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Presidential Documents

Title 3—

The President

Presidential Determination No. 2003–40 of September 24, 2003

Waiving Prohibition on United States Military Assistance to Parties to the Rome Statute Establishing the International Criminal Court

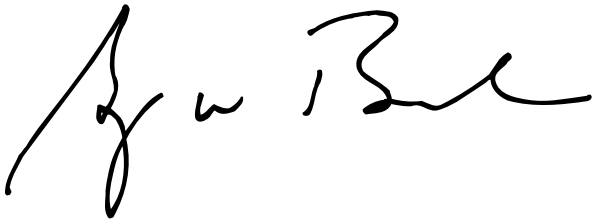
Memorandum for the Secretary of State

Consistent with the authority vested in me by section 2007 of the American Servicemembers' Protection Act of 2002, title II of Public Law 107–206 (22 U.S.C. 7421 *et seq.*), I hereby determine that:

(1) Afghanistan, Democratic Republic of the Congo, Georgia, and Honduras have each entered into an agreement with the United States pursuant to Article 98 of the Rome Statute preventing the International Criminal Court from proceeding against U.S. personnel present in such countries, and waive the prohibition of section 2007(a) of the American Servicemembers' Protection Act with respect to these countries for as long as such agreement remains in force; and

(2) it is important to the national security interest of the United States to waive, for a period of 6 months from the date of this determination, the prohibition of section 2007(a) with respect to Guinea, and waive that prohibition with respect to this country for that period.

You are authorized and directed to report this determination to the Congress, and to arrange for its publication in the **Federal Register**.



THE WHITE HOUSE,
Washington, September 24, 2003.

[FR Doc. 03–25285
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Rules and Regulations

Federal Register
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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Docket No. FV03–930–3 FR]

Tart Cherries Grown in the States of Michigan, et al.; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule increases the assessment rate for tart cherries that are utilized in the production of tart cherry products from $0.0019 to $0.0021 per pound. The assessment rate was recommended by the Cherry Industry Administrative Board (Board) under Marketing Order No. 930 for the 2003–2004 and subsequent fiscal periods. The Board is responsible for local administration of the marketing order which regulates the handling of tart cherries grown in the production area. Authorization to assess tart cherry handlers enables the Board to incur expenses that are reasonable and necessary to administer the program. The fiscal period began July 1 and ends June 30. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: This final rule becomes effective October 6, 2003.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella or Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Suite 2A04, Unit 155, 4700 River Road, Riverdale, MD 20737, telephone: (301) 734–5243, or Fax: (301)–734–5275; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, or Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or e-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Order No. 930 (7 CFR part 930), regulating the handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin, hereinafter referred to as the ''order.'' The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, tart cherry handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable tart cherries beginning July 1, 2003, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This final rule increases the assessment rate established for the Board for the 2003–2004 and subsequent fiscal periods for cherries that are utilized in the production of tart cherry products from $0.0019 to $0.0021 per pound of cherries.

The tart cherry marketing order provides authority for the Board, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Board are producers and handlers of tart cherries. They are familiar with the Board's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2002–2003 fiscal period, the Board recommended, and the Department approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by the USDA upon recommendation and information submitted by the Board or other information available to USDA.

Section 930.42(a) of the order authorizes a reserve sufficient to cover one year's operating expenses. The increased rate is expected to generate enough income to meet the Board's operating expenses in 2003–2004.

The Board met on January 23, 2003, and unanimously recommended 2003–2004 expenditures of $532,000. The industry completed a formal rulemaking proceeding which amended the assessment rate section by authorizing one assessment rate rather than two assessment rates for different tart cherry products [67 FR 51697]. The provisions requiring the establishment of different assessment rates for different products were removed. In their place, the Board is required to consider the volume of cherries used in making various products and the relative market value of those products in deciding whether the assessment rate should be a single, uniform rate applicable to all cherries or

whether varying rates should be recommended for cherries manufactured into different products.

In addition, the amended order provides that the assessment rate not apply to cherries diverted in orchard by growers, and those diverted by handlers through destruction at their plants. The Board recommended the amendment to allow them to establish one assessment rate for all tart cherry products handled. In making its recommendation, the Board stated that while a two-tiered assessment rate scheme may be appropriate in some years, it may not be in others due to the fact that the absolute and relative market values of various tart cherry products fluctuate from year to year.

The amended order specifically provides that under section 930.41(f)(1) and (2) the established assessment rate may be uniform, or may vary depending on the product the cherries are used to manufacture. The Board must consider the differences in the number of pounds of cherries utilized for various cherry products and the relative market values of such cherry products.

On June 25, 2003 (68 FR 37726), a final rule was published in the **Federal Register** that established a single assessment rate for the 2002–2003 fiscal period for all tart cherries handled regardless of the product the cherries are used to manufacture. The Board determined that the markets for juice, juice concentrate, and puree were gaining in importance and that cherries used in such products should be assessed the same as those sold for use in assorted bakery items, as canned pie fill and as dried cherries.

The Board considered the above items and decided that one assessment rate should be recommended for all cherry products during 2003–2004. According to the Board, processors have developed a strong market for juice and concentrate products over the past few years. There is considerable belief that juice will be one of the growth outlets for tart cherries. This derives from the industry's promotional efforts being undertaken for juice and concentrate products, the segmentation of the market into retail and industrial components, and the nutritional/nutraceutical profile of the product. As a result, there has been an increase in consumer recognition, acceptance, purchases, and the value of tart cherry juice and concentrate. According to the Board, prices received for tart cherry juice concentrate are now $25.00 per gallon or more. This is derived by using the fairly common conversion ratio of 100 pounds to the gallon for mid-west production, which has a raw product value of $0.25 per pound. Using a 50 gallon conversion for the product, as has been seen on the west coast, this represents a per pound value of $0.50. The difference in the west and mid-west conversion factors is that tart cherries produced in the western United States generally have a higher sugar content and larger fruit size, thus fewer raw product is needed. The average grower price received ranges between $0.17 to $0.20 per pound.

According to the Board, puree products are as valuable and comparable to juice and juice concentrate products. The Board reported that the spot price for single strength puree for 2001 was about 60 cents per pound. The raw product equivalent (RPE) volume of pureed fruit was 539,504 pounds which is about 0.15 percent of all processed fruit. The Board also reported for 2001 that the price for five plus one product was 67 cents per pound. Five plus one is a product of cherries and sugar which is manufactured by many processors (25 pounds of cherries and 5 pounds of sugar to make a 30 pound commercial container). It is the main product that handlers produce. Five plus one cherries are primarily sold and remanufactured into assorted bakery items, canned pie fill, and dried cherries. Since juice, juice concentrate, and puree are not considered to be low value products at this time, the Board considers one assessment to be appropriate. It is important to understand that product is moved around between production areas and may be converted into puree or concentrate at a later date. The market drives the processing of these various products each season.

In comparing the costs of juice, juice concentrate, and puree, the Board has determined that current prices are similar for these products when compared to the 5 plus 1 product. The information received from the Board indicates that puree products are becoming a viable market and should be assessed at a higher assessment rate.

As a result of last season's short crop, much of the tart cherry products released from inventory were in the form of tart cherry juice and/or juice concentrate. There is not much, if any, of this product that is available on the market today. The Board contends that given these factors, it is hard to suggest that juice/concentrate, or puree, are of lesser value than are the more traditional products such as pie-fill or individually quick frozen tart cherries. Thus, the Board determined that one assessment rate is appropriate for the 2003–04 fiscal period.

