characteristics of the children for whom the prospective adoptive parent(s) would be qualified to care (specifying in particular whether they are willing and able to care for a child with special needs);

(2) A determination whether the prospective adoptive parent(s) are eligible and suited to adopt;

(3) A statement describing the counseling and training provided to the prospective adoptive parent(s);

(4) The results of a criminal background check on the prospective adoptive parent(s) and any other individual for whom a check is required by 8 CFR 204.3(e);

(5) A full and complete statement of all facts relevant to the eligibility and suitability of the prospective adoptive parent(s) to adopt a child under any specific requirements identified to the Secretary by the Central Authority of the child's country of origin; and

(6) A statement in each copy of the home study that it is a true and accurate copy of the home study that was provided to the prospective adoptive parent(s) or DHS.

(b) The agency or person ensures that the home study is performed in accordance with 8 CFR 204.3(e), and any applicable State law.

(c) Where the home study is not performed in the first instance by an accredited agency or temporarily accredited agency (that is, it was initially prepared by an approved person or an exempted provider), the agency or person ensures that the home study is reviewed and approved in writing by an accredited agency or temporarily accredited agency. The written approval must include a determination that the home study:

(1) Includes all of the information required by paragraph (a) of this section and is performed in accordance with 8 CFR 204.3(e), and applicable State law; and

(2) Was performed by an individual who meets the personnel qualifications in § 96.37(f), or, if the individual is an exempted provider, ensure that the individual meets the requirements for home study providers established by 8 CFR 204.3(b).

(d) The agency or person takes all appropriate measures to ensure the timely transmission of the same home study that was provided to the prospective adoptive parent(s) or to DHS (including any supplemental statement to the home study) to the Central Authority or other competent authority of the child's country of origin.

§ 96.48 Preparation and training of prospective adoptive parent(s) in incoming cases.

(a) The agency or person provides prospective adoptive parent(s) with at least ten hours (independent of the home study) of preparation and training, as described in paragraphs (b) and (c) of this section, designed to promote a successful intercountry adoption. The agency or person provides such training before the prospective adoptive parent(s) travel to adopt the child or the

child is placed with the prospective adoptive parent(s) for adoption.

(b) The training provided by the agency or person addresses the following topics:

(1) The intercountry adoption process, the general characteristics and needs of children awaiting adoption, and the intercountry conditions that affect children in the Convention country from which the prospective adoptive parent(s) plan to adopt;

(2) The effects on children of malnutrition, relevant environmental toxins, maternal substance abuse, and of any other known genetic, health, emotional, and developmental risk factors associated with children from the expected country of origin;

(3) Information about the impact on a child of leaving familiar ties and surroundings, as appropriate to the expected age of the child;

(4) Data on institutionalized children and the impact of institutionalization on children, including the effect on children of the length of time spent in an institution and of the type of care provided in the expected country of origin;

(5) Information on attachment disorders and other emotional problems that institutionalized or traumatized children and children with a history of multiple caregivers may experience, before and after their adoption;

(6) Information on the laws and adoption processes of the expected country of origin, including foreseeable delays and impediments to finalization of an adoption;

(7) Information on the long-term implications for a family that has become multicultural through intercountry adoption; and

(8) An explanation of any reporting requirements associated with Convention adoptions, including any post-placement or post-adoption reports required by the expected country of origin.

(c) The agency or person also provides the prospective adoptive parent(s) with training that allows them to be as fully prepared as possible for the adoption of a particular child. This includes counseling on:

(1) The child's history and cultural, racial, religious, ethnic, and linguistic background;

(2) The known health risks in the specific region or country where the child resides; and

(3) Any other medical, social, and other data known about the particular child.

(d) The agency or person provides such training through appropriate methods, including:

(1) Collaboration among agencies or persons to share resources to meet the training needs of parents;

(2) Group seminars offered by the agency or person or other agencies or training entities;

(3) Individual counseling sessions;

(4) Video, computer-assisted, or distance learning methods using standardized curricula;

(5) In cases where training cannot otherwise be provided, an extended home study process, with a system for evaluating the thoroughness with which the topics have been covered.

(e) The agency or person provides additional in-person, individualized counseling and preparation, as needed, to meet the needs of the parent(s) in light of the particular child(ren) to be adopted and his or her special needs, and any other training or counseling needed in light of the child background study or the home study.

(f) The agency or person provides the prospective adoptive parent(s) with information about print, internet, and other resources available for continuing to acquire information about common behavioral, medical, and other issues; connecting with parent support groups, adoption clinics and experts; and seeking appropriate help when needed.

(g) The agency or person exempts prospective adoptive parent(s) from all or part of the training and preparation that would normally be required for a specific adoption only where the parent(s) have received adequate prior training or have prior experience as parent(s) of children adopted from abroad.

(h) The agency or person records the nature and extent of the training and preparation provided to the prospective adoptive parent(s) in the adoption record.

§ 96.49 Provision of medical and social information in incoming cases.

(a) The agency or person provides a copy of the child's medical records to the prospective adoptive parent(s) at least two weeks before either the adoption or placement for adoption, or the date on which the prospective adoptive parent(s) travel to the other Convention country to complete all procedures in such country relating to the adoption or placement for adoption, whichever is earlier.

(b) To the fullest extent practicable, the agency or person provides the prospective adoptive parent(s) with a correct and complete English-language translation of the records and, where the medical records provided pursuant to paragraph (a) of this section are a summary or compilation of other

medical records, the agency or person provides a copy of the original medical records used to create that summary or compilation if the original medical records are available.

(c) The agency or person provides the prospective adoptive parent(s) with an opportunity to arrange another translation of the records, including a translation into a language other than English, if needed.

(d) The agency or person itself uses reasonable efforts, or requires its supervised provider or agent in the child's country of origin who is responsible for obtaining medical information about the child on behalf of the agency or person to use reasonable efforts, to obtain available information, including in particular:

(1) The date that the Convention country or other child welfare authority assumed custody of the child and the child's condition at that time;

(2) History of any significant illnesses, hospitalizations, and changes in the child's condition since the Convention country or other child welfare authority assumed custody of the child;

(3) Growth data and developmental status at the time of the child's referral for adoption; and

(4) Specific information on the known health risks in the specific region or country where the child resides.

(e) If the agency or person provides medical information to the prospective adoptive parent(s) from an examination by a physician or from an observation of the child by someone who is not a physician, the information includes:

(1) The name and credentials of the physician who performed the examination or the individual who observed the child;

(2) The date of the examination or observation;

(3) If the medical information includes references, descriptions, or observations made by any individual other than the physician who performed the examination or the individual who performed the observation, the identity of that individual, the individual's training, and information on whether the individual relied on objective data or subjective perceptions in drawing his or her conclusions;

(4) A review of hospitalizations, significant illnesses, and other significant medical events, and the reasons for them;

(5) Information about the full range of any tests performed on the child, including tests addressing known risk factors in the child's country of origin; and

(6) Current health information.

(f) The agency or person itself uses reasonable efforts, or requires its supervised provider or agent in the child's country of origin who is responsible for obtaining social information about the child on behalf of the agency or person to use reasonable efforts, to obtain available information, including in particular:

(1) Information about the child's history and cultural, racial, religious, ethnic, and linguistic background; and

(2) Information about all of the child's past and current placements prior to adoption, including information on who assumed custody and provided care for the child.

(g) Where any of the information listed in paragraphs (d) and (f) of this section cannot be obtained, the agency or person documents in the adoption record the efforts made to obtain the information and why it was not obtainable.

(h) Where available, the agency or person provides information for contacting the examining physician or the individual who made the observations to any physician engaged by the prospective adoptive parent(s), upon request.

(i) The agency or person ensures that videotapes and photographs of the child are identified by the date on which the videotape or photograph was recorded or taken.

(j) Neither the agency or person nor its agents withhold from or misrepresent to the prospective adoptive parent(s) any medical, social, or other pertinent information concerning the child.

(k) The agency or person does not withdraw a referral until the prospective adoptive parent(s) have had at least a week (unless extenuating circumstances involving the child's best interests require a more expedited decision) to consider the needs of the child and their ability to meet those needs, and to obtain physician review of medical information and other descriptive information, including videotapes of the child.

§ 96.50 Placement and post-placement monitoring until final adoption in incoming cases.

(a) The agency or person takes all appropriate measures to ensure that the transfer of the child takes place in secure and appropriate circumstances, with properly trained and qualified escorts, if used, and, if possible, in the company of the prospective adoptive parent(s).

(b) After the child is placed with the prospective adoptive parent(s) prior to the adoption, the agency or person monitors and supervises the child's

placement to ensure that the placement remains in the best interests of the child, and ensures that at least the number of home visits required by State law or by the child's country of origin are performed, whichever is greater.

(c) When a placement for adoption is in crisis, the agency or person makes an effort to provide or arrange for counseling by an individual with appropriate skills to assist the family in dealing with the problems that have arisen.

(d) When counseling in a placement for adoption that is in crisis does not succeed in resolving the crisis and the placement is disrupted, the agency or person assuming custody of the child assumes responsibility for making another placement of the child.

(e) The agency or person acts promptly and in accord with any applicable legal requirements to remove the child when the placement may no longer be in the child's best interests, to provide temporary care, to find an eventual adoptive placement for the child, and, in consultation with the Secretary, to inform the Central Authority of the child's country of origin about any new prospective adoptive parent(s).

(1) In all cases where removal of a child from a placement is considered, the agency or person considers the child's views when appropriate in light of the child's age and maturity and, when required by State law, obtains the consent of the child prior to removal.

(2) The agency or person does not return from the United States a child placed for adoption in the United States unless the Central Authority of the country of origin and the Secretary have approved the return in writing.

(f) The agency or person includes in the written adoption contract with the prospective adoptive parent(s) a plan describing the agency's or person's responsibilities if a placement for adoption is disrupted. This plan addresses:

(1) Who will have legal and financial responsibility for transfer of custody in an emergency or in the case of impending disruption and for the care of the child;

(2) If the disruption takes place after the child has arrived in the United States, under what circumstances the child will, as a last resort, be returned to the child's country of origin, if that is determined to be in the child's best interests;

(3) How the child's wishes, age, length of time in the United States, and other pertinent factors will be taken into account; and

(4) How the Central Authority of the child's country of origin and the Secretary will be notified.

(g) The agency or person provides post-placement reports until final adoption on a child to the other Convention country when required by the other Convention country. Where such reports are required, the agency or person:

(1) Informs the prospective adoptive parent(s) of the requirement prior to the referral of the child for adoption;

(2) Informs the prospective adoptive parent(s) that they will be required to provide all necessary information for the report(s); and

(3) Discloses who will prepare the reports and the fees that will be charged.

(h) The agency or person takes steps to:

(1) Ensure that an order declaring the adoption as final is sought by the prospective adoptive parent(s), and entered in compliance with section 301(c) of the IAA (Pub. L. 106-279, section 301(c), 42 U.S.C. 14931(c)); and

(2) Notify the Secretary of the finalization of the adoption within thirty days of the entry of the order.

§ 96.51 Post-adoption services in incoming cases.

(a) The agency or person takes all appropriate measures to ensure that the transfer of the child takes place in secure and appropriate circumstances, with properly trained and qualified escorts, if used, and, if possible, in the company of the adoptive parent(s).

(b) The agency or person either informs the prospective adoptive parent(s) in the written adoption contract that the agency or person will not provide services if an adoption is dissolved or provides a plan describing the agency's or person's responsibilities, if any, if an adoption is dissolved.

(c) When post-adoption reports are required by the child's country of origin, the agency or person includes a requirement for such reports in the adoption contract and makes good-faith efforts to encourage adoptive parent(s) to provide such reports.

(d) The agency or person does not return from the United States an adopted child whose adoption has been dissolved unless the Central Authority of the country of origin and the Secretary have approved the return in writing.

(e) If the agency or person voluntarily provides post-adoption services, it ensures that the individual providing such services has knowledge of post-adoption issues and, if possible, of the legal, social, cultural, and emotional issues pertinent to the particular adoption case in which it is involved.

§ 96.52 Performance of Hague Convention communication and coordination functions in incoming cases.

(a) The agency or person keeps the Central Authority of the other Convention country and the Secretary informed about the adoption process and the measures taken to complete it, as well as about the progress of the placement if a probationary period is required.