Budgeted expenditures for the 2003–04 fiscal period were unanimously recommended at $532,000. The major expenditures recommended by the Board for the 2003–2004 fiscal period include $81,000 for meetings, $149,000 for compliance, $191,000 for personnel, $106,000 for office expenses, and $5,000 for industry educational efforts. Budgeted expenses for those items in 2002–2003 were $85,000 for meetings, $170,000 for compliance, $185,000 for personnel, $80,000 for office expenses, and $2,500 for industry educational efforts, respectively. In comparison, last year's budgeted expenditures were $522,500. Last season, the tart cherry industry experienced a significant frost mainly in Michigan which severely impacted the crop. Only 60 million pounds of cherries were produced in comparison to a normal crop of about 260 million pounds. The Board staff has responded to this decrease in funds by cutting its expenditures. The Board reduced its staff and Committee travel for meetings and used reserve funds to continue administrative operations in 2002–2003.

The recommended assessment rate of $0.0021 is higher than the current rate of $0.0019 per pound. The Board recommended an increased assessment rate to generate larger revenue to meet its expenses and keep its reserves at an acceptable level. In deriving the recommended assessment rate in January, the Board estimated assessable tart cherry production for the fiscal period at 260 million pounds. However, actual production was 222 million pounds. Therefore, total assessment income for 2003–2004 based on actual production of 222 million pounds is $466,200. This amount plus adequate funds in the reserve and interest income will be adequate to cover budgeted expenses. Funds in the reserve (approximately $66,000) will be kept within the approximately six months' operating expenses as recommended by the Board consistent with section 930.42(a).

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and other information submitted by the Board or other available information.

Although the assessment rate is effective for an indefinite period, the Board will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Board meetings are available from the Board or the USDA. Board meetings are

open to the public and interested persons may express their views at these meetings. USDA will evaluate Board recommendations and other available information to determine whether modifications of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Board's 2003–2004 budget and those for subsequent fiscal periods would be reviewed and, as appropriate, approved by the USDA.

The Regulatory Flexibility Act and Effects on Small Businesses

The Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities and has prepared this final regulatory flexibility analysis. The Regulatory Flexibility Act (RFA) allows AMS to certify that regulations do not have a significant economic impact on a substantial number of small entities. However, as a matter of general policy, AMS's Fruit and Vegetable Programs (Programs) no longer opts for such certification, but rather performs regulatory flexibility analyses for any rulemaking that would generate the interest of a significant number of small entities. Performing such analyses shifts the Programs' efforts from determining whether regulatory flexibility analyses are required to the consideration of regulatory options and economic or regulatory impacts.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 40 handlers of tart cherries who are subject to regulation under the order and approximately 900 producers of tart cherries in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts less than $5,000,000, and small agricultural producers are those whose annual receipts are less than $750,000. A majority of the tart cherry handlers and producers may be classified as small entities.

The Board unanimously recommended 2003–2004 expenditures of $532,000 and an assessment rate increase from $0.0019 to $0.0021 per pound. This rule increases the assessment rate established for the Board and collected from handlers for the 2003–2004 and subsequent fiscal periods for cherries that are utilized in the production of tart cherry products. The quantity of assessable tart cherries produced during the 2003–2004 crop year is 222 million pounds. Assessment income, based on this crop, along with interest income and reserves, would be adequate to cover budgeted expenses.

The major expenditures recommended by the Board for the 2003–2004 fiscal period include $81,000 for meetings, $149,000 for compliance, $191,000 for personnel, $106,000 for office expenses, and $5,000 for industry educational efforts. Budgeted expenses for those items in 2002–2003 were $85,000 for meetings, $170,000 for compliance, $185,000 for personnel, $80,000 for office expenses, and $2,500 for industry educational efforts, respectively.

The Board discussed the alternative of continuing the existing assessment rate, but concluded that would cause the amount in the operating reserve to be reduced to an unacceptable level.

The principal demand for tart cherries is in the form of processed products. Tart cherries are dried, frozen, canned, juiced, and pureed. Data from the National Agricultural Statistics Service (NASS) states that during the period 1995/96 through 2002/03, approximately 92 percent of the U.S. tart cherry crop, or 285.7 million pounds, was processed annually. Of the 285.7 million pounds of tart cherries processed, 58 percent was frozen, 30 percent was canned, and 12 percent was utilized for juice.

Based on NASS data, acreage in the United States devoted to tart cherry production has been trending downward. Since 1987/88 tart cherry bearing acres have decreased from 50,050 acres, to 36,900 acres in the 2002/03 crop year. In 2002/03, 93 percent of domestic tart cherry acreage was located in four States: Michigan, New York, Utah, and Wisconsin. Michigan leads the nation in tart cherry acreage with 74 percent of the total. Michigan produces about 75 percent of the U.S. tart cherry crop each year. Tart cherry acreage in Michigan decreased from 28,500 acres in 2000–2001, to 27,400 acres in 2002–2003.

In deriving the recommended assessment rate, the Board estimated assessable tart cherry production for the fiscal period at 260 million pounds. However, actual 2003–2004 production is approximately 222 million pounds. Cherries used for handler destruction and grower diversion outlets are exempt from assessment obligations. Funds in the reserve (approximately $66,000) will be kept within the approximately six months' operational expenses as recommended by the Board which would be consistent with the order (§ 930.42(a)).

While this action will impose additional costs on handlers, the costs are in the form of assessments which are applied uniformly. Some of the costs may also be passed on to producers. However, these costs are offset by the benefits derived from the operation of the marketing order. The Board's meeting was widely publicized throughout the tart cherry industry and all interested persons were invited to attend the meeting and participate in Board deliberations on all issues. Like all Board meetings, the January 23, 2003, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons were invited to submit information on the regulatory and informational impacts of this action on small businesses.

This action will impose no additional reporting or recordkeeping requirements on either small or large tart cherry handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A proposed rule concerning this action was published in the **Federal Register** on July 25, 2003 (68 FR 43978). Copies of the rule were mailed and sent via facsimile to all Board members and cherry handlers. Finally, the rule was made available through the Internet by the Office of the Federal Register and USDA. A 30-day comment period ending August 25, 2003, was provided to allow interested persons to respond to the proposal.

One comment was received from Mr. Perry Hedin, Executive Director of the Board. He commented that the Board is in support of the proposed rule but he wanted to make one clarification. The terms of the order allow the Board to maintain one year's operational expenses as a reserve. The Board policy, however, intends to maintain cash reserves equal to one half of one year's operational budget. The Board's increase in the assessment rate this year was intended to replenish the cash reserves depleted when the crop was extremely short in 2002. The commenter stated that the Board should be able to rebuild some of the intended cash reserves under the current assessment,

but it is as yet unknown if reserves will be fully replenished this season.

Accordingly, no changes will be made to the rule based on the comment received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab/html.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant matters presented, including the information and recommendation submitted by the Board and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because the 2003–2004 fiscal period began on July 1, 2003, and ends on June 30, 2004, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable tart cherries handled during such fiscal period. Further, handlers are aware of this action which was unanimously recommended by the Board at a public meeting. Also, a 30-day comment period was provided in the proposed rule.

List of Subjects in 7 CFR Part 930

Marketing agreements, Reporting and recordkeeping requirements, Tart cherries.

■ For the reasons set forth in the preamble, 7 CFR part 930 is amended as follows:

PART 930—TART CHERRIES GROWN IN THE STATES OF MICHIGAN, NEW YORK, PENNSYLVANIA, OREGON, UTAH, WASHINGTON, AND WISCONSIN

■ 1. The authority citation for 7 CFR part 930 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 930.200 is revised to read as follows:

§ 930.200 Handler assessment rate.

On and after July 1, 2003, the assessment rate imposed on handlers shall be $0.0021 per pound of cherries handled for tart cherries grown in the production area and utilized in the production of tart cherry products.

Dated: September 29, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–25110 Filed 10–2–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 956

[Docket No. FV03–956–1 FR]

Sweet Onions Grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon; Fiscal Period Change

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule changes the fiscal period under the Walla Walla sweet onion marketing order from June 1 through May 31 to January 1 through December 31. This rule was recommended by the Walla Walla Sweet Onion Marketing Committee (Committee), the agency responsible for local administration of the marketing order regulating the handling of sweet onions grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon. The June 1 through May 31 fiscal period has been in place since the marketing order's inception in 1995. Due to the advance planning needed for market promotion, including paid advertising, it has been the practice of the Committee to develop its budget of expenditures prior to the start of each fiscal period, but delay the actual expenditure of funds until after June 1. This made it more difficult for the Committee to coordinate the timing of marketing promotion activities with the short harvest and marketing season for Walla Walla sweet onions. This fiscal period change is expected to help the Committee better coordinate its marketing promotion activities with the marketing season—mid-June into September.

EFFECTIVE DATE: This final rule becomes effective January 1, 2004.

FOR FURTHER INFORMATION CONTACT: Barry M. Broadbent, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, Suite 385, Portland, Oregon 97204–2807; Telephone: (503) 326–2724, Fax: (503) 326–7440, or E-mail: *Barry.Broadbent@usda.gov.;* or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938.

Small business may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Order No. 956, both as amended (7 CFR part 956), regulating the handling of Walla Walla sweet onions grown in Southeast Washington and Northeast Oregon, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This final rule changes the fiscal period from June 1 through May 31 to January 1 through December 31. This rule also makes conforming changes to the order's administrative rules and regulations. This change was

unanimously recommended by the Committee at its December 17, 2003, meeting.

Section 956.40 of the order provides authority for the Committee to incur expenses that are reasonable and necessary to operate the program. Section 956.42 provides that these expenses be paid by assessments levied on fresh shipments of Walla Walla sweet onions. Further, § 956.41 provides that an annual budget of expenses be prepared by the Committee based on the defined fiscal period. Section 956.13 of the order defines ''fiscal period'' and provides the authority for making this fiscal period change.

Walla Walla sweet onions are traditionally harvested from about mid-June through about mid-August, although, in recent years, harvest has been extended into September due to an increase in spring planted onions and the use of better storage facilities. Walla Walla sweet onions have a short shelf life and are therefore generally marketed within a relatively short period of time following harvest. During the promulgation of the order in 1995, the proponent industry committee—the organization responsible for drafting the order and presenting it during the promulgation hearing—was of the opinion that the new order's fiscal period should begin shortly before the marketing season began. Testimony during the hearing supported the position that the start of the fiscal period should be close to the beginning of the season. This was so a minimum of expenses would be incurred prior to the time assessment revenue was received by the Committee following the sweet onion harvest.

Experience gained over the last eight years has shown the Committee that the June 1 through May 31 fiscal period is not conducive to coordinating the timing of its marketing promotion, including paid advertising activities, with the short harvest and marketing season for Walla Walla sweet onions. The crop is harvested and marketed during a four-month period—mid-June into September.

Due to the advance planning needed for market promotion, including paid advertising, it has been the practice of the Committee to develop its budget of expenditures prior to the start of each fiscal period, but delay the actual expenditure of funds until after June 1. This made it more difficult for the Committee to coordinate the timing of its promotion activities with the short harvest and marketing season. The Committee believes that better timing of marketing promotion activities with the harvest and marketing of Walla Walla sweet onions will improve the distribution and consumption of sweet onions. To foster better timing, the Committee recommended that the fiscal period begin January 1 and end December 31 each year.

As previously stated, the Committee has been operating with a fiscal period of June 1 through May 31. The Committee formulated a budget for the twelve-month period beginning June 1, 2003, and submitted it to the USDA for approval. The budget was approved on May 23, 2003. The Committee began expending funds June 1 for its 2003–2004 promotion and research plans, as well as for administration costs. With the effective date of this fiscal period change being January 1, 2004, the Committee will be required to meet prior to that date to reformulate and resubmit a new budget for USDA approval for a new fiscal period beginning January 1, 2004, and ending December 31, 2004.

As conforming changes to the fiscal period change, this rule also updates language in § 956.142, Interest charges, and § 956.180, Reports by removing the words ''of each fiscal period'' wherever they appear.

Final Regulatory Flexibility Analysis

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

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 26 handlers of Walla Walla sweet onions subject to regulation under the order and approximately 35 Walla Walla sweet onion producers in the regulated area. Small agricultural service firms are defined by the Small Business Administration (SBA)(13 CFR 121.201) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000.

The Committee estimates that in 2002, 611,955 50-pound units of Walla Walla sweet onions were marketed at an average FOB price of about $9.00 per unit. The total industry value at shipping point was approximately $5,507,595. Thus, a majority of handlers and producers of Walla Walla sweet onions may be classified as small entities.

This final rule changes the current fiscal period from June 1 through May 31 to January 1 through December 31. The prior fiscal period had been in place since the marketing order's inception in 1995. Due to the advance planning needed for market promotion, including paid advertising, the Committee has previously developed its budget of expenditures before June 1, but delayed actual expenditures until that date. This made it more difficult for the Committee to coordinate the timing of marketing promotion activities with the short harvest and marketing season for Walla Walla sweet onions—mid-June into September. The Committee believes the January 1 through December 31 fiscal period will better facilitate marketing promotion programs and will improve the distribution and consumption of Walla Walla sweet onions.

Section 956.13 of the order defines ''fiscal period'' and provides the authority for making this change. This final rule is a change to Committee operations that will not impose any new requirements or costs on Walla Walla sweet onion handlers or producers. It could, on the other hand, simplify the business operations within the Walla Walla sweet onion industry by putting the order's fiscal period on the same basis as that of normal business recordkeeping practices.

The Committee discussed the alternative of taking no action on a fiscal period change, but unanimously concluded that this change will improve program administration.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large Walla Walla sweet onion handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sectors. In addition, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

The Committee's meeting was widely publicized throughout the Walla Walla sweet onion industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the December 17, 2002, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue.

A proposed rule concerning this action was published in the **Federal Register** on April 9, 2003 (68 FR 17325). Copies of the rule were mailed or sent via facsimile to all Committee members and Walla Walla sweet onion handlers. Finally, the rule was made available through the Internet by the Office of the Federal Register and USDA. A 60-day comment period ending June 9, 2003, was provided to allow interested persons to respond to the proposal. One comment was received but was not relevant to the fiscal period change.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ama.usda.gov/fv/moab.html.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 956

Marketing agreements, Onions, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 956 is amended as follows:

PART 956—SWEET ONIONS GROWN IN THE WALLA WALLA VALLEY OF SOUTHEAST WASHINGTON AND NORTHEAST OREGON

■ 1. The authority citation for 7 CFR part 956 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. A new § 956.113 is added to subpart ''Rules and Regulations'' to read as follows:

§ 956.113 Fiscal period.

■ Pursuant to § 956.13, *fiscal period* shall mean the period beginning January 1 and ending December 31 of each year.

§ 956.142 [Amended]

■ 3. Section 956.142 is amended by removing the words ''of each fiscal period'' in the second sentence.

§ 956.180 [Amended]

■ 4. Section 956.180 is amended by removing the words ''of each fiscal period'' in the introductory text.