(b) The agency or person takes all appropriate measures, consistent with the procedures of the other Convention country, to:

(1) Transmit on a timely basis the home study to the Central Authority or other competent authority of the child's country of origin;

(2) Obtain the child background study, proof that the necessary consents to the child's adoption have been obtained, and the necessary determination that the prospective placement is in the child's best interests, from the Central Authority or other competent authority in the child's country of origin;

(3) Provide confirmation that the prospective adoptive parent(s) agree to the adoption to the Central Authority or other competent authority in the child's country of origin; and

(4) Transmit the determination that the child is or will be authorized to enter and reside permanently in the United States to the Central Authority or other competent authority in the child's country of origin.

(c) The agency or person takes all necessary and appropriate measures, consistent with the procedures of the other Convention country, to obtain permission for the child to leave his or her country of origin and to enter and reside permanently in the United States.

(d) Where the transfer of the child does not take place, the agency or person returns the home study on the prospective adoptive parent(s) and/or the child background study to the authorities that forwarded them.

(e) The agency or person takes all necessary and appropriate measures to perform any tasks in a Convention adoption case that the Secretary identifies are required to comply with the Convention, the IAA, or any regulations implementing the IAA.

Standards for Cases in Which a Child Is Emigrating From the United States (Outgoing Cases)

§ 96.53 Background studies on the child and consents in outgoing cases.

(a) The agency or person takes all appropriate measures to ensure that a child background study is performed that includes information about the

child's identity, adoptability, background, social environment, family history, medical history (including that of the child's family), and any special needs of the child.

(b) Where the child background study is not prepared in the first instance by an accredited agency or temporarily accredited agency (that is, it was initially prepared by an approved person or exempted provider), it ensures that the background study is reviewed and approved in writing by an accredited agency or temporarily accredited agency. The written approval must include a determination that the background study:

(1) Includes all the information required by paragraph (a) of this section;

(2) Evidences that consents were obtained in accordance with paragraph (c) of this section;

(3) Reflects consideration of the child's wishes and opinions in accordance with paragraph (d) of this section; and

(4) Was prepared either by an exempted provider or by an individual who meets the personnel qualifications set forth in § 96.37(g).

(c) The agency or person takes all appropriate measures to ensure that consents have been obtained as follows:

(1) The persons, institutions, and authorities whose consent is necessary for adoption have been counseled as necessary and duly informed of the effects of their consent, in particular whether or not an adoption will result in the termination of the legal relationship between the child and his or her family of origin;

(2) All such persons, institutions, and authorities have given their consents;

(3) The consents have been expressed or evidenced in writing in the required legal form, have been given freely, were not induced by payments or compensation of any kind, and have not been withdrawn;

(4) The consent of the mother, where required, was executed after the birth of the child;

(5) The child, as appropriate in light of his or her age and maturity, has been counseled and duly informed of the effects of the adoption and of his or her consent to the adoption, including that it will result in the child living in another country; and

(6) The child's consent, where required, has been given freely, in the required legal form, and expressed or evidenced in writing and not induced by payment or compensation of any kind.

(d) If the child is ten years of age or older, or as otherwise provided by State law, the agency or person gives due

consideration to the child's wishes or opinions before determining that an intercountry placement is in the child's best interests.

(e) The agency or person takes all appropriate measures to transmit to the Central Authority or other competent authority of the other Convention country the child background study, proof that the necessary consents have been obtained, and the reasons for its determination that the placement is in the child's best interests. In doing so, the agency or person, as required by Article 16(2) of the Convention, does not reveal the identity of the mother or the father if these identities may not be disclosed under State law.

§ 96.54 Placement standards in outgoing cases.

(a) Except in the case of adoption by relatives or in the case in which the birth parent(s) have identified specific prospective adoptive parent(s) or in other special circumstances accepted by the State court with jurisdiction over the case, the agency or person makes reasonable efforts to find a timely adoptive placement for the child in the United States by:

(1) Disseminating information on the child and his or her availability for adoption through print, media, and internet resources designed to communicate with potential prospective adoptive parent(s) in the United States;

(2) Listing information about the child on a national or State adoption exchange or registry for at least thirty calendar days after the birth of the child;

(3) Responding to inquiries about adoption of the child; and

(4) Providing a copy of the child background study to potential prospective adoptive parent(s).

(b) The agency or person demonstrates to the satisfaction of the State court with jurisdiction over the adoption that sufficient reasonable efforts to find a timely adoptive placement for the child in the United States were made, or that making such reasonable efforts was not in the best interests of the child.

(c) In placing the child for adoption, the agency or person:

(1) To the extent consistent with State or Federal law, gives significant weight to the placement preferences expressed by the birth parent(s) in all voluntary placements;

(2) Makes diligent efforts to place siblings together for adoption and, where placement together is not possible, to arrange for contact between separated siblings, unless it is in the best interests of one of the siblings that

such efforts or contact not take place; and

(3) Complies with all applicable requirements of the Indian Child Welfare Act.

(d) If and as required by State law, the agency or person provides the birth parent(s) with independent legal counsel at the expense of the agency or person or the prospective adoptive parent(s), and fully discloses to the birth parent(s) that the child is to be adopted by parent(s) who reside outside the United States.

(e) The agency or person takes all appropriate measures to give due consideration to the child's upbringing and to his or her ethnic, religious, and cultural background.

(f) When particular prospective adoptive parent(s) in another Convention country have been identified, the agency or person takes all appropriate measures to determine whether the envisaged placement is in the best interests of the child, on the basis of the child background study and the home study on the prospective adoptive parent(s).

(g) The agency or person thoroughly prepares the child for the transition to the other Convention country, using age-appropriate services that address the child's likely feelings of separation, grief, and loss and difficulties in making any cultural, religious, racial, ethnic, or linguistic adjustment.

(h) The agency or person takes all appropriate measures to ensure that the transfer of the child takes place in secure and appropriate circumstances, with properly trained and qualified escorts, if used, and, if possible, in the company of the adoptive parent(s) or the prospective adoptive parent(s);

(i) Before the placement for adoption proceeds, the agency or person identifies the entity in the receiving country that will provide post-placement supervision and reports, if required by State law, and ensures that the child's adoption record contains the information necessary for contacting that entity.

(j) The agency or person ensures that the child's adoption record includes the order granting the adoption or legal custody for the purpose of adoption in the Convention country.

(k) The agency or person consults with the Secretary before arranging for the return to the United States of any child who has emigrated to a Convention country in connection with the child's adoption.

§ 96.55 Performance of Hague Convention communication and coordination functions in outgoing cases.

(a) The agency or person keeps the Central Authority of the other Convention country and the Secretary informed about the adoption process and the measures taken to complete it, as well as about the progress of the placement if a probationary period is required.

(b) The agency or person ensures that:

(1) Copies of all documents from the State court proceedings, including the order granting the adoption or legal custody, are provided to the Secretary;

(2) Any additional information on the adoption is transmitted to the Secretary promptly upon request; and

(3) It otherwise facilitates, as requested, the Secretary's ability to provide the certification that the child has been adopted or that custody has been granted for the purpose of adoption, in accordance with the Convention and the IAA.

(c) Where the transfer of the child does not take place, the agency or person returns the home study on the prospective adoptive parent(s) and/or the child background study to the authorities that forwarded them.

(d) The agency or person provides to the State court with jurisdiction over the adoption:

(1) Proof that consents have been given as required in § 96.53(c);

(2) An English copy or certified English translation of the home study on the prospective adoptive parent(s) in the other Convention country, and the determination by the agency or person that the placement with the prospective adoptive parent(s) is in the child's best interests;

(3) Evidence that the prospective adoptive parent(s) in the other Convention country agree to the adoption;

(4) Evidence that the child will be authorized to enter and reside permanently in the Convention country or on the same basis as that of the prospective adoptive parent(s); and

(5) Evidence that the Central Authority of the other Convention country has agreed to the adoption, if such consent is necessary under its laws for the adoption to become final.

(e) The agency or person makes the showing required by § 96.54(b) to the State court with jurisdiction over the adoption.

(f) The agency or person takes all necessary and appropriate measures to perform any tasks in a Convention adoption case that the Secretary identifies are required to comply with

the Convention, the IAA, or any regulations implementing the IAA.

§ 96.56 [Reserved]

Subpart G—Decisions on Applications for Accreditation or Approval

§ 96.57 Scope.

The provisions in this subpart establish the procedures for when the accrediting entity issues decisions on applications for accreditation or approval. Temporary accreditation is governed by the provisions in subpart N of this part. Unless otherwise provided in subpart N of this part, the provisions in subpart G of this part do not apply to agencies seeking temporary accreditation.

§ 95.58 Notification of accreditation and approval decisions.

(a) The accrediting entity must notify agencies and persons that applied by the transitional application deadline of its accreditation and approval decisions on a uniform notification date to be established by the Secretary. On that date, the accrediting entity must inform each applicant and the Secretary in writing whether the agency's or person's application has been granted or denied or remains pending. The accrediting entity may not provide any information about its accreditation or approval decisions to any agency or person or to the public until the uniform notification date. If the Secretary requests information on the interim or final status of an applicant prior to the uniform notification date, the accrediting entity must provide such information to the Secretary.

(b) Notwithstanding the provisions in paragraph (a) of this section, the accrediting entity may, in its discretion, communicate with agencies and persons that applied by the transitional application deadline about the status of their pending applications for the sole purpose of affording them an opportunity to correct deficiencies that may hinder or prevent accreditation or approval.

(c) The accrediting entity must routinely inform applicants that applied after the transitional application deadline in writing of its accreditation and approval decisions, as those decisions are finalized, but may not do so earlier than the uniform notification date referenced in paragraph (a) of this section. The accrediting entity must routinely provide this information to the Secretary in writing.

§ 96.59 Review of decisions to deny accreditation or approval.

(a) There is no administrative or judicial review of an accrediting entity's decision to deny an application for accreditation or approval. As provided in § 96.79, a decision to deny for these purposes includes:

- (1) A denial of the agency's or person's initial application for accreditation or approval;
- (2) A denial of an application made after cancellation or refusal to renew by the accrediting entity; and
- (3) A denial of an application made after cancellation or debarment by the Secretary.

(b) The agency or person may petition the accrediting entity for reconsideration of a denial. The accrediting entity must establish internal review procedures that provide an opportunity for an agency or person to petition for reconsideration of the denial.

§ 96.60 Length of accreditation or approval period.

(a) Except as provided in paragraph (b) of this section, the accrediting entity will accredit or approve an agency or person for a period of four years. The accreditation or approval period will commence either on the date the Convention enters into force for the United States (if the agency or person is accredited or approved before that date) or on the date that the agency or person is granted accreditation or approval.

(b) In order to stagger the renewal requests from agencies and persons that applied for accreditation or approval by the transitional application deadline, so as to prevent renewal requests from coming due at the same time, the accrediting entity may, in consultation with the Secretary, accredit or approve some agencies and persons that applied by the transitional application deadline for a period of between three and five years for their first accreditation or approval cycle. The accrediting entity must establish criteria, which must be approved by the Secretary, for choosing which agencies and persons it will accredit or approve for a period of other than four years.

§ 96.61 [Reserved]

Subpart H—Renewal of Accreditation or Approval

§ 96.62 Scope.

The provisions in this subpart establish the procedures for renewal of an agency's accreditation or a person's approval. Temporary accreditation may not be renewed, and the provisions in

subpart H of this part do not apply to temporarily accredited agencies.

§ 96.63 Renewal of accreditation or approval.

(a) The accrediting entity must advise accredited agencies and approved persons it is responsible for monitoring of the date by which they should seek renewal of their accreditation or approval so that the renewal process can reasonably be completed before the agency's or person's current accreditation or approval expires. If the accredited agency or approved person wishes to renew its accreditation or approval, it must seek renewal by this date. If the accredited agency or approved person does not wish to renew its accreditation or approval, it must immediately notify the accrediting entity and take all necessary steps to complete its Convention cases and to transfer its pending Convention cases and adoption records to other accredited agencies, approved persons, or a State archive, as appropriate, under the oversight of the accrediting entity, before its accreditation or approval expires.

(b) The accredited agency or approved person may seek renewal from a different accrediting entity than the one that handled its prior application. If it changes accrediting entities, the accredited agency or approved person must so notify the accrediting entity that handled its prior application by the date on which the agency or person must (pursuant to paragraph (a) of this section) seek renewal of its status. The accredited agency or approved person must follow the accrediting entity's instructions when submitting a request for renewal and preparing documents and other information for the accrediting entity to review in connection with the renewal request.

(c) The accrediting entity must process the request for renewal in a timely fashion. Before deciding whether to renew the accreditation or approval of an agency or person, the accrediting entity may, in its discretion, advise the agency or person of any deficiencies that may hinder or prevent its renewal and defer a decision to allow the agency or person to correct the deficiencies. The accrediting entity must routinely notify the accredited agency, approved person, and the Secretary in writing when it renews or refuses to renew an agency's or person's accreditation or approval.