Dated: September 29, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–25111 Filed 10–2–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1220

[No. LS–03–03]

Soybean Promotion and Research: Amend the Order To Adjust Representation on the United Soybean Board

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule adjusts the number of members for certain States on the United Soybean Board (Board) to reflect changes in production levels that have occurred since the last time the Board was reapportioned in 2000. These adjustments are required by the Soybean Promotion and Research Order (Order). The results of the adjustments are an additional member for Maryland and Michigan. New York is no longer part of the Eastern Region unit. The State has sufficient soybean production to qualify as a separate State unit with one representative on the Board. New Jersey is merged into the Eastern Region unit. The State no longer has sufficient soybean production to be a separate State unit. As a result of these changes, the total Board membership increases from 62 members to 64 members. These changes to the Board are effective with the Secretary of Agriculture's 2004 appointments.

EFFECTIVE DATE: November 3, 2003.

FOR FURTHER INFORMATION: Kenneth R. Payne, Chief; Marketing Programs Branch; Livestock and Seed Program; Agricultural Marketing Service (AMS), USDA, Room 2638–S; STOP 0251; 1400 Independence Avenue, SW.; Washington, DC 20250–0251; telephone 202/720–1115.

SUPPLEMENTARY INFORMATION:

Executive Orders 12866

The Office of Management and Budget (OMB) has waived the review process required by Executive Order 12866 for this action.

Executive Orders 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have a retroactive effect. This rule would not preempt any State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule.

The Soybean Promotion, Research, and Consumer Information Act (Act) provides that administrative proceedings must be exhausted before parties may file suit in court. Under § 1971 of the Act, a person subject to the Order may file a petition with the Secretary stating that the Order, any provision of the Order, or any obligation imposed in connection with the Order, is not in accordance with law and requesting a modification of the Order or an exemption from the Order. The petitioner is afforded the opportunity for a hearing on the petition. After a hearing, the Department of Agriculture (Department) would rule on the petition. The Act provides that the district courts of the United States in any district in which such person is an inhabitant, or has their principal place of business, has jurisdiction to review USDA's ruling on the petition, if a complaint for this purpose is filed within 20 days after the date of the entry of the ruling.

Regulatory Flexibility Act

The Administrator of AMS has determined that this rule will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), because it merely adjusts representation on the Board to reflect changes in production levels that have occurred since the Board was reapportioned in 2000. As such, these changes will not have an impact on those persons subject to the program. There are an estimated 600,813 soybean producers who pay assessments and an estimated 10,000 first purchasers who collect assessments, most of whom would be considered small entities under the criteria established by the Small Business Administration (13 CFR 121.201).

Paperwork Reduction Act

In accordance with OMB regulations (5 CFR part 1320), which implements the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirements and recordkeeping requirements contained in the Order have been previously approved by OMB under OMB control number 0581–0093.

Background and Changes

The Act (7 U.S.C. 6301–6311) provides for the establishment of a coordinated program of promotion and research designed to strengthen the soybean industry's position in the marketplace, and to maintain and expand domestic and foreign markets and uses for soybeans and soybean products. The program is financed by an assessment of 0.5 percent of the net market price of soybeans sold by producers. Pursuant to the Act, an Order was made effective July 9, 1991. The Order established a Board of 60 members. For purposes of establishing the Board, the United States was divided into 31 geographic units. Representation on the Board from each unit was determined by the level of production in each unit. The Secretary appointed the initial Board on July 11, 1991. The Board is composed of domestic soybean producers.

Section 1220.201(c) of the Order provides that at the end of each 3-year period, the Board shall review soybean production levels in the geographic units throughout the United States. The Board may recommend to the Secretary modification in the levels of production necessary for Board membership for each unit. At its March 2003 meeting the Board decided not to recommend any changes to the levels of production necessary for Board membership for each unit.

Section 1220.201(d) of the Order provides that at the end of each 3-year period, the Secretary must review the volume of production of each unit and adjust the boundaries of any unit and the number of Board members from each such unit as necessary to conform with the criteria set forth in § 1220.201(e): (1) To the extent practicable, States with annual average soybean production of less than 3,000,000 bushels shall be grouped into geographically contiguous units, each of which has a combined production level equal to or greater than 3,000,000 bushels, and each such group shall be entitled to at least one member on the Board; (2) units with at least 3,000,000 bushels, but fewer than 15,000,000 bushels shall be entitled to one Board member; (3) units with 15,000,000 bushels or more but fewer than 70,000,000 bushels shall be entitled to two Board members; (4) units with 70,000,000 bushels or more but fewer than 200,000,000 bushels shall be entitled to three Board members; and (5) units with 200,000,000 bushels or more shall be entitled to four Board members.

A proposed rule was published in the **Federal Register** (68 FR 35825) on June 17, 2003, with a 60-day comment period. The Department received one comment from an individual who, while opposed to the proposal, did not address the proposed changes to the representation on the Board.

Based on the requirements of the Act and Order, AMS is adjusting representation on the Board as proposed. Maryland and Michigan will each gain an additional member. New York will no longer be part of the Eastern Region unit because the State has sufficient soybean production to qualify as a separate State unit with one representative on the Board. New Jersey will lose its only member because the State no longer has sufficient soybean production to be a separate State unit. New Jersey is merged into the Eastern Region unit, and will be represented on the Board by the Eastern Region's representative. There are no adjustments to the other States or regions.

This final rule will increase Board membership from 62 members to 64 members effective with the 2004 nominations and appointments. The number of geographical units will remain at 30.

List of Subjects in 7 CFR Part 1220

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreements, Soybeans and soybean products, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, Title 7, part 1220 is amended as follows:

PART 1220—SOYBEAN PROMOTION, RESEARCH, AND CONSUMER INFORMATION

■ 1. The authority citation for 7 CFR part 1220 continues to read as follows:

Authority: 7 U.S.C. 6301–6311.

■ 2. In § 1220.201, the table in paragraph (a) is revised to read as follows:

§ 1220.201 Membership of board.

(a) * * *

Unit	No. of members
Illinois	4
Iowa	4
Minnesota	4
Indiana	4
Missouri	3
Ohio	3
Arkansas	3
Nebraska	3
South Dakota	3
Kansas	3
Michigan	3
Mississippi	2
Louisiana	2
Tennessee	2
North Carolina	2
Kentucky	2
North Dakota	2
Wisconsin	2
Maryland	2
Virginia	1
Georgia	1
South Carolina	1
Alabama	1
Delaware	1
Texas	1
Pennsylvania	1
Oklahoma	1
New York	1
Eastern Region (New Jersey, Massachusetts, Connecticut, Florida, Rhode Island, Vermont, New Hampshire, Maine, West Virginia, District of Columbia, and Puerto Rico)	1
Western Region (Montana, Wyoming, Colorado, New Mexico, Idaho, Utah, Arizona, Washington, Oregon, Nevada, California, Hawaii, and Alaska)	1

* * * * *

Dated: September 29, 2003

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–25113 Filed 10–2–03; 8:45 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 30, 40, and 70

RIN 3150–AG85

Financial Assurance for Materials Licensees

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations for financial assurance for certain materials licensees, including all waste brokers, to bring the amount of financial assurance required more in line with current decommissioning costs. The objective of this action is to ensure that licensees maintain adequate financial assurance so that timely decommissioning can be carried out following shutdown of a licensed facility.

EFFECTIVE DATE: December 2, 2003.

FOR FURTHER INFORMATION CONTACT: James Morris, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington,

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SUPPLEMENTARY INFORMATION:

Introduction

When NRC published the ''General Requirements for Decommissioning Nuclear Facilities'' final rule the Commission noted that inadequate or untimely consideration of decommissioning, specifically in the areas of planning and financial assurance, could result in significant adverse health, safety and environmental impacts (53 FR 24018, June 27, 1988). Additionally, they stated an intention that the regulations make clear that the licensee is responsible for the funding and completion of decommissioning in a manner which protects public health and safety.

Availability of adequate decommissioning funding is necessary for assuring that timely decontamination of facilities takes place following cessation of licensed operations. If a nuclear materials facility remains in a nonoperating status without being decommissioned, public health and safety could be compromised by leakage and contamination and/or loss of control of nuclear materials. Also, when decommissioning is delayed for long periods following cessation of operations, there is a risk that safety practices may become lax as key personnel relocate and management interest wanes. The Commission stated in the ''Timeliness in Decommissioning of Materials Facilities'' final rule that the rule was intended to reduce the potential risk to public health and the environment from radioactive material remaining for long periods of time at such facilities after licensed activities have ceased (59 FR 36026, July 15, 1994).

Background

On October 7, 2002, the NRC published a proposed rule (67 FR 62403) that would amend the requirements for financial assurance for certain materials licensees. The proposed rule was developed in response to a need to update financial assurance requirements to ensure that licensees maintain adequate financial assurance coverage. The NRC regulations requiring financial assurance for decommissioning are designed to ensure that adequate funding will be available for timely decommissioning by licensees following shutdown of normal operations. The financial assurance regulations are part of the overall NRC strategy to maintain safety and protection of the public and the environment during and after decommissioning and decontamination of nuclear facilities.

Financial assurance is composed of several parts: (1) Appropriate identification of licensees for which financial assurance should be required; (2) the amount of financial assurance required for each licensee must be adequate to fund current decommissioning costs; and (3) appropriate financial assurance mechanisms (surety bonds, escrow accounts, parent or self-guarantee, etc.) must be required.

The NRC is amending its financial assurance requirements for certain materials licensees to bring required financial assurance amounts more in line with actual current decommissioning costs. The objective of this rulemaking is to maintain adequate financial assurance by addressing gaps in the current regulatory framework regarding (1) and (2) above.

Under current decommissioning regulations, materials licensees that use substantial quantities of nuclear materials must provide financial assurance for decommissioning (most materials licensees do not need to provide financial assurance because their possession limits are below the threshold for requiring financial assurance). NRC has approximately 4900 materials licensees, of which approximately 10 percent require financial assurance. The financial assurance requirements were established in 1988 as part of the decommissioning rulemaking (53 FR 24018; June 27, 1988). The amount of financial assurance that must be provided can be based on either: (1) A facility-specific decommissioning cost estimate provided by the licensee in a decommissioning funding plan;[1] or (2) one of several dollar amounts prescribed by regulation (certification amounts), that are based on possession limits. Revision to some of the financial assurance requirements for materials licensees are needed because there have been changes in decommissioning costs since that rulemaking was issued. Also, experience has revealed that for certain types of licensees, such as waste brokers,[2] special circumstances exist that require different financial assurance considerations.

The financial assurance regulations no longer provide adequate coverage of decommissioning costs for certain types of materials licensees, mainly due to large increases in decommissioning costs since the financial assurance regulations were put in place. Allowing these financial assurance coverage shortfalls to remain could increase the likelihood of inadequate funding for timely decommissioning.

To address these financial assurance coverage issues NRC considered two alternatives which were: (1) No action; and (2) carrying out this rulemaking. NRC performed a regulatory analysis studying the costs and benefits of the two alternatives and reached the following conclusions.

(1) No Action

Under this alternative, no rulemaking would be done. The amount of financial assurance required would not be adequate to fully fund decommissioning activities for a large number of licensees. This shortfall in financial assurance would increase the likelihood that decommissioning of some facilities would not be carried out in a timely manner. This could result in adverse impacts on public health and safety, and also could have adverse environmental effects. It would also increase the likelihood that State or local governments and/or the general public would have to bear the costs of decommissioning.

No costs to licensees or NRC would be involved for this alternative. Licensees would not be subject to any cost increases, and NRC would not incur costs associated with developing and implementing the rulemaking.

(2) Rulemaking to Revise the Financial Assurance Requirements for Materials Licensees

Under this alternative, certification amounts would be raised by 50 percent, providing approximately $80 million in additional financial assurance.[3] Large irradiator and waste broker licensees would have to base financial assurance on a site-specific decommissioning cost estimate. All waste brokers would have to provide financial assurance to cover the amount of the cost estimate. The decommissioning cost estimates would have to be updated at least every 3 years. A rulemaking to revise the financial assurance requirements for materials licensees would increase the assurance of adequate funding for decommissioning activities. This increased assurance would make timely decommissioning more likely, contributing to maintaining public health and safety and protection of the environment. This action would also

[1] For some types of licensees using very large amounts of radioactive material, a facility-specific cost estimate must be used.

[2] Waste brokers are waste processors and waste collectors as defined in 10 CFR part 20, appendix G.

[3] Estimate based on current numbers of licensees using each certification amount.

decrease the likelihood that State and local governments and/or the general public would have to bear the costs of decommissioning, should a licensee be unable to do so.

The benefit of the rulemaking is enhanced assurance of adequate funding for timely decommissioning. As stated above, there are gaps in the current financial assurance regulations permitting some licensees to provide financial assurance that does not cover the full cost of decommissioning, mainly due to large increases in decommissioning costs since the financial assurance regulations were put in place. Allowing these gaps to remain could increase the likelihood of inadequate funding for timely decommissioning.

The effect of inadequate/untimely funding of decommissioning may have adverse impacts on public health and safety. If a site is not decommissioned due to insufficient funds there is an increased likelihood of contamination and/or exposure of members of the public. The changes to the regulations are concentrated in areas where the likelihood of inadequate funding relative to decommissioning costs appears to be relatively high. First, the financial assurance requirements are imposed only on those licensees having the highest possession limits, and thus the potential for highest doses. Only about 10 percent of materials licensees must provide financial assurance. Second, the changes in this plan address situations where risk of inadequate funding of decommissioning obligations is greatest—where required amounts of financial assurance appear to be substantially less than decommissioning costs.

Failure to provide adequate financial assurance for decommissioning also has equity considerations. The potential public costs involved in cleanup of contaminated facilities where financial assurance is inadequate must be considered. Equity considerations call for adequate financial assurance so that a licensee's decommissioning costs are borne by the licensee.

The changes to the regulations are focused on areas where the likelihood of inadequate funding relative to decommissioning costs is high. The changes address situations where currently required amounts of financial assurance appear to be substantially less than decommissioning costs. The changes would provide approximately $80 million in additional financial assurance.[4]

These amendments were developed prior to recent heightened concerns about security of nuclear material. Because the objective of the amendments is to ensure that adequate funds are available to provide for the timely decommissioning of nuclear facilities with appropriate disposal of radioactive materials, these amendments should also enhance security of nuclear materials.

Changes are being made in four areas:

(1) Large sealed source licensees, *i.e.*, large irradiators, would not be permitted to use the certification amounts, and would have to base their financial assurance on a site-specific decommissioning cost estimate;

(2) All waste broker licensees (waste processors and waste collectors) would have to provide financial assurance, would not be permitted to use the certification amounts, and would have to base their financial assurance on a site-specific decommissioning cost estimate;

(3) The certification amounts for licensees would be increased by 50 percent; and

(4) Decommissioning cost estimates would have to be updated at least every 3 years.

Analysis of Public Comments

Eight comment letters were received. Three were from industry organizations, four from corporations, and one from an individual health physics professional. The comments and staff responses are summarized below:

A. Comments Regarding Requirements for Large Sealed Source Licensees

NRC's previous requirements allowed all sealed source licensees to use a certification amount as a basis for financial assurance. The proposed revisions modified this requirement by requiring sealed source licensees above a specified threshold (*i.e.*, possession limits in excess of 10^{12} times the applicable quantities of appendix B to part 30) to prepare and submit site-specific decommissioning cost estimates in place of certifications of financial assurance. The comments raised three issues related to this proposed change.