(d) Sections 96.25 and 96.26, relating to requests for and use of information, and § 96.27, relating to the substantive criteria for evaluating applicants for accreditation or approval, other than

§ 96.27(e), will govern determinations whether to renew accreditation or approval. In addition, in lieu of § 96.27(e), if the agency or person has been suspended by an accrediting entity or the Secretary during its most current accreditation or approval cycle, the accrediting entity may take the reasons underlying the suspension into account when determining whether to renew accreditation or approval and may refuse to renew accreditation or approval based on the prior suspension.

§ 96.64 [Reserved]

Subpart I—Routine Oversight by Accrediting Entities

§ 96.65 Scope.

The provisions in this subpart establish the procedures for routine oversight of accredited agencies and approved persons. Temporary accreditation is governed by the provisions of subpart N of this part. Unless otherwise provided in subpart N, the provisions in subpart I of this part do not apply to temporarily accredited agencies.

§ 96.66 Oversight of accredited agencies and approved persons by the accrediting entity.

(a) The accrediting entity must monitor agencies it has accredited and persons it has approved at least annually to ensure that they are in substantial compliance with the standards in subpart F of this part. The accrediting entity must investigate complaints about accredited agencies and approved persons, as provided in subpart J of this part.

(b) An accrediting entity may, on its own initiative, conduct site visits to inspect an agency's or person's premises or programs, with or without advance notice, for purposes of random verification of its continued compliance or to investigate a complaint. The accrediting entity may consider any information about the agency or person that becomes available to it about the compliance of the agency or person. The provisions of §§ 96.25 and 96.26 govern requests for and use of information.

§ 96.67 [Reserved]

Subpart J—Oversight Through Review of Complaints

§ 96.68 Scope.

The provisions in this subpart establish the procedures for processing complaints against accredited agencies and approved persons. Temporary accreditation is governed by the provisions of subpart N of this part, and as provided for in § 96.103, procedures

for processing complaints on temporarily accredited agencies must comply with subpart J of this part.

§ 96.69 Filing of complaints against accredited agencies and approved persons.

(a) Complaints against accredited agencies and approved persons may be made as follows:

(1) The complaint must first be filed with the agency or person providing adoption services;

(2) If the agency or person against whom the complaint is being made is a supervised provider, the complaint must also be filed with the primary provider;

(3) If a complaint is filed with a supervised provider, the supervised provider must instruct the complainant to also file the complaint with the primary provider and must provide the complainant with the primary provider's contact information;

(4) If the complaint cannot be resolved through the complaint processes of the agency or person providing the services or the primary provider (if different), or if the complaint was resolved by an agreement to take action but the agency or person providing the service or the primary provider (if different) failed to take such action within thirty days of agreeing to do so, the complaint may then be filed with the Complaint Registry in accordance with § 96.70, which will refer the complaint to the accrediting entity or other appropriate authority in accordance with § 96.70(b).

(b) A Federal government body, including DHS, a public body, any law enforcement authority or licensing authority, or a foreign Central Authority may make complaints directly to the Complaint Registry or the accrediting entity overseeing the accredited agency or approved person. Federal government bodies, including DHS, may report complaints directly to the Secretary.

§ 96.70 Review of complaints about accredited agencies and approved persons by the Complaint Registry.

(a) The Secretary shall establish a Complaint Registry to assist the Secretary in executing his or her oversight responsibilities and to perform such functions on behalf of the accrediting entity as the Secretary may determine. The Secretary may provide for the Complaint Registry to be funded in whole or in part from fees collected by the Secretary pursuant to section 403(b) of the IAA (Pub. L. 106–279, section 403(b), 42 U.S.C. 14943(b)) or by the accrediting entity(s).

(b) The Secretary will provide for the Complaint Registry to:

(1) Record, screen, refer (to the appropriate accrediting entity, the Secretary, or a law enforcement or other agency), and track the resolution and disposition of complaints that could not be resolved through the complaint processes of the relevant agency or person that provided the service in question, or the primary provider (if different);

(2) Record, screen, refer (to the appropriate accrediting entity, the Secretary, or a law enforcement or other agency), and track the resolution and disposition of cases in which the agency or person that provided the service in question, or the primary provider (if different) failed to take specific remedial action on a complaint within thirty days of agreeing to do so;

(3) Report possible patterns of complaints made at any time against a particular accredited agency or approved person to the accrediting entity overseeing that agency or person; and

(4) Perform such other functions as the Secretary may assign to it to assist the accrediting entity or the Secretary in exercising their oversight and other responsibilities under the IAA.

(c) The Secretary will post on the Department's Web site contact information necessary for submitting complaints to the Complaint Registry and information concerning its precise functions.

§ 96.71 Review of complaints against accredited agencies and approved persons by the accrediting entity.

(a) The accrediting entity must establish written procedures, including deadlines, for recording, investigating, and acting upon complaints it receives about agencies it has accredited and persons it has approved. The procedures must be consistent with this section and be approved by the Secretary. The accrediting entity must make written information about its complaint procedures available upon request.

(b) If the accrediting entity determines that a complaint implicates the Convention, the IAA, or the regulations implementing the IAA, it must act as follows:

(1) Unless the complaint was made directly to the Complaint Registry or the accrediting entity pursuant to § 96.69(b), the accrediting entity must verify whether the complainant has already attempted to resolve the complaint through the internal complaint procedures of the agency or person that provided the service or the primary provider (if different) and, if not, may refer the complaint to the agency or person, or to the primary provider, for

attempted resolution through its internal complaint procedures.

(2) The accrediting entity may conduct whatever investigative activity (including site visits) it considers necessary to determine whether the accredited agency or approved person may maintain accreditation or approval as provided in § 96.27. The provisions of §§ 96.25 and 96.26 govern requests for and use of information. The accrediting entity must give priority to complaints submitted from the Secretary, other Federal government bodies, including DHS, any law enforcement or licensing authority, a public body, or a foreign Central Authority.

(3) If the accrediting entity determines that the agency or person may not maintain accreditation or approval, it must take adverse action pursuant to subpart K of this part.

(c) When the accrediting entity has completed its complaint review process, it must provide written notification of the outcome of its investigation, and any actions taken, to the complainant, the Complaint Registry, and to any other entity that referred the information.

(d) The accrediting entity may not take any action to discourage an individual from, or retaliate against an individual for, making a complaint, expressing a grievance, questioning the conduct of, or expressing an opinion about the performance of an accredited agency, an approved person, or the accrediting entity.

§ 96.72 Referral of complaints to the Secretary and other authorities.

(a) An accrediting entity must report promptly to the Secretary any substantiated complaint that:

(1) Reveals that an accredited agency or approved person has engaged in a pattern of serious, willful, grossly negligent, or repeated failures to comply with the standards in subpart F of this part; or

(2) Indicates that continued accreditation or approval would not be in the best interests of the children and families concerned.

(b) An accrediting entity must, after consultation with the Secretary, refer to the Attorney General or other appropriate law enforcement authorities any substantiated complaints that involve conduct that is:

(1) Subject to the civil or criminal penalties imposed by section 404 of the IAA (Pub. L. 106–279, section 404, 42 U.S.C. 14944);

(2) In violation of the Immigration and Nationality Act (8 U.S.C. 1101 *et seq.*); or

(3) Otherwise in violation of Federal, State, or local law.

(c) When an accrediting entity makes a report pursuant to paragraphs (a) or (b) of this section, it must indicate whether it is recommending that the Secretary take action to debar the agency or person, either temporarily or permanently.

§ 96.73 [Reserved]

Subpart K—Adverse Action by the Accrediting Entity

§ 96.74 Scope.

The provisions in this subpart establish the procedures governing adverse action by an accrediting entity against accredited agencies and approved persons. Temporary accreditation is governed by the provisions in subpart N of this part. Unless otherwise provided in subpart N of this part, the provisions in subpart K of this part do not apply to temporarily accredited agencies.

§ 96.75 Adverse action against accredited agencies or approved persons not in substantial compliance.

The accrediting entity must take adverse action when it determines that an accredited agency or approved person may not maintain accreditation or approval as provided in § 96.27. The accrediting entity is authorized to take any of the following actions against an accredited agency or approved person whose compliance the entity oversees. Each of these actions by an accrediting entity is considered an adverse action for purposes of the IAA and the regulations in this part:

(a) Suspending accreditation or approval;

(b) Canceling accreditation or approval;

(c) Refusing to renew accreditation or approval;

(d) Requiring an accredited agency or approved person to take a specific corrective action to bring itself into compliance;

(e) Imposing other sanctions including, but not limited to, requiring an accredited agency or approved person to cease providing adoption services in a particular case or in a specific Convention country.

§ 96.76 Procedures governing adverse action by the accrediting entity.

(a) The accrediting entity must decide which adverse action to take based on the seriousness and type of violation and on the extent to which the accredited agency or approved person has corrected or failed to correct deficiencies of which it has been

previously informed. The accrediting entity must notify an accredited agency or approved person in writing of any decision to take an adverse action against the agency or person. The accrediting entity's written notice must identify the deficiencies prompting imposition of the adverse action.

(b) Before taking adverse action, the accrediting entity may, in its discretion, advise the agency or person of the deficiencies warranting adverse action and provide it with an opportunity to take corrective action and demonstrate compliance before the adverse action is imposed. If the accrediting entity took adverse action but did not communicate with the accredited agency or approved person about the deficiency in advance (such as in a situation in which providing advance notice is not consistent with ensuring that a child's well-being is protected), the accrediting entity must allow the accredited agency or approved person an opportunity after the notice is issued to provide information refuting that adverse action was warranted. The accrediting entity may withdraw the adverse action based on the information provided.

(c) The provisions in §§ 96.25 and 96.26 govern requests for and use of information.

§ 96.77 Responsibilities of the accredited agency, approved person, and accrediting entity following adverse action by the accrediting entity.

(a) If the accrediting entity takes an adverse action against an agency or person, the action will take effect immediately unless the accrediting entity agrees to a later effective date.

(b) If the accrediting entity suspends or cancels the accreditation or approval of an agency or person, the agency or person must immediately, or by any later effective date set by the accrediting entity, cease to provide adoption services in all Convention cases. In the case of suspension, it must consult with the accrediting entity about whether to transfer its Convention adoption cases and its adoption records. In the case of cancellation, it must, under the oversight of the accrediting entity, transfer its Convention adoption cases and adoption records to other accredited agencies, approved persons, or a State archive as appropriate.

(c) If the accrediting entity refuses to renew the accreditation or approval of an agency or person, the agency or person must cease to provide adoption services in all Convention cases upon expiration of its existing accreditation or approval. It must take all necessary steps to complete its Convention cases before its accreditation or approval

expires. It must also, under the oversight of the accrediting entity, transfer its pending Convention cases and adoption records. When the agency or person is unable to transfer such Convention cases or adoption records, the accrediting entity must, after consultation with the Secretary, take appropriate action to assist the agency or person in transferring its Convention cases and adoption records.

(d) The accrediting entity must immediately notify the Secretary in writing when it takes an adverse action that impacts the accreditation or approval status of an agency or person.

§ 96.78 Petitions to terminate adverse action by the accrediting entity.

(a) If the accrediting entity takes adverse action against an agency or person, the agency or person must petition the accrediting entity to terminate the adverse action, on the grounds that the deficiencies necessitating the adverse action have been corrected, before it can seek judicial review. The accrediting entity may terminate the adverse action only if the agency or person demonstrates to the satisfaction of the accrediting entity that the deficiencies that led to the adverse action have been corrected. The accrediting entity must notify an agency or person in writing of its decision on the petition to terminate the adverse action. If the accrediting entity does not terminate the adverse action after being petitioned to do so in accordance with this paragraph, the agency or person may seek judicial review of the adverse action.

(b) If the accrediting entity described in paragraph (a) of this section is no longer providing accreditation or approval services, the agency or person may petition any accrediting entity with jurisdiction over its application.

(c) If the accrediting entity cancels or refuses to renew an agency's or person's accreditation or approval, and does not terminate the adverse action pursuant to paragraph (a) of this section, the agency or person must reapply for accreditation or approval if it wishes to become accredited or approved again. Before doing so, the agency or person must request and obtain permission to make a new application from the accrediting entity that cancelled or refused to renew its accreditation or approval. The accrediting entity may grant such permission only if the agency or person demonstrates to the satisfaction of the accrediting entity that the specific deficiencies that led to the cancellation or refusal to renew have been corrected.

(d) If the accrediting entity grants the agency or person permission to reapply,

the agency or person may file an application with that accrediting entity in accordance with subpart D of this part.