1. Residual Market Value of Sealed Sources

Comment: Several commenters argued that NRC's proposed rule is based on an overestimate of large irradiator decommissioning costs because NRC fails to take into account the residual market value of sealed sources. The residual market value of the sources is substantial, and should be considered as an offset to decommissioning costs. The NRC is unjustified in ending the use of certification amounts by large irradiators because actual decommissioning costs for large irradiators, considering the residual value of sources, would still be less than the proposed certification amount for sealed source licensees of $113K. With the cost of removal and transport being recovered from the resale or redistribution value of the sources, there is little difference in decommissioning costs of large versus small irradiators, and the $113K figure should be adequate.

One commenter asserted that the cobalt-60 used in large irradiators sells for about $1 per curie or more; therefore, a facility with 2 million curies should be able to sell its inventory for some significant fraction of its $2 million market value. Decommissioning such a facility would likely result in little or no out of pocket cost (such as the supplier handling charge assumed by NRC in NUREG/CR–6280) and perhaps a positive cash flow. The commenter then provided two examples where the commenter decommissioned licensee facilities in part to obtain title to cobalt-60 worth between $0.25–$1 per curie or more. As a result of this residual value, NRC's proposal to require large irradiators to prepare a site-specific decommissioning cost estimate actually would result in reduced amounts of financial assurance (due to consideration of the value of the sources), while placing an unnecessary burden on licensees.

Another commenter extended a similar argument to items in finished goods inventory, other saleable goods in inventory, and active or contaminated equipment that could be used elsewhere. This commenter stated that it is unfair and beyond the boundaries of good business practices to consider assets as liabilities just because they are radioactive, and NRC has not established within its regulations the difference between radioactive materials with residual value and radioactive materials as waste.

Response: The NRC agrees that the proposed rule does not take into account the residual market value of sealed sources. This approach is both appropriate and consistent with existing NRC policy. For example, current

[4] The estimate is based on numbers of licensees using each of the 3 certification amounts, and the differential between the revised certification amounts and former certification amounts for each of the 3 groups.

guidance in NUREG–1727 states the following: [5]

> The cost estimate should clearly state that it does not take credit for any salvage value that might be realized from the sale of potential assets (*e.g.*, recovered materials or decontaminated equipment) during or after decommissioning. If estimated credits are taken for salvage value but are not fully realized at the time of decommissioning, the cost estimate (as well as the financial assurance) may be significantly low.

The NRC believes that it would be inappropriate to incorporate salvage value into certification amounts when the actual residual value can vary substantially depending on the number and type of sources at a given facility, as well as on the curies present at the time of decommissioning (which generally is not known when a licensee's certification of financial assurance is put in place). Any residual value also would be subject to variability arising from changing market conditions. Therefore, it would be inappropriate to consider these characteristics when establishing generic certification levels.

Furthermore, NRC is concerned that it may be impossible at the time of decommissioning to realize (*i.e.*, as cash) any inherent value contained in sealed sources, even if the sources have substantial value to the licensees that possess them. Irradiator licensees convert this inherent value into cash through the course of their business operations. However, these business operations cease at the time of decommissioning. Assuming that licensees decommission their facilities at the most economical point in time, then their sources will probably have decayed just to the point where they can no longer be used cost-effectively. In this case at least, the sources are unlikely to have value to anyone unless they can be re-processed.

Another significant concern to NRC is the possibility that some sources may have no residual value at all and may need to be disposed of as low-level waste (LLW). If sources must be disposed as LLW, then decommissioning costs would be considerably higher. For example, NUREG/CR–6280 concludes that decommissioning costs for a clean reference large irradiator facility may range (in 1993 dollars) from $289,000, if the sources are returned to the supplier, up to $3.0 million if it is necessary to dispose of the sources as LLW.[6]

If the potential salvage value of a source were to be used to offset the estimated cost of decommissioning, the effect would be to reduce the amount of funds guaranteed by financial instruments that possess a very high level of assurance, such as a prepaid escrow fund or an irrevocable letter of credit. However, the estimated salvage value of a source does not guarantee that funds will be available when needed. Even where a potential buyer provides a contractual promise to buy the source for a specified sum, the contract provides a lower level of assurance than the protection provided by the fiduciary obligations required of financial institutions that act as trustees or guarantors of funds. A contractual arrangement between the licensee and a buyer does not include the NRC as a beneficiary with the right to demand that funds be placed into a standby trust which restricts use of the funds for decommissioning only. In contrast, a letter of credit, for example, does establish the NRC as a beneficiary and gives the NRC that right. Therefore, permitting a licensee to reduce its decommissioning cost estimate by the potential salvage value of a source would decrease the level of financial assurance as compared to the financial instruments required by current regulations.

For all these reasons, NRC concludes that its current approach not to permit credit for residual salvage value in setting certification amounts is reasonable.

2. Exemption Threshold Too Low

Comment: One commenter noted that, under the proposed rule, sealed source licensees are exempt from financial assurance requirements if the licensed material is less than or equal to 10^{10} times the applicable quantities of appendix B to part 30, which becomes 10,000 Ci for cobalt (10^{10} times 1.0 μCi). The commenter asserted that this causes problems for owners of cobalt teletherapy units, wherein a new source typically decays to below 10,000 Ci in the first 2 years of use. The complication, according to the commenter, is that financial assurance is initially required but then becomes unnecessary for the remainder of the source's life. The commenter requested that the exempted amount be raised to 5×10^{10} times the applicable Appendix B quantity as no teletherapy source exceeds 15,000 Ci.

Response: The certification levels and calculations described in the regulations are based on *licensed* possession limits, rather than actual possession. If a licensee for a cobalt teletherapy unit is allowed to possess cobalt in excess of 10,000 Ci under its license, then financial assurance is required even if the activity of the source decays to lower than that level. In fact, financial assurance must be maintained until NRC terminates the license, even if the licensee no longer possesses any radioactive material (unless the license is modified to reflect different possession limits). This approach ensures that licensees maintain adequate financial assurance for activities that are authorized under the license. Also, requiring a constant amount of financial assurance avoids the complication of constantly adjusting financial assurance levels to account for decay, changing inventories, etc.

The commenter may be correct that an increase in the exemption threshold would benefit teletherapy unit licensees. However, it also would eliminate the added protections achieved by the financial assurance requirements (even in cases where decommissioning occurred before any significant decay of the radioactive sources).

3. ''Arbitrary'' Upper Certification Limit

Comment: One commenter stated that decommissioning costs are driven more by the size and complexity of the facility than the size or activity of the source used, *e.g.*, a newer facility with twice as large a source as an older facility may require half the cost to decommission due to new design features. Therefore, the upper limit (of 10^{12} times the applicable quantities of appendix B to part 30) for sealed source certifications is arbitrary and should be removed.

Response: NRC agrees that both the size and complexity of a facility are important decommissioning cost drivers. Although newer facilities may be more likely to incorporate design features that will tend to reduce decommissioning costs, this correlation is untested and may only be true in general terms. There is no assurance that a new facility will cost less to decommission than an older facility or, conversely, that older facilities (which may have been remodeled) cost more to decommission. Moreover, research indicates that the characteristics of the sealed sources constitute an important and potentially critical cost driver. Therefore, the proposed activity-based upper limit is not arbitrary, but rather provides a reasonably effective and simple method for distinguishing those licensees for whom preparation of a

[5] NUREG–1727, ''NMSS Decommissioning Standard Review Plan,'' Appendix F, September 2000, p. F26.

[6] NUREG/CR–6280, ''Technology, Safety, and Costs of Decommissioning a Reference Large Irradiator and Reference Sealed Sources,'' Pacific Northwest Laboratory, January 1996.

facility-specific cost estimate (including a discussion of the fate of the sealed sources) is warranted. NRC believes that an upper limit based on activity is considerably easier to implement than one that would account for additional or alternative factors.

B. Comments on Waste Broker Definition

Commenters raised three issues regarding NRC's proposed definition of ''waste broker.'' The proposed definition stated that waste broker means any licensee that collects or accepts radioactive material from other entities for the purpose of processing, compacting, repackaging, or otherwise preparing it for disposal, or storage.

1. Applicability to Storage and Radioactive Materials

Comment: Two commenters stated that the proposed definition of waste broker should be reconsidered, particularly its applicability to storage activities and to radioactive material (as opposed to radioactive waste). Otherwise, these commenters stated, NRC's waste broker requirements will inadvertently subject some licensees that are not waste brokers to NRC's waste broker requirements, including the following:

- Manufacturers (who receive radioactive material from a supplier for storage and future use);
- Distributors (who receive radioactive material from a supplier for storage and distribution);
- Service companies (who are authorized to receive sources from a supplier to be used for source exchanges);
- Contractors (who receive radioactive material in generally-licensed devices as part of a turnkey job, then place them in storage until they are turned over to the user); and
- Carriers (who, as general licensees, store radioactive material or waste prior to delivery, or who deliver material or waste prior to storage by the recipient).

Response: The NRC agrees that the proposed definition is problematic as suggested by these commenters. The final rule does not establish a definition of waste broker, but instead uses the existing definitions of waste processor and waste collector in 10 CFR part 20, appendix G. § 30.35 (c)(5) now requires waste collectors and waste processors to have financial assurance and base the amount of financial assurance on a site-specific decommissioning cost estimate.

2. Collectors vs. Processors

Comment: One commenter stated that the proposed rule's definition of waste broker appropriately covers waste processors and should, but does not, include waste collectors. There are certain licensees that have as their principal purpose to collect and consolidate packaged radioactive waste from others and transfer it to waste processors or disposal facilities. Facilities for interim storage of waste should have adequate financial assurance to cover decommissioning whether the licensee is a collector or processor.

Response: NRC agrees that the waste ''collectors'' described in the comment should be subject to the waste broker requirements. A change has been made to Section 30.35 (c)(5) to place requirements on waste collectors and waste processors as defined in 10 CFR part 20, appendix G.

3. Need to Define Radioactive ''Waste''

Comment: One commenter stated that the proposed term ''waste broker'' cannot be defined when there is no clear standard definition of ''waste'' anywhere in NRC regulation or statute. The commenter stated that, historically, the term ''waste'' has been generally applied to sealed sources at the end of intended use regardless of whether they can be reused by someone else or their contents recovered as feedstock or reworked to extend the useful life of the sources. The commenter noted that there are differing definitions in 10 CFR 63.2 and 10 CFR 110.2, with the latter specifically exempting sealed sources being returned to any qualified manufacturer from the waste import and export regulations. In other contexts, there is no meaningful definition of radioactive ''waste'' as it applies to sealed sources or other radioactive materials. The commenter asserted that regardless of the lack of a clear definition of radioactive ''waste,'' there is also a conflict in NRC policy and regulation as, on one hand, some sealed sources are exempted from the definition of ''waste'' while, on the other hand, sources are included in the scope of licensed material subject to decommissioning financial assurance.

Response: The NRC has decided not to define ''waste'' or ''waste broker'' in this rule. Although ''waste'' is not defined in NRC regulations, it is used in other NRC regulations and guidance in various contexts; therefore, defining the term for this rulemaking could result in unintended consequences. The apparent conflict in NRC policy and regulations that was raised by one commenter regarding the inconsistency of the use of this term as applied to sealed sources, is easily resolved by placing in context the exemption the commenter cited in 10 CFR 110.2 (vs. the inclusion of sealed sources in the scope of licensed material subject to the decommissioning financial assurance in this rule). As the Statements of Consideration for the exemption explain (60 FR 37556, published on 7/21/95), the exemption refers to sealed sources that are being returned to the United States or another country for reconditioning, recycling, or reprocessing. These types of transfers help to ensure that the materials are handled responsibly and not left in dispersed and perhaps unregulated locations around the world. Therefore, the NRC determined that they should not be subject to specific licensing, in this context, if the radioactive material involved would not be otherwise subject to such licensing. The disposition of sealed sources in this context differs radically from the disposition of sealed sources addressed by the rule.

As noted in the Statement of Considerations accompanying the proposed rule, the waste broker provisions of the rule are intended to be applied to licensees that (1) are likely to have fluctuating amounts of radioactive waste generated by other licensees, and (2) have a financial interest in maximizing the amount of radioactive waste they handle (*i.e.*, because their revenue is directly correlated to the amount of waste accepted). However, the existing definitions of ''waste processor'' and ''waste collector'' in 10 CFR part 20, appendix G, ''Requirements for Transfers of Low-level Radioactive Waste Intended for Disposal at Licensed Land Disposal Facilities and Manifest,'' encompass the activities of the licensees the proposed term ''waste broker'' sought to address. These activities, which are well understood by the regulated community, make such licensees stand out among other NRC licensees from a financial assurance perspective and support the inclusion of these licensees in this rule.

C. Comments on Requirements for Decommissioning Cost Updates

1. Three vs. Five Year Updates

Comment: Several commenters stated that the 3-year time frame for periodic decommissioning cost estimate updates is too frequent and that every 5 years would be more reasonable. One of the three stated that cost estimates should be reassessed every 5 years in order to coincide with the license renewal process. This commenter stated that, for irradiators, decommissioning does not involve disposal of materials as radioactive waste and, therefore, that the stated impetus for the 3-year period

(*i.e.*, recent increases in radioactive waste disposal costs) does not apply. Another of these commenters stated that NRC's proposal will be burdensome and appears to be driven by short-term investment performance and anticipation of higher waste disposal costs. This commenter countered that the history of investments over long periods of time (*e.g.*, 40-plus year facility lifetimes) is very positive, and that licensees have taken steps to lower their waste disposal costs by reducing the volume of decommissioning waste that will be generated and by increasing the recycling of materials to other nuclear facilities.

Response: The proposed requirement to update decommissioning cost estimates every 3 years will help ensure that financial assurance obtained by licensees will not become inadequate as a result of changing disposal prices or other factors. Increasing waste disposal costs have been and continue to be a concern for NRC. However, decommissioning costs also may change for a variety of licensee-specific reasons (*e.g.*, due to changes in the size and scope of operations) as well as for other reasons that may be out of a licensee's control (*e.g.*, inflation). The proposed 3-year cost estimate updates are intended to capture changes in estimated costs regardless of cause, and to help ensure that the level of financial assurance required of each licensee is appropriate. Therefore, the proposed requirement is appropriate even for licensees that are not expecting to incur any significant waste disposal costs, as well as for licensees that may be taking steps to reduce the volume of decommissioning waste (which is only one component of decommissioning costs).

Although it would be less burdensome to require updates every 5 years as opposed to every 3 years, the NRC believes that this would entail too great of a risk that cost estimates could become significantly low. The NRC's experience indicates that decommissioning cost estimates may fluctuate significantly in less than five years. In one case, a licensee increased its decommissioning cost estimate from $55,000,000 to $67,000,000 in one year. Even where site conditions do not change as dramatically as in the case noted, inflation may increase costs significantly.