§ 96.79 Administrative or judicial review of adverse action by the accrediting entity.

(a) There is no administrative review of an adverse action by an accrediting entity.

(b) Section 202(c)(3) of the IAA (Pub. L. 106-279, § 202(c)(3), 42 U.S.C. 14922(c)(3)) provides for judicial review of adverse actions by an accrediting entity. Adverse actions are only those actions listed in § 96.75. There is no judicial review of an accrediting entity's decision to deny accreditation or approval, including:

(1) A denial of an initial application;

(2) A denial of an application made after cancellation or refusal to renew by the accrediting entity; and

(3) A denial of an application made after cancellation or debarment by the Secretary.

(c) In accordance with section 202(c)(3) of the IAA (Pub. L. 106-279, § 202(c)(3), 42 U.S.C. 14922(c)(3)), an accredited agency or approved person that is the subject of an adverse action by an accrediting entity may petition the United States district court in the judicial district in which the agency is located or the person resides to set aside the adverse action imposed by the accrediting entity. The United States district court may review the adverse action in accordance with 5 U.S.C. 706. When an accredited agency or approved person petitions a United States district court to review the adverse action of an accrediting entity, the accrediting entity will be considered an agency as defined in 5 U.S.C. 701 for the purpose of judicial review of the adverse action.

§ 96.80 [Reserved]

Subpart L—Oversight of Accredited Agencies and Approved Persons by the Secretary

§ 96.81 Scope.

The provisions in this subpart establish the procedures governing adverse action by the Secretary against accredited agencies and approved persons. Temporary accreditation is governed by the provisions in subpart N of this part. Unless otherwise provided in subpart N of this part, the provisions in subpart L of this part do not apply to temporarily accredited agencies.

§ 96.82 The Secretary's response to actions by the accrediting entity.

(a) There is no administrative review by the Secretary of an accrediting entity's decision to deny accreditation

or approval, nor of any decision by an accrediting entity to take an adverse action.

(b) When informed by an accrediting entity that an agency has been accredited or a person has been approved, the Secretary will take appropriate steps to ensure that relevant information about the accredited agency or approved person is provided to the Permanent Bureau of the Hague Conference on Private International Law. When informed by an accrediting entity that it has taken an adverse action that impacts an agency's or person's accreditation or approval status, the Secretary will take appropriate steps to inform the Permanent Bureau of the Hague Conference on Private International Law.

§ 96.83 Suspension or cancellation of accreditation or approval by the Secretary.

(a) The Secretary must suspend or cancel the accreditation or approval granted by an accrediting entity when the Secretary finds that the agency or person is substantially out of compliance with the standards in subpart F of this part and that the accrediting entity has failed or refused, after consultation with the Secretary, to take the action directed by the Secretary.

(b) The Secretary may suspend or cancel the accreditation or approval granted by an accrediting entity if the Secretary finds that such action:

(1) Will further U.S. foreign policy or national security interests;

(2) Will protect the ability of U.S. citizens to adopt children under the Convention; or

(3) Will protect the interests of children.

(c) If the Secretary suspends or cancels the accreditation or approval of an agency or person, the Secretary will take appropriate steps to notify both the accrediting entity and the Permanent Bureau of the Hague Conference on Private International Law.

§ 96.84 Reinstatement of accreditation or approval after suspension or cancellation by the Secretary.

An agency or person may petition the Secretary for relief from the Secretary's suspension or cancellation of its accreditation or approval. If the Secretary is satisfied that the deficiencies or circumstances that led to the suspension or cancellation have been corrected or are no longer applicable, the Secretary shall, in the case of a suspension, terminate the suspension or, in the case of a cancellation, notify the agency or person that it may reapply for accreditation or

approval to the same accrediting entity that handled its prior application for accreditation or approval. If that accrediting entity is no longer providing accreditation or approval services, the agency or person may reapply to any accrediting entity with jurisdiction over its application. If the Secretary terminates a suspension or permits an agency or person to reapply for accreditation or approval, the Secretary will so notify the appropriate accrediting entity. If the Secretary terminates a suspension, the Secretary will also notify the Permanent Bureau of the Hague Conference on Private International Law of the reinstatement.

§ 96.85 Temporary and permanent debarment by the Secretary.

(a) The Secretary may temporarily or permanently debar an agency from accreditation or a person from approval on the Secretary's own initiative, at the request of DHS, or at the request of an accrediting entity. A debarment of an accredited agency or approved person will automatically result in the cancellation of accreditation or approval by the Secretary, and the accrediting entity shall deny any pending request for renewal of accreditation or approval.

(b) The Secretary may issue a debarment order only if:

(1) There is substantial evidence that the agency or person is out of compliance with the standards in subpart F of this part; and

(2) There has been a pattern of serious, willful, or grossly negligent failures to comply or other aggravating circumstances indicating that continued accreditation or approval would not be in the best interests of the children and families concerned. For purposes of this paragraph, "the children and families concerned" include any children and any families whose interests have been or may be affected by the agency's or person's actions.

§ 96.86 Length of debarment period and reapplication after temporary debarment.

(a) In the case of a temporary debarment order, the order will take effect on the date specified in the order and will specify a date, not earlier than three years later, on or after which the agency or person may petition the Secretary for withdrawal of the temporary debarment. If the Secretary withdraws the temporary debarment, the agency or person may then reapply for accreditation or approval to the same accrediting entity that handled its prior application for accreditation or approval. If that accrediting entity is no longer providing accreditation or approval services, the agency or person

may apply to any accrediting entity with jurisdiction over its application.

(b) In the case of a permanent debarment order, the order will take effect on the date specified in the order. The agency or person will not be permitted to apply again to an accrediting entity for accreditation or approval, or to the Secretary for termination of the debarment.

§ 96.87 Responsibilities of the accredited agency, approved person, and accrediting entity following suspension, cancellation, or debarment by the Secretary.

If the Secretary suspends or cancels the accreditation or approval of an agency or person, or debars an agency or person, the agency or person must cease to provide adoption services in all Convention cases. In the case of suspension, it must consult with the accrediting entity about whether to transfer its Convention adoption cases and adoption records. In the case of cancellation, it must, under the oversight of the accrediting entity, transfer its Convention adoption cases and adoption records to other accredited agencies, approved persons, or a State archive, as appropriate. When the agency or person is unable to transfer such Convention cases or adoption records, the accrediting entity must, after consultation with the Secretary, take appropriate action to assist the agency or person in transferring its Convention cases and adoption records.

§ 96.88 Review of suspension, cancellation, or debarment by the Secretary.

(a) There is no administrative review of an action by the Secretary.

(b) Section 204(d) of the IAA (Pub. L. 106–279, § 204(d), 42 U.S.C. 14924(d)) provides for judicial review of final actions by the Secretary. A suspension or cancellation of accreditation or approval, and a debarment (whether temporary or permanent) by the Secretary are final actions subject to judicial review. Other actions by the Secretary are not final actions and are not subject to judicial review.

(c) In accordance with section 204(d) of the IAA (Pub. L. 106–279, § 204(d), 42 U.S.C. 14924(d)), an agency or person that has been suspended, cancelled, or temporarily or permanently debarred by the Secretary may petition the United States District Court for the District of Columbia, or the United States district court in the judicial district in which the person resides or the agency is located, pursuant to 5 U.S.C. 706, to set aside the action.

§ 96.89 [Reserved]

Subpart M—Dissemination and Reporting of Information by Accrediting Entities

§ 96.90 Scope.

The provisions in this subpart govern the dissemination and reporting of information on accredited agencies and approved persons by accrediting entities. Temporary accreditation is governed by the provisions in subpart N of this part and, as provided for in § 96.110, reports on temporarily accredited agencies must comply with subpart M of this part.

§ 96.91 Dissemination of information to the public about accreditation and approval status.

(a) Once the Convention has entered into force for the United States, the accrediting entity must maintain and make the following information available to the public on a quarterly basis:

(1) The name, address, and contact information for each agency and person it has accredited or approved;

(2) The names of agencies and persons to which it has denied accreditation or approval that have not subsequently been accredited or approved;

(3) The names of agencies and persons that have been subject to withdrawal of temporary accreditation, suspension, cancellation, refusal to renew accreditation or approval, or debarment by the accrediting entity or the Secretary; and

(4) Other information specifically authorized in writing by the accredited agency or approved person to be disclosed to the public.

(b) Once the Convention has entered into force for the United States, each accrediting entity must make the following information available to individual members of the public upon specific request:

(1) Confirmation of whether or not a specific agency or person has a pending application for accreditation or approval and, if so, the date of the application and whether it is under active consideration or whether a decision on the application has been deferred;

(2) A summary of the accreditation or approval study of an agency or person, in a format approved by the Secretary; and

(3) If an agency or person has been subject to withdrawal of temporary accreditation, suspension, cancellation, refusal to renew accreditation or approval, or debarment, a brief statement of the reasons for the action.

§ 96.92 Dissemination of information to the public about complaints against accredited agencies and approved persons.

Once the Convention has entered into force for the United States, each accrediting entity must maintain a written record documenting each complaint received and the steps taken in response to it. This information may be disclosed to the public as follows:

(a) The accrediting entity must verify, upon inquiry from a member of the public, whether a complaint was received against an accredited agency or approved person and, if so, provide information about the status of the complaint, including whether it was found to be substantiated or not;

(b) The accrediting entity must have procedures for disclosing information about complaints that are substantiated and those that are not substantiated.

§ 96.93 Reports to the Secretary about accredited agencies and approved persons and their activities.

(a) The accrediting entity must make annual reports to the Secretary on the information it collects from accredited agencies and approved persons pursuant to § 96.43. The accrediting entity must make quarterly reports to the Secretary that summarize for the entire quarter the following information:

(1) The accreditation and approval status of applicants, accredited agencies, and approved persons;

(2) Any instances where it has denied accreditation or approval;

(3) Any adverse actions taken against an accredited agency or approved person and any withdrawals of temporary accreditation;

(4) All substantiated complaints against accredited agencies and approved persons and the impact of such complaints on their accreditation or approval status;

(5) The number, nature, and outcome of complaint investigations carried out by the accrediting entity as well as the shortest, longest, average, and median length of time expended to complete complaint investigations; and

(6) Any discernible patterns in complaints received about specific agencies or persons, as well as any discernible patterns of complaints in the aggregate.

(b) The accrediting entity must report to the Secretary within thirty days of the time it learns that an accredited agency or approved person:

(1) Has ceased to provide adoption services; or

(2) Has transferred its Convention cases and adoption records.

(c) In addition to the reporting requirements contained in § 96.72, an

accrediting entity must immediately notify the Secretary in writing:

(1) When it accredits an agency or approves a person;

(2) When it renews the accreditation or approval of an agency or person;

(3) When it takes an adverse action against an accredited agency or approved person that impacts its accreditation or approval status or withdraws an agency's temporary accreditation.

§ 96.94 [Reserved]

Subpart N—Procedures and Standards Relating to Temporary Accreditation

§ 96.95 Scope.

(a) The provisions in subpart N of this part govern only temporary accreditation. The provisions in subpart F of this part cover full accreditation of agencies and approval of persons.

(b) Agencies that meet the eligibility requirements in this subpart may apply for temporary accreditation which will run for a one- or two-year period following the Convention's entry into force for the United States. Persons may not be temporarily approved. Temporary accreditation is only available to agencies that apply by the transitional application deadline and who complete the temporary accreditation process by the deadline for initial accreditation or approval in accordance with § 96.19.

§ 96.96 Eligibility requirements for temporary accreditation.

(a) An accrediting entity may not temporarily accredit an agency unless the agency demonstrates to the satisfaction of the accrediting entity that:

(1) It has provided adoption services in fewer than 100 intercountry adoption cases in the calendar year preceding the year in which the transitional application deadline falls. For purposes of subpart N of this part, the number of cases includes all intercountry adoption cases that were handled by, or under the responsibility of, the agency, regardless of whether they involved countries party to the Convention;

(2) It qualifies for non-profit tax treatment under section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or for non-profit status under the law of any State;

(3) It is properly licensed under State law to provide adoption services in at least one State. It is, and for the last three years prior to the transitional application deadline has been, providing intercountry adoption services;

(4) It has the capacity to maintain and provide to the accrediting entity and the Secretary, within thirty days of request, all of the information relevant to the Secretary's reporting requirements under section 104 of the IAA (Pub. L. 106-279, section 104, 42 U.S.C. 14914); and

(5) It has not been involved in any improper conduct related to the provision of intercountry adoption or other services, as evidenced in part by the following:

(i) The agency has maintained its State license without suspension or cancellation for misconduct during the entire period in which it has provided intercountry adoption services;

(ii) The agency has not been subject to a finding of fault or liability in any administrative or judicial action in the three years preceding the transitional application deadline; and

(iii) The agency has not been the subject of any criminal findings of fraud or financial misconduct in the three years preceding the transitional application deadline.