For example, if decommissioning costs were to rise by five percent annually (due to higher disposal costs, increased operations, inflation, and/or other factors), then in only 3 years a previously accurate estimate would understate current costs by 15 percent. As a result, financial assurance would be low by the same amount. This would create an unacceptable risk of unfunded decommissioning obligations. This risk would increase even further over a 5-year period.

2. Update Estimates Only When Warranted

Comment: One commenter asserted that the reason costs can change significantly has to do with ''internal'' factors such as the size and scope of operations (as opposed to ''external'' factors such as the cost of disposal). Therefore, this commenter suggested that whenever an application for a license amendment is submitted due to changes in operations or materials possession (or other factors specified by NRC), an updated cost estimate should be required and considered as part of the amendment process. If no license amendments are required prior to license renewal, then an updated estimate should be required only at the time of license renewal. The commenter also described two alternatives to this approach. Under the first alternative, NRC could arrange for updates on a case-by-case basis by category and default history for that segment. Under the second alternative, licensees would update their cost estimate if estimated costs exceed a required contingency included in the previous estimate.

Response: NRC agrees that internal factors are an important cause of significant changes to decommissioning costs. However, if the commenter's primary suggestion (*i.e.*, to require an updated cost estimate as part of any license amendment application involving a change in operations or materials possession, or at the time of license renewal if there are no amendments) were enacted, licensees would update their cost estimates only once every 5 years, assuming there were no license amendments or other ''internal'' trigger events that might be specified by NRC. This would be true regardless of cost increases due to ''external'' factors (*e.g.*, increased disposal costs, inflation). As discussed in Section C.1 above, this approach is not acceptable to NRC because it could result in a substantial portion of decommissioning costs not being covered by financial assurance.

The first alternative approach would require that updates be provided by licensees on a case-by-case basis by ''category'' and ''default history'' for the relevant segment. NRC believes this approach would place an unreasonable administrative burden on NRC staff to analyze all changes and events applicable to each licensee individually, as well as to study default histories and other developments by segment. Even if NRC were to undertake such efforts, licensees still might be required to submit updated estimates (albeit on a case-by-case basis) with a frequency that approximates that of this rulemaking.

The second alternative approach suggested in the comment would require that cost estimates be updated only when the new estimate exceeds the required contingency in the previously-submitted cost estimate. As do other types of engineering cost estimates, decommissioning cost estimates include a contingency factor to account for unanticipated costs. This contingency factor is typically equal to 25 percent of the total of all known decommissioning costs. One problem with this alternative is that, if the contingency factor were allowed to cover recent increases in known costs, then the contingency would not be available to address the unanticipated costs for which it was intended. This means that the outdated estimate could be inadequate by 25 percent, which is not acceptable to NRC. A second problem with this alternative is that, in order to avoid updating the cost estimate, licensees would have to develop an updated cost estimate so that they could determine whether costs have escalated to more than the contingency factor. Therefore, it would be more efficient and more protective of decommissioning funding for the licensee to submit the updated estimate to NRC as proposed in this rulemaking, using it as the most accurate basis for financial assurance.

D. General Comments

1. Rule Is Arbitrary and Unwarranted

Comment: One commenter disagreed with the increase in certification amounts and with NRC's justification for the change, characterizing it as ''arbitrary and unwarranted.'' The commenter stated that although disposal costs have indeed risen, waste liabilities actually have been reduced by efforts to reduce weights and volumes and eliminate sources of waste streams, and by considering ease of decommissioning in the design, construction, and operation of new facilities. The commenter stated that Barnwell has been unable to achieve South Carolina targets for generation of volume-driven revenue due to changes in waste management practices by generators over the years.

Response: NRC does not agree that the basis for the rulemaking is arbitrary or unwarranted. First, and as noted by the comment, disposal costs have indeed risen. Although some licensees have implemented waste reduction efforts,

these efforts do not necessarily offset all (or even most) of the waste disposal cost increases for these licensees. Moreover, other licensees have not implemented such efforts. NRC believes that the greatest waste reduction efforts have been made by larger licensees, who are the least likely to use the certification amounts.

Second, increased disposal costs are not NRC's only justification for increasing the certification amounts. Inflation that has occurred since the promulgation of the original certification amounts exceeds 50 percent, based on the Consumer Price Index.[7] Specific information on decommissioning costs also shows a substantial increase. NRC regulations for decommissioning of nuclear power reactor licensees at 10 CFR 50.75 contain a cost adjustment factor for licensees to update the minimum amount of financial assurance required. This adjustment factor, which takes into account labor, energy, and waste disposal costs, shows a minimum increase of approximately 65 percent in reactor decommissioning costs from 1986 to 2000.[8] Thus, inflation, by itself is more than adequate as a justification for the rule's 50 percent increase in the certification amounts. In addition, other research conducted by NRC for this rulemaking indicates that licensees using certifications have substantially less financial assurance than is warranted based on their estimated decommissioning costs.[9]

2. NRC's Financial Assurance Rules too Complicated

Comment: One commenter stated that the regulations addressing decommissioning plans and financial assurance are unnecessarily complicated. The commenter suggested that the rules be consolidated within a single chapter of 10 CFR, instead of spread through four chapters and appendices. The commenter suggested listing requirements in simpler language instead of burying them in complicated prose. The commenter also offered assistance to NRC.

Response: The NRC agrees that plain language improvements may be needed. This rulemaking makes changes in only a part of NRC's overall financial assurance requirements. Its objective is to bring financial assurance requirements more in line with actual decommissioning costs. NRC is trying to close any such gaps in a timely manner. Any future rulemakings covering more general changes in the financial assurance requirements will be carried out with a view toward clarification and simplification, where practical. As an aid to understanding its requirements, the NRC staff has developed a guidance document, ''NMSS Decommissioning Standard Review Plan,'' NUREG–1727,[10] that explains how licensees can meet decommissioning requirements, including financial assurance requirements.

3. Consider Costs to Agreement State Licensees

Comment: One commenter stated that it appears NRC considered the cost of the rule only to its own licensees, and not to Agreement State licensees. It is unrealistic to expect Agreement States not to adopt the rule (even though they are not required to do so based upon its category D rating), so NRC should consider costs to all licensees.

Response: NRC has considered these costs, and has provided several opportunities for Agreement States to comment. The comments that NRC has received from Agreement States have generally supported this rulemaking. However, NRC has revised the Regulatory Analysis for the rule to more clearly estimate costs to Agreement State licensees that adopt the rule.

4. Comment Period Should Be Extended

Comment: One commenter requested that the public comment period for the proposed rule be extended until 60 days after NUREG/CR–6477 is made available for review by the public.

Response: NUREG/CR–6477 was published in mid-January, and placed on the website for this rulemaking. A **Federal Register** notice of availability of the NUREG report, with a 30-day public comment period, was published on January 30, 2003 (68 FR 4801). No comments were received on the report.

Changes From the Proposed Rule

The definition of waste broker in § 30.4 is being removed. In § 30.35(c)(5), the terms waste processors[11] and waste collectors[12], as defined in 10 CFR part 20, appendix G, are being used instead. Implementation dates have been inserted at appropriate places in the rule as described below.

Implementation

The NRC is implementing these requirements in a way intended to minimize the burden on licensees and regulators. Licensees are being given a reasonable period of time to submit new decommissioning cost estimates and to obtain any additional financial assurance that may be required. The NRC is establishing different effective dates for revised financial assurance requirements, depending on the type of licensee, so that new financial assurance submittals would not all be filed at one time. Licensees currently using the $750K certification amount are required to obtain additional financial assurance