(b) An accrediting entity may not temporarily accredit an agency unless the agency also demonstrates to the satisfaction of the accrediting entity that it has a comprehensive plan for applying for and achieving full accreditation before the agency's temporary accreditation expires, and is taking steps to execute that plan.

§ 96.97 Application procedures for temporary accreditation.

(a) An agency seeking temporary accreditation must submit an application to an accrediting entity with jurisdiction over its application, with the required fee(s), by the transitional application deadline established pursuant to § 96.19. Applications for temporary accreditation that are filed after the transitional application deadline will not be considered.

(b) An agency may not seek temporary accreditation and full accreditation at the same time. The agency's application must clearly state whether it is seeking temporary accreditation or full accreditation. An eligible agency's option of applying for temporary accreditation will be deemed to have been waived if the agency also submits a separate application for full accreditation prior to the transitional application deadline. The agency may apply to only one accrediting entity at a time.

(c) The accrediting entity must establish and follow uniform application procedures and must make information about these procedures available to agencies that are

considering whether to apply for temporary accreditation. The accrediting entity must evaluate the applicant for temporary accreditation in a timely fashion. The accrediting entity must use its best efforts to provide a reasonable opportunity for an agency that applies for temporary accreditation by the transitional application deadline to complete the temporary accreditation process by the deadline for initial accreditation or approval. If an agency seeks temporary accreditation under subpart N of this part, it will be included on the initial list deposited by the Secretary with the Permanent Bureau of the Hague Conference on Private International Law only if it is granted temporary accreditation by the deadline for initial accreditation or approval established pursuant to § 96.19(a).

§ 96.98 Length of temporary accreditation period.

(a) *One-year temporary accreditation.* An agency that has provided adoption services in 50–99 intercountry adoptions in the calendar year preceding the year in which the transitional application deadline falls may apply for a one-year period of temporary accreditation. The one-year period will commence on the date that the Convention enters into force for the United States.

(b) *Two-year temporary accreditation.* An agency that has provided adoption services in fewer than 50 intercountry adoptions in the calendar year preceding the year in which the transitional application deadline falls may apply for a two-year period of temporary accreditation. The two-year period will commence on the date that the Convention enters into force for the United States.

§ 96.99 Converting an application for temporary accreditation to an application for full accreditation.

(a) The accrediting entity may, in its discretion, permit an agency that has applied for temporary accreditation to convert its application to an application for full accreditation, subject to submission of any additional required documentation, information, and fee(s). The accrediting entity may grant a request for conversion if the accrediting entity has determined that the applicant is not in fact eligible for temporary accreditation based on the number of adoption cases it has handled; if the agency has concluded that it can complete the full accreditation process sooner than expected; or for any other reason that the accrediting entity deems appropriate.

(b) If an application is converted, it will be treated as an application filed after the transitional application deadline, and the agency may not necessarily be provided an opportunity to complete the accreditation process in time to be included on the initial list of accredited agencies and approved persons that the Secretary will deposit with the Permanent Bureau of the Hague Conference on Private International Law.

§ 96.100 Procedures for evaluating applicants for temporary accreditation.

(a) To evaluate an agency for temporary accreditation, the accrediting entity must:

(1) Review the agency's written application and supporting documentation; and

(2) Verify the information provided by the agency, as appropriate. The accrediting entity may also request additional documentation and information from the agency in support of the application as it deems necessary.

(b) The accrediting entity may also decide, in its discretion, that it must conduct a site visit to determine whether to approve the application for temporary accreditation. The site visit may include interviews with birth parents, adoptive parent(s), prospective adoptive parent(s), and adult adoptee(s) served by the agency, interviews with the agency's employees, and interviews with other individual(s) knowledgeable about its provision of adoption services. It may also include a review of on-site documents. The accrediting entity must, to the extent possible, advise the agency or person in advance of documents it wishes to review during the site visit. The provisions of §§ 96.25 and 96.26 will govern requests for and use of information.

(c) Before deciding whether to grant temporary accreditation to the agency, the accrediting entity may, in its discretion, advise the agency of any deficiencies that may hinder or prevent its temporary accreditation and defer a decision to allow the agency to correct the deficiencies.

(d) The accrediting entity may only use the criteria contained in § 96.96 when determining whether an agency is eligible for temporary accreditation.

(e) The eligibility criteria contained in § 96.96 and the standards contained in § 96.104 do not eliminate the need for an agency to comply fully with the laws of the jurisdictions in which it operates. An agency must provide adoption services in Convention cases consistent with the laws of any State in which it operates and with the Convention and the IAA.

§ 96.101 Notification of temporary accreditation decisions.

(a) The accrediting entity must notify agencies of its temporary accreditation decisions on the uniform notification date to be established by the Secretary pursuant to § 96.58(a). On that date, the accrediting entity must inform each applicant and the Secretary in writing whether the agency has been granted temporary accreditation. The accrediting entity may not provide any information about its temporary accreditation decisions to any agency or to the public until the uniform notification date. If the Secretary requests information on the interim or final status of an agency prior to the uniform notification date, the accrediting entity must provide such information to the Secretary.

(b) Notwithstanding paragraph (a) of this section, the accrediting entity may, in its discretion, communicate with agencies about the status of their pending applications for temporary accreditation for the sole purpose of affording them an opportunity to correct deficiencies that may hinder their temporary accreditation. When informed by an accrediting entity that an agency has been temporarily accredited, the Secretary will take appropriate steps to ensure that relevant information about the temporarily accredited agency is provided to the Permanent Bureau of the Hague Conference on Private International Law.

§ 96.102 Review of temporary accreditation decisions.

There is no administrative or judicial review of an accrediting entity's decision to deny temporary accreditation.

§ 96.103 Oversight by accrediting entities.

(a) The accrediting entity must oversee an agency that it has temporarily accredited by monitoring whether the agency is in substantial compliance with the standards contained in § 96.104 and through the process of assessing the agency's application for full accreditation when it is filed. The accrediting entity must also investigate any complaints or other information that becomes available to it about an agency it has temporarily accredited. Complaints against a temporarily accredited agency must be handled in accordance with subpart J of this part. For purposes of subpart J of this part, the temporarily accredited agency will be treated as if it were a fully accredited agency, except that:

(1) The relevant standards will be those contained in § 96.104 rather than

those contained in subpart F of this part; and

(2) Enforcement action against the agency will be taken in accordance with § 96.105 and § 96.107 rather than in accordance with subpart K of this part.

(b) The accrediting entity may determine, at its discretion, that it must conduct a site visit to investigate a complaint or other information or otherwise monitor the agency. In such a case, the accrediting entity may assess additional fees for actual costs incurred for travel and maintenance of evaluators and for any additional administrative costs to the accrediting entity.

(c) The accrediting entity may consider any information that becomes available to it about the compliance of the agency. The provisions of §§ 96.25 and 96.26 govern requests for and use of information.

§ 96.104 Performance standards for temporary accreditation.

The accrediting entity may not maintain an agency's temporary accreditation unless the agency demonstrates to the satisfaction of the accrediting entity that it is in substantial compliance with the following standards:

(a) The agency follows applicable licensing and regulatory requirements in all jurisdictions in which it provides adoption services;

(b) It does not engage in any improper conduct related to the provision of intercountry adoption services, as evidenced in part by the following:

(1) It maintains its State license without suspension or cancellation for misconduct;

(2) It is not subject to a finding of fault or liability in any administrative or judicial action; and

(3) It is not the subject of any criminal findings of fraud or financial misconduct;

(c) It adheres to the standards in § 96.36 prohibiting child buying;

(d) It adheres to the standards for responding to complaints in accordance with § 96.41;

(e) It adheres to the standards on adoption records and information relating to Convention cases in accordance with § 96.42;

(f) It adheres to the standards on providing data to the accrediting entity in accordance with § 96.43;

(g) When acting as the primary provider in a Convention adoption and using supervised providers in the United States or in another Convention country, it complies with the standards in §§ 96.44, 96.45 and 96.46;

(h) When performing or approving a home study in an incoming Convention

case, it complies with the standards in § 96.47;

(i) When performing or approving a child background study or obtaining consents in an outgoing Convention case, it complies with the standards in § 96.53;

(j) When performing Hague Convention functions in incoming or outgoing cases, it complies with the standards in § 96.52 or § 96.55;

(k) It has a plan to transfer its cases and adoption records if it ceases to provide or is no longer permitted to provide adoption services in Convention cases;

(l) The agency is making continual progress towards completing the process of obtaining full accreditation by the time its temporary accreditation expires; and

(m) The agency or person takes all necessary and appropriate measures to perform any tasks in a Convention adoption case that the Secretary identifies are required to comply with the Convention, the IAA, or any regulations implementing the IAA.

§ 96.105 Adverse action against a temporarily accredited agency by an accrediting entity.

(a) If at any time the accrediting entity determines that an agency it has temporarily accredited is substantially out of compliance with the standards in § 96.104, it may, in its discretion, withdraw the agency's temporary accreditation. The accrediting entity must notify the agency in writing of any decision to withdraw the agency's temporary accreditation. The written notice must identify the deficiencies necessitating the withdrawal. Before withdrawing the agency's temporary accreditation, the accrediting entity may, in its discretion, provide the agency with an opportunity to correct the deficiencies warranting withdrawal.

(b) The provisions of §§ 96.25 and 96.26 govern requests for and use of information.

(c) The accrediting entity must immediately notify the Secretary in writing when it withdraws an agency's temporary accreditation.

§ 96.106 Review of the withdrawal of temporary accreditation by an accrediting entity.

(a) There is no administrative review of a decision by an accrediting entity to withdraw an agency's temporary accreditation.

(b) Withdrawal of temporary accreditation is analogous to cancellation of accreditation and is therefore an adverse action pursuant to § 96.75. In accordance with section

202(c)(3) of the IAA (Pub. L. 106-279, section 202(c)(3), 42 U.S.C. 14922(c)(3)), a temporarily accredited agency that is the subject of an adverse action by an accrediting entity may petition the United States district court in the judicial district in which the agency is located or the person resides to set aside the adverse action imposed by the accrediting entity. The United States district court may review the adverse action in accordance with 5 U.S.C. 706. When an accredited agency petitions a United States district court to review the adverse action of an accrediting entity, the accrediting entity will be considered an agency as defined in 5 U.S.C. 701 for the purpose of judicial review of the adverse action.

§ 96.107 Adverse action against a temporarily accredited agency by the Secretary.

(a) The Secretary may, in his or her discretion, withdraw an agency's temporary accreditation if the Secretary finds that the agency is substantially out of compliance with the standards in § 96.104 and the accrediting entity has failed or refused, after consultation with the Secretary, to take appropriate enforcement action.

(b) The Secretary may also withdraw an agency's temporary accreditation if the Secretary finds that such action:

(1) Will further U.S. foreign policy or national security interests;

(2) Will protect the ability of U.S. citizens to adopt children under the Convention; or

(3) Will protect the interests of children.

(c) If the Secretary withdraws an agency's temporary accreditation, the Secretary will notify the accrediting entity.

§ 96.108 Review of the withdrawal of temporary accreditation by the Secretary.

(a) There is no administrative review of a decision by the Secretary to withdraw an agency's temporary accreditation.

(b) Section 204(d) of the IAA (Pub. L. 106-279, section 204(d), 42 U.S.C. 14924(d)) provides for judicial review of final actions by the Secretary. Withdrawal of temporary accreditation, which is analogous to cancellation of accreditation, is a final action subject to judicial review.

(c) An agency whose temporary accreditation has been withdrawn by the Secretary may petition the United States District Court for the District of Columbia, or the United States district court in the judicial district in which the agency is located, to set aside the action pursuant to section 204(d) of the

IAA (Pub. L. 106-279, 204(d), 42 U.S.C. 14924(d)).

§ 96.109 Effect of the withdrawal of temporary accreditation by the accrediting entity or the Secretary.

(a) If an agency's temporary accreditation is withdrawn, it must cease to provide adoption services in all Convention cases and must, under the oversight of the accrediting entity, transfer its Convention adoption cases and adoption records to other accredited agencies, approved persons, or a State archive, as appropriate.

(b) Where the agency is unable to transfer such Convention cases or adoption records, the accrediting entity must, after consultation with the Secretary, take appropriate action to assist the agency in transferring its Convention cases and adoption records.

(c) When an agency's temporary accreditation is withdrawn, the Secretary will, where appropriate, take steps to inform the Permanent Bureau of the Hague Conference on Private International Law.

(d) An agency whose temporary accreditation has been withdrawn may continue to seek full accreditation or may withdraw its pending application and apply for full accreditation at a later time. Its application for full accreditation must be made to the same accrediting entity that granted its application for temporary accreditation. If that entity is no longer providing accreditation services, it may apply to any accrediting entity with jurisdiction over its application.

(e) If an agency continues to pursue its application for full accreditation or subsequently applies for full accreditation, the accrediting entity may take the circumstances of the withdrawal of its temporary accreditation into account when evaluating the agency for full accreditation.

§ 96.110 Dissemination and reporting of information about temporarily accredited agencies.

The accrediting entity must disseminate and report information about agencies it has temporarily accredited as if they were fully accredited agencies, in accordance with subpart M of this part.

§ 96.111 Fees charged for temporary accreditation.

(a) Any fees charged by an accrediting entity for temporary accreditation will include a non-refundable fee for temporary accreditation set forth in a schedule of fees approved by the Secretary as provided in § 96.8(a). Such fees may not exceed the costs of

temporary accreditation and must include all the costs of all activities associated with the temporary accreditation cycle (including, but not limited to, costs for completing the temporary accreditation process, complaint review and investigation, routine oversight and enforcement, and other data collection and reporting activities). The temporary accreditation fee may not include the costs of site visit(s). The schedule of fees may provide, however, that, in the event that a site visit is required to determine whether to approve an application for temporary accreditation, to investigate a complaint or other information, or otherwise to monitor the agency, the accrediting entity may assess additional fees for actual costs incurred for travel and maintenance of evaluators and for any additional administrative costs to the accrediting entity.

(b) An accrediting entity must make its schedule of fees available to the public, including prospective applicants for temporary accreditation, upon request. At the time of application, the accrediting entity must specify the fees to be charged in a contract between the parties and must provide notice to the applicant that no portion of the fee will be refunded if the applicant fails to become temporarily accredited.

Dated: August 27, 2003.

Richard Armitage,

Deputy Secretary of State, Department of State.

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DEPARTMENT OF STATE

22 CFR Part 98

RIN 1400-AB-69

[Public Notice 4467]

Intercountry Adoption—Preservation of Convention Records

AGENCY: Department of State.

ACTION: Proposed rule.

SUMMARY: The Department of State (the Department) is proposing new regulations to implement the records preservation requirements of the 1993 Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (the Convention) and the Intercountry Adoption Act of 2000 (the IAA). The IAA requires that the Department issue rules to govern the preservation of Convention records held by the Department and the Department of Homeland Security (DHS). These proposed rules require the Department

and DHS to maintain Convention records for 75 years.

DATES: Written or electronic comments must reach the Department on or before November 14, 2003.

ADDRESSES: Commenters may send hard copy submissions or comments in electronic format. Commenters sending only hard copies must send an original and two copies referencing docket number State/AR-01/98 to: U.S. Department of State, CA/OCS/PRI, Adoption Regulations Docket Room, SA-29, 2201 C Street NW., Washington, DC 20520. Hard copy comments may also be sent by overnight courier services to: U.S. Department of State, CA/OCS/PRI, Adoption Regulations Docket Room, 2201 C Street NW., Washington DC 20520. Do not personally hand deliver comments to the Department of State.

Comments referencing the docket number State/AR-01/98 may be submitted electronically to adoptionregs@state.gov. Two hard copies of the comments submitted electronically must be mailed under separate cover as well. The electronic comments or the hard copy comments must be received by the date noted above in the date section of this proposed rule. Comments must be made in the text of the message or submitted as a Word file avoiding the use of any form of encryption or use of special characters. If you submit comments by hard copy rather than electronically, include a disk with the submission if possible. Hard copy submissions without an accompanying disk file, however, will be accepted.

FOR FURTHER INFORMATION CONTACT: For further information on submitting comments on the regulations, contact Anna Mary Coburn or Edward Betancourt at 202-647-2826. Hearing- or speech-impaired persons may use the Telecommunications Devices for the Deaf (TDD) by contacting the Federal Information Relay Service at 1-800-877-8339.

SUPPLEMENTARY INFORMATION: As noted, comments may be submitted electronically to: adoptionregs@state.gov. Public comments and supporting materials are available for viewing at the Adoption Regulations Docket Room. To review docket materials, members of the public must make an appointment by calling Delilia Gibson-Martin at 202-647-2826. The public may copy a maximum of 100 pages at no charge. Additional copies cost \$0.25 a page. The Department of State will keep the official record for this action in paper form. Accordingly, the official administrative file is the

paper file maintained at the Adoption Regulations Docket Room, United States Department of State. The Department of State's responses to public comments, whether the comments are received in written or electronic format, will be published in the **Federal Register**, and no immediate responses will be provided. General information about intercountry adoptions is available on the Department of State's Web site at <http://travel.state.gov/adopt.html>. Background information about the development of these regulations is provided at <http://www.hagueregs.org>.

I. Legal Authority

The Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, May 29, 1993, S. Treaty Doc. 105-51 (1998); 1870 U.N.T.S. 167 (Reg. No. 31922 (1993)), 32 I.L.M. 1134 (1993); Intercountry Adoption Act of 2000, 42 U.S.C. 14901-14954.

II. Preservation of Convention Records

The Convention governs intercountry adoptions between countries that are parties to the Convention. The IAA provides for U.S. implementation of the Convention. The Convention's main purpose is to establish safeguards to ensure that an intercountry adoption takes place in the best interests of the child. The IAA's purpose is primarily to ensure that adoptions between the United States and other countries party to the Convention take place in accordance with the Convention. Together, the Convention and the IAA seek to protect the rights of children, birth families, and adoptive parents involved in adoptions (or prospective adoptions) covered by the Convention. Another purpose of the IAA is to improve the ability of the Federal government to assist United States citizens seeking to adopt children from Convention countries and residents of Convention countries seeking to adopt children from the United States. More detailed information about the Convention and the IAA may be found in the Supplementary Information published in the proposed rules for part 96 of title 22 of the Code of Federal Regulations (CFR), which are published today as well in the **Federal Register**.

Both the Convention and the IAA contain specific provisions requiring that competent authorities preserve records concerning a child's intercountry adoption. The purpose of this proposed regulation is to enable the Department and DHS (the successor agency to the Immigration and Naturalization Service (INS)) to comply with the Convention and the IAA

requirements for the preservation of Convention records. (The Secretary of DHS will assume certain functions vested in the Attorney General and the INS by the IAA relating to the Immigration and Naturalization Service's responsibilities, pursuant to the Homeland Security Act of 2002, Public Law 107-296, Nov. 25, 2002, as amended by section 105 of the Homeland Security Act Amendments of 2003. (See Consolidated Appropriations Resolution, Public Law 108-7, Feb. 20, 2003)). This Preamble uses terms, such as the Secretary, the Department of Homeland Security, Case Registry, Convention, Convention country, adoption record, agency, person, and public body that are defined in § 96.2 of the proposed regulations for part 96 of title 22 of the CFR, which as noted are also being published on the same day as this proposed rule in the **Federal Register**. This proposed rule defines Convention records, and carries forward for the convenience of the public the same definition of Convention contained in the proposed regulations for part 96.

Article 30 of the Convention generally requires that each Convention country ensure that information concerning any child whose adoption is subject to the Convention be preserved. The IAA mandates that the Department issue regulations to comply with the Convention's requirement that a child's records be preserved. Specifically, section 401(a) of the IAA requires that the Department, in consultation with INS (now part of DHS), issue regulations that establish procedures and requirements for the preservation of Convention records. As required by the IAA, the Department has consulted with DHS to prepare this regulation.

The term Convention record is defined in these proposed regulations as including only records pertaining to adoptions under the Convention that are generated or received by two Federal agencies—the Department or DHS. The term Convention record does not include records generated or received by adoption service providers or State public bodies. The definition for Convention record in part 98 thus mirrors the IAA definition for the same term.

The Convention also imposes an obligation for the preservation of adoption records. The term adoption record, rather than the term Convention record, is used to cover records generated or received by agencies or persons or State public bodies. The term adoption record is defined in § 96.2 of the proposed regulations for part 96 of title 22 of the CFR. The proposed

regulations on the preservation of adoption records—that is, records held by non-Federal entities, including agencies, persons, and State public bodies—are contained in the proposed regulations for part 96 of title 22 of the CFR. The retention of such records is not addressed by this proposed new rule for part 98. Nor does this proposed regulation address access to adoption records. State law will continue, entirely unaffected by part 98, to govern access to adoption records held by agencies, persons, or public bodies including State courts as provided for by section 401(c) of the IAA.¹

As required by section 401(a) of the IAA, the proposed regulations in part 98 address the preservation of Convention records generated or received by the Department and DHS. The proposed regulations are not required to, and do not, address access by birth parents, adoptive parents, or adoptees to Convention records. Access to Convention records retained by the Department or DHS will be controlled by Federal law governing access to records held by Federal agencies, particularly by the Freedom of Information Act (5 U.S.C. 552 (1966)) and the Privacy Act (5 U.S.C. 552(a) (1974)).

Because the Convention is not yet in force for the United States, no records currently held by the Federal government pertain to a Convention adoption. Once the Convention has entered into force for the United States, there will be Convention records. A Convention record will include DHS's "A" files and may include other records held by the Department and DHS, including entries in the planned Case Registry.

¹ The report of the Senate Committee on Foreign Relations, S. Rep. No. 106-276 (2000) at page 11 contains a statement with regard to section 401(c) of the IAA that includes the following:

[T]he Committee does not intend this legislation to affect the scope of access to adoption records under existing Federal or State law. Under current law, Federal records that contain information regarding intercountry adoptions are subject to Federal laws regarding disclosure and access to information maintained by the Federal Government (primarily the Privacy Act and the Freedom of Information Act). Records regarding intercountry adoptions held by States or in the files of adoption agencies are governed by any State law that may apply to such records. * * * Under section 401, Federal records will continue to be governed by applicable Federal law, while non-Federal records, including records of adoption proceedings conducted in the United States, will continue to be governed by applicable State law. No State is required by this provision to change its laws regarding access to, and disclosure of, adoption records.

The report of the House Committee on International Relations, H.R. Rep. No. 106-691(2000) at page 30, contains almost identical language relating to section 401(c).

The proposed rule adopts a minimum period of 75 years for the preservation of Convention records. Promulgation of this rule will further compliance with Article 30(1) of the Convention, which requires that provision be made for the preservation of information about a child's origin, including the identity of the child's parents and about the child's medical history. While such information will primarily be in the child's adoption record, some may also be in a child's Convention record. The 75-year period is consistent with the current record preservation period for records held by the Department and DHS that are similar to Convention records. The preservation requirement will extend to Convention records regarding three kinds of adoptions covered by the Convention:

- (1) Adoptions involving a child immigrating to the United States;
- (2) Adoptions involving a child emigrating from the United States; and
- (3) Adoptions involving two other countries party to the Convention.

A minimum period of 75 years was considered adequate to ensure the availability of Convention records during the lifetime of the adopted person, when matters for which the records may be needed are likely to arise. At the same time, the 75-year period should ensure that the costs and paperwork burden of retaining records are not incurred unnecessarily by retaining them beyond their likely usefulness.

The 75-year period will begin to run (for all three kinds of adoptions covered by the Convention) on the date that the first document or entry specifically related to the adoption is included in the Convention record. Additional subsequent entries to the record will thus be subject to a slightly shorter retention period than the first entry, but the difference is not likely to be significant in a typical adoption case in which most of the records would be entered within the first one or two years of the adoption.

This proposed rule will also create and reserve a new part 97 of title 22 of the CFR. The Department anticipates using part 97 to establish regulations governing adoptions under the Convention.

III. Regulatory Review

A. Regulatory Flexibility Act/Executive Order 13272: Small Business

The Department of State has reviewed this regulation, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601–612, and, pursuant to 5 U.S.C. 605(b), certifies that it will not have a

significant economic impact on a substantial number of small entities. Executive Order 13272 therefore is inapplicable.

B. Small Business Regulatory Enforcement Fairness Act of 1996

This proposed rule is not a major rule as defined by 5 U.S.C. 804 for purposes of congressional review of agency rulemaking under the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121. The 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, or innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

C. The Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (UFMA), Public Law 104–4; 109 Stat. 48; 2 U.S.C. 1532, generally requires agencies to prepare a statement, including cost-benefit and other analyses, before proposing any rule that may result in an annual expenditure of \$100 million or more by State, local, or tribal governments, or by the private sector. Section 4 of UFMA, 2 U.S.C. 1503, excludes legislation necessary for implementation of treaty obligations. The IAA falls within this exclusion because it is the implementing legislation for the Convention. In any event, this rule will not result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any year. Moreover, because this rule will not significantly or uniquely affect small governments, section 203 of the UFMA, 2 U.S.C. 1533, does not require preparation of a small government agency plan in connection with it.

D. Executive Order 13132: Federalism

A rule has federalism implications under Executive Order 13132 if it has 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. This regulation will not have such effects, and therefore does not have sufficient federalism implications to require consultations or to warrant the preparation of a federalism summary impact statement under section 6 of Executive Order 13132.

E. Executive Order 12866: Regulatory Review

Under section 3(f) of Executive Order 12866, proposed regulations that meet the definition of “significant regulatory action” generally must be submitted to OMB for review. Section 3 of Executive Order 12866 exempts from this requirement “rules that pertain to a military or foreign affairs function of the United States, other than procurement regulations and regulations involving the import or export of non-defense articles and services.” This rule, through which the Department provides for the implementation of the Convention, directly pertains to foreign affairs functions of the United States. Although the Department does not consider this rule to be a “significant regulatory action” within the meaning of the Executive Order 12866, the Department has consulted with the INS (now part of DHS) during the formulation of the rule. The rule was sent for review to OMB.

F. Executive Order 12988: Civil Justice Reform

The Department has reviewed these proposed regulations in light of sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden. The Department has made every reasonable effort to ensure compliance with the requirements in Executive Order 12988.

G. The Paperwork Reduction Act (PRA) of 1995

Under the PRA, 42 U.S.C. 3501 *et seq.*, agencies are generally required to submit to OMB for review and approval collection of information requirements imposed on “persons” as defined in the PRA. These regulations impose retention requirements only on the Department of State and DHS, and do not impose any information collection requirements on “persons.” Therefore, the requirements of the PRA do not apply.

List of Subjects in 22 CFR Part 98

Adoption and foster care; International agreements; reporting and record-keeping requirements.

Accordingly, the Department proposes to add a new part 98 of title 22 of the CFR, chapter 1, subchapter J, to read as follows:

PART 98—INTERCOUNTRY ADOPTION/CONVENTION RECORD PRESERVATION

Sec.
98.1 Definitions

98.2 Preservation of Convention Records

Authority: Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (done at The Hague, May 29, 1993), S. Treaty Doc. 105-51 (1998); 1870 U.N.T.S. 167 (Reg. No. 31922 (1993)); Intercountry Adoption Act of 2000, 42 U.S.C. 14901-14954.

§ 98.1 Definitions.

As used in this part:

(a) *Convention* means the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, done at The Hague on May 29, 1993.

(b) *Convention record* means any item, collection, or grouping of information contained in an electronic or physical document, an electronic collection of data (including the information contained in the Case Registry), a photograph, an audio or video tape, or any other information storage medium of any type whatever that contains information about a specific past, current, or prospective

adoption covered by the Convention (regardless of whether the adoption was made final) that has been generated or received by the Secretary or DHS. Convention record includes a record, generated or received by the Secretary or DHS, about a specific adoption case involving two Convention countries other than the United States in connection with which the Secretary or DHS performs a Central Authority function.

(c) Such other terms as are defined in 22 CFR 96.2 shall have the meaning given to them therein.

§ 98.2 Preservation of Convention records.

Once the Convention has entered into force for the United States, the Secretary and DHS will preserve, or require the preservation of, Convention records generated or received by the Secretary or DHS in connection with adoptions and placements for adoption covered by the Convention for a period of not less than 75 years. For Convention records

involving a child who is immigrating to the United States and Convention records involving a child who is emigrating from the United States, the 75-year period shall start on the date that the Secretary or DHS generates the first document or entry or receives the first document in any Convention record related to the adoption of the child. For an intercountry adoption or placement for adoption involving two Convention countries other than the United States, the 75-year period shall start on the date that the Secretary or DHS generates the first document or entry or receives the first document for a Convention record in connection with the performance of a Central Authority function.

Dated: August 27, 2003.

Richard Armitage,

Deputy Secretary of State, Department of State.

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Freedom of Information Act; implementation:

Organizational changes and fee structure; comments due by 9-22-03; published 8-11-03 [FR 03-20358]

STATE DEPARTMENT

Visas; nonimmigrant documentation:

Transit Without Visa and International-to-International programs; suspension; comments due by 9-22-03; published 8-7-03 [FR 03-20204]

TRANSPORTATION DEPARTMENT

Standard time zone boundaries:

South Dakota; comments due by 9-25-03; published 8-11-03 [FR 03-20418]

TRANSPORTATION DEPARTMENT**Federal Aviation Administration**

Airworthiness directives:

Boeing; comments due by 9-25-03; published 8-11-03 [FR 03-20389]

Bombardier; comments due by 9-22-03; published 8-22-03 [FR 03-21523]

Cessna; comments due by 9-22-03; published 7-29-03 [FR 03-19197]

TRANSPORTATION DEPARTMENT**Federal Aviation Administration**

Airworthiness standards:

Special conditions— Avions Marcel Dassault-Breguet Aviation Model Falcon 10 series airplanes; comments due by 9-26-03; published 8-27-03 [FR 03-21959]

TRANSPORTATION DEPARTMENT**Federal Aviation Administration**

Airworthiness standards:

Special conditions— Bombardier Aerospace Model BD-100-1A10 airplane; comments due

by 9-25-03; published 8-26-03 [FR 03-21769]

TRANSPORTATION DEPARTMENT**Federal Aviation Administration**

Class E airspace; comments due by 9-24-03; published 8-18-03 [FR 03-21080]

TRANSPORTATION DEPARTMENT**Federal Aviation Administration**

Class E airspace; comments due by 9-25-03; published 8-11-03 [FR 03-20401]

TRANSPORTATION DEPARTMENT**Federal Railroad Administration**

Railroad workplace safety:

Roadway maintenance machine safety; comments due by 9-26-03; published 7-28-03 [FR 03-18912]

TRANSPORTATION DEPARTMENT**National Highway Traffic Safety Administration**

Motor vehicle safety standards:

Hydraulic and air brake systems— Heavy vehicle anti-lock brake system (ABS); performance requirement; comments due by 9-25-03; published 8-11-03 [FR 03-20025]

TREASURY DEPARTMENT Internal Revenue Service

Income taxes:

Assumption of partner liabilities; cross-reference; comments due by 9-22-03; published 6-24-03 [FR 03-15282]

Correction; comments due by 9-22-03; published 9-15-03 [FR C3-15282]

Loss corporations; interests distributions; cross reference; comments due by 9-25-03; published 6-27-03 [FR 03-16230]

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)

Last List August 25, 2003

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869-050-00001-6)	9.00	⁴ Jan. 1, 2003
3 (1997 Compilation and Parts 100 and 101)	(869-050-00002-4)	32.00	¹ Jan. 1, 2003
4	(869-050-00003-2)	9.50	Jan. 1, 2003
5 Parts:			
1-699	(869-050-00004-1)	57.00	Jan. 1, 2003
700-1199	(869-050-00005-9)	46.00	Jan. 1, 2003
1200-End, 6 (6 Reserved)	(869-050-00006-7)	58.00	Jan. 1, 2003
7 Parts:			
1-26	(869-050-00007-5)	40.00	Jan. 1, 2003
27-52	(869-050-00008-3)	47.00	Jan. 1, 2003
53-209	(869-050-00009-1)	36.00	Jan. 1, 2003
210-299	(869-050-00010-5)	59.00	Jan. 1, 2003
300-399	(869-050-00011-3)	43.00	Jan. 1, 2003
400-699	(869-050-00012-1)	39.00	Jan. 1, 2003
700-899	(869-050-00013-0)	42.00	Jan. 1, 2003
900-999	(869-050-00014-8)	57.00	Jan. 1, 2003
1000-1199	(869-050-00015-6)	23.00	Jan. 1, 2003
1200-1599	(869-050-00016-4)	58.00	Jan. 1, 2003
1600-1899	(869-050-00017-2)	61.00	Jan. 1, 2003
1900-1939	(869-050-00018-1)	29.00	⁴ Jan. 1, 2003
1940-1949	(869-050-00019-9)	47.00	Jan. 1, 2003
1950-1999	(869-050-00020-2)	45.00	Jan. 1, 2003
2000-End	(869-050-00021-1)	46.00	Jan. 1, 2003
8	(869-050-00022-9)	58.00	Jan. 1, 2003
9 Parts:			
1-199	(869-050-00023-7)	58.00	Jan. 1, 2003
200-End	(869-050-00024-5)	56.00	Jan. 1, 2003
10 Parts:			
1-50	(869-050-00025-3)	58.00	Jan. 1, 2003
51-199	(869-050-00026-1)	56.00	Jan. 1, 2003
200-499	(869-050-00027-0)	44.00	Jan. 1, 2003
500-End	(869-050-00028-8)	58.00	Jan. 1, 2003
11	(869-050-00029-6)	38.00	Jan. 1, 2003
12 Parts:			
1-199	(869-050-00030-0)	30.00	Jan. 1, 2003
200-219	(869-050-00031-8)	38.00	Jan. 1, 2003
220-299	(869-050-00032-6)	58.00	Jan. 1, 2003
300-499	(869-050-00033-4)	43.00	Jan. 1, 2003
500-599	(869-050-00034-2)	38.00	Jan. 1, 2003
600-899	(869-050-00035-1)	54.00	Jan. 1, 2003
900-End	(869-050-00036-9)	47.00	Jan. 1, 2003
13	(869-050-00037-7)	47.00	Jan. 1, 2003

Title	Stock Number	Price	Revision Date
14 Parts:			
1-59	(869-050-00038-5)	60.00	Jan. 1, 2003
60-139	(869-050-00039-3)	58.00	Jan. 1, 2003
140-199	(869-050-00040-7)	28.00	Jan. 1, 2003
200-1199	(869-050-00041-5)	47.00	Jan. 1, 2003
1200-End	(869-050-00042-3)	43.00	Jan. 1, 2003
15 Parts:			
0-299	(869-050-00043-1)	37.00	Jan. 1, 2003
300-799	(869-050-00044-0)	57.00	Jan. 1, 2003
800-End	(869-050-00045-8)	40.00	Jan. 1, 2003
16 Parts:			
0-999	(869-050-00046-6)	47.00	Jan. 1, 2003
1000-End	(869-050-00047-4)	57.00	Jan. 1, 2003
17 Parts:			
1-199	(869-050-00049-1)	50.00	Apr. 1, 2003
200-239	(869-050-00050-4)	58.00	Apr. 1, 2003
240-End	(869-050-00051-2)	62.00	Apr. 1, 2003
18 Parts:			
1-399	(869-050-00052-1)	62.00	Apr. 1, 2003
400-End	(869-050-00053-9)	25.00	Apr. 1, 2003
19 Parts:			
1-140	(869-050-00054-7)	60.00	Apr. 1, 2003
141-199	(869-050-00055-5)	58.00	Apr. 1, 2003
200-End	(869-050-00056-3)	30.00	Apr. 1, 2003
20 Parts:			
1-399	(869-050-00057-1)	50.00	Apr. 1, 2003
400-499	(869-050-00058-0)	63.00	Apr. 1, 2003
500-End	(869-050-00059-8)	63.00	Apr. 1, 2003
21 Parts:			
1-99	(869-050-00060-1)	40.00	Apr. 1, 2003
100-169	(869-050-00061-0)	47.00	Apr. 1, 2003
170-199	(869-050-00062-8)	50.00	Apr. 1, 2003
200-299	(869-050-00063-6)	17.00	Apr. 1, 2003
300-499	(869-050-00064-4)	29.00	Apr. 1, 2003
500-599	(869-050-00065-2)	47.00	Apr. 1, 2003
600-799	(869-050-00066-1)	15.00	Apr. 1, 2003
800-1299	(869-050-00067-9)	58.00	Apr. 1, 2003
1300-End	(869-050-00068-7)	22.00	Apr. 1, 2003
22 Parts:			
1-299	(869-050-00069-5)	62.00	Apr. 1, 2003
300-End	(869-050-00070-9)	44.00	Apr. 1, 2003
23	(869-050-00071-7)	44.00	Apr. 1, 2003
24 Parts:			
0-199	(869-050-00072-5)	58.00	Apr. 1, 2003
200-499	(869-050-00073-3)	50.00	Apr. 1, 2003
500-699	(869-050-00074-1)	30.00	Apr. 1, 2003
700-1699	(869-050-00075-0)	61.00	Apr. 1, 2003
1700-End	(869-050-00076-8)	30.00	Apr. 1, 2003
25	(869-050-00077-6)	63.00	Apr. 1, 2003
26 Parts:			
§§ 1.0-1-1.60	(869-050-00078-4)	49.00	Apr. 1, 2003
§§ 1.61-1.169	(869-050-00079-2)	63.00	Apr. 1, 2003
§§ 1.170-1.300	(869-050-00080-6)	57.00	Apr. 1, 2003
§§ 1.301-1.400	(869-050-00081-4)	46.00	Apr. 1, 2003
§§ 1.401-1.440	(869-050-00082-2)	61.00	Apr. 1, 2003
§§ 1.441-1.500	(869-050-00083-1)	50.00	Apr. 1, 2003
§§ 1.501-1.640	(869-050-00084-9)	49.00	Apr. 1, 2003
§§ 1.641-1.850	(869-050-00085-7)	60.00	Apr. 1, 2003
§§ 1.851-1.907	(869-050-00086-5)	60.00	Apr. 1, 2003
§§ 1.908-1.1000	(869-050-00087-3)	60.00	Apr. 1, 2003
§§ 1.1001-1.1400	(869-050-00088-1)	61.00	Apr. 1, 2003
§§ 1.1401-1.1503-2A	(869-050-00089-0)	50.00	Apr. 1, 2003
§§ 1.1551-End	(869-050-00090-3)	50.00	Apr. 1, 2003
2-29	(869-050-00091-1)	60.00	Apr. 1, 2003
30-39	(869-050-00092-0)	41.00	Apr. 1, 2003
40-49	(869-050-00093-8)	26.00	Apr. 1, 2003
50-299	(869-050-00094-6)	41.00	Apr. 1, 2003
300-499	(869-050-00095-4)	61.00	Apr. 1, 2003
500-599	(869-050-00096-2)	12.00	⁵ Apr. 1, 2003
600-End	(869-050-00097-1)	17.00	Apr. 1, 2003

Title	Stock Number	Price	Revision Date	Title	Stock Number	Price	Revision Date
27 Parts:				86 (86.600-1-End)			
1-199	(869-050-00098-9)	63.00	Apr. 1, 2003	87-99	(869-048-00150-6)	57.00	July 1, 2002
200-End	(869-050-00099-7)	25.00	Apr. 1, 2003	100-135	(869-048-00151-4)	42.00	July 1, 2002
28 Parts:				136-149			
0-42	(869-050-00100-4)	61.00	July 1, 2003	150-189	(869-048-00152-2)	58.00	July 1, 2002
43-End	(869-050-00101-2)	58.00	July 1, 2003	*190-259	(869-050-00157-8)	39.00	July 1, 2003
29 Parts:				260-265			
0-99	(869-050-00102-1)	50.00	July 1, 2003	266-299	(869-048-00155-7)	47.00	July 1, 2002
*100-499	(869-050-00103-9)	22.00	July 1, 2003	300-399	(869-048-00156-5)	47.00	July 1, 2002
*500-899	(869-050-00104-7)	61.00	July 1, 2003	400-424	(869-048-00157-3)	43.00	July 1, 2002
*900-1899	(869-050-00105-5)	35.00	July 1, 2003	425-699	(869-048-00158-1)	54.00	July 1, 2002
1900-1910 (§§ 1900 to 1910.999)	(869-048-00104-2)	58.00	July 1, 2002	425-699	(869-048-00159-0)	59.00	July 1, 2002
1910 (§§ 1910.1000 to end)	(869-050-00107-1)	46.00	July 1, 2003	700-789	(869-048-00160-3)	58.00	July 1, 2002
1911-1925	(869-050-00108-0)	30.00	July 1, 2003	790-End	(869-048-00161-1)	45.00	July 1, 2002
1926	(869-050-00109-8)	50.00	July 1, 2003	41 Chapters:			
1927-End	(869-048-00108-5)	59.00	July 1, 2002	1, 1-1 to 1-10		13.00	³ July 1, 1984
30 Parts:				1, 1-11 to Appendix, 2 (2 Reserved)		13.00	³ July 1, 1984
1-199	(869-048-00109-3)	56.00	July 1, 2002	3-6		14.00	³ July 1, 1984
200-699	(869-048-00110-7)	47.00	July 1, 2002	7		6.00	³ July 1, 1984
*700-End	(869-050-00113-6)	57.00	July 1, 2003	8		4.50	³ July 1, 1984
31 Parts:				9		13.00	³ July 1, 1984
0-199	(869-048-00112-3)	35.00	July 1, 2002	10-17		9.50	³ July 1, 1984
200-End	(869-048-00113-1)	60.00	July 1, 2002	18, Vol. I, Parts 1-5		13.00	³ July 1, 1984
32 Parts:				18, Vol. II, Parts 6-19		13.00	³ July 1, 1984
1-39, Vol. I		15.00	² July 1, 1984	18, Vol. III, Parts 20-52		13.00	³ July 1, 1984
1-39, Vol. II		19.00	² July 1, 1984	19-100		13.00	³ July 1, 1984
1-39, Vol. III		18.00	² July 1, 1984	1-100	(869-048-00162-0)	23.00	July 1, 2002
1-190	(869-048-00114-0)	56.00	July 1, 2002	101	(869-048-00163-8)	43.00	July 1, 2002
*191-399	(869-050-00117-9)	63.00	July 1, 2003	102-200	(869-048-00164-6)	41.00	July 1, 2002
400-629	(869-048-00116-6)	47.00	July 1, 2002	201-End	(869-048-00165-4)	24.00	July 1, 2002
630-699	(869-048-00117-4)	37.00	July 1, 2002	42 Parts:			
700-799	(869-048-00118-2)	44.00	July 1, 2002	1-399	(869-048-00166-2)	56.00	Oct. 1, 2002
*800-End	(869-050-00121-7)	47.00	July 1, 2003	400-429	(869-048-00167-1)	59.00	Oct. 1, 2002
33 Parts:				430-End	(869-048-00168-9)	61.00	Oct. 1, 2002
1-124	(869-048-00120-4)	47.00	July 1, 2002	43 Parts:			
125-199	(869-048-00121-2)	60.00	July 1, 2002	1-999	(869-048-00169-7)	47.00	Oct. 1, 2002
200-End	(869-050-00124-1)	50.00	July 1, 2003	1000-end	(869-048-00170-1)	59.00	Oct. 1, 2002
34 Parts:				44	(869-048-00171-9)	47.00	Oct. 1, 2002
1-299	(869-048-00123-9)	45.00	July 1, 2002	45 Parts:			
300-399	(869-048-00124-7)	43.00	July 1, 2002	1-199	(869-048-00172-7)	57.00	Oct. 1, 2002
400-End	(869-048-00125-5)	59.00	July 1, 2002	200-499	(869-048-00173-5)	31.00	⁹ Oct. 1, 2002
35				500-1199	(869-048-00174-3)	47.00	Oct. 1, 2002
	(869-048-00126-3)	10.00	⁷ July 1, 2002	1200-End	(869-048-00175-1)	57.00	Oct. 1, 2002
36 Parts				46 Parts:			
*1-199	(869-050-00129-2)	37.00	July 1, 2003	1-40	(869-048-00176-0)	44.00	Oct. 1, 2002
200-299	(869-048-00128-0)	35.00	July 1, 2002	41-69	(869-048-00177-8)	37.00	Oct. 1, 2002
300-End	(869-048-00129-8)	58.00	July 1, 2002	70-89	(869-048-00178-6)	14.00	Oct. 1, 2002
37				90-139	(869-048-00179-4)	42.00	Oct. 1, 2002
	(869-048-00130-1)	47.00	July 1, 2002	140-155	(869-048-00180-8)	24.00	Oct. 1, 2002
38 Parts:				156-165	(869-048-00181-6)	31.00	⁹ Oct. 1, 2002
0-17	(869-050-00133-1)	58.00	July 1, 2003	166-199	(869-048-00182-4)	44.00	Oct. 1, 2002
18-End	(869-048-00132-8)	58.00	July 1, 2002	200-499	(869-048-00183-2)	37.00	Oct. 1, 2002
39				500-End	(869-048-00184-1)	24.00	Oct. 1, 2002
	(869-048-00133-6)	40.00	July 1, 2002	47 Parts:			
40 Parts:				0-19	(869-048-00185-9)	57.00	Oct. 1, 2002
1-49	(869-048-00134-4)	57.00	July 1, 2002	20-39	(869-048-00186-7)	45.00	Oct. 1, 2002
50-51	(869-048-00135-2)	40.00	July 1, 2002	40-69	(869-048-00187-5)	36.00	Oct. 1, 2002
52 (52.01-52.1018)	(869-048-00136-1)	55.00	July 1, 2002	70-79	(869-048-00188-3)	58.00	Oct. 1, 2002
52 (52.1019-End)	(869-048-00137-9)	58.00	July 1, 2002	80-End	(869-048-00189-1)	57.00	Oct. 1, 2002
53-59	(869-050-00140-3)	31.00	July 1, 2003	48 Chapters:			
60 (60.1-End)	(869-048-00139-5)	56.00	July 1, 2002	1 (Parts 1-51)	(869-048-00190-5)	59.00	Oct. 1, 2002
60 (Apps)	(869-048-00140-9)	51.00	⁸ July 1, 2002	1 (Parts 52-99)	(869-048-00191-3)	47.00	Oct. 1, 2002
*61-62	(869-050-00143-8)	43.00	July 1, 2003	2 (Parts 201-299)	(869-048-00192-1)	53.00	Oct. 1, 2002
63 (63.1-63.599)	(869-048-00142-5)	56.00	July 1, 2002	3-6	(869-048-00193-0)	30.00	Oct. 1, 2002
63 (63.600-63.1199)	(869-048-00143-3)	46.00	July 1, 2002	7-14	(869-048-00194-8)	47.00	Oct. 1, 2002
63 (63.1200-End)	(869-048-00144-1)	61.00	July 1, 2002	15-28	(869-048-00195-6)	55.00	Oct. 1, 2002
64-71	(869-048-00145-0)	29.00	July 1, 2002	29-End	(869-048-00196-4)	38.00	⁹ Oct. 1, 2002
72-80	(869-048-00146-8)	59.00	July 1, 2002	49 Parts:			
81-85	(869-048-00147-6)	47.00	July 1, 2002	1-99	(869-048-00197-2)	56.00	Oct. 1, 2002
86 (86.1-86.599-99)	(869-048-00148-4)	52.00	⁸ July 1, 2002	100-185	(869-048-00198-1)	60.00	Oct. 1, 2002
				186-199	(869-048-00199-9)	18.00	Oct. 1, 2002
				200-399	(869-048-00200-6)	61.00	Oct. 1, 2002

Title	Stock Number	Price	Revision Date
400-999	(869-048-00201-4)	61.00	Oct. 1, 2002
1000-1199	(869-048-00202-2)	25.00	Oct. 1, 2002
1200-End	(869-048-00203-1)	30.00	Oct. 1, 2002
50 Parts:			
1-17	(869-048-00204-9)	60.00	Oct. 1, 2002
18-199	(869-048-00205-7)	40.00	Oct. 1, 2002
200-599	(869-048-00206-5)	38.00	Oct. 1, 2002
600-End	(869-048-00207-3)	58.00	Oct. 1, 2002
CFR Index and Findings			
Aids	(869-050-00048-2)	59.00	Jan. 1, 2003
Complete 2003 CFR set		1,195.00	2003
Microfiche CFR Edition:			
Subscription (mailed as issued)		298.00	2003
Individual copies		2.00	2003
Complete set (one-time mailing)		298.00	2002
Complete set (one-time mailing)		290.00	2001

¹ Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

² The July 1, 1985 edition of 32 CFR Parts 1-189 contains a note only for Parts 1-39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1-39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

³ The July 1, 1985 edition of 41 CFR Chapters 1-100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

⁴ No amendments to this volume were promulgated during the period January 1, 2002, through January 1, 2003. The CFR volume issued as of January 1, 2002 should be retained.

⁵ No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2001. The CFR volume issued as of April 1, 2000 should be retained.

⁷ No amendments to this volume were promulgated during the period July 1, 2000, through July 1, 2001. The CFR volume issued as of July 1, 2000 should be retained.

⁸ No amendments to this volume were promulgated during the period July 1, 2001, through July 1, 2002. The CFR volume issued as of July 1, 2001 should be retained.

⁹ No amendments to this volume were promulgated during the period October 1, 2001, through October 1, 2002. The CFR volume issued as of October 1, 2001 should be retained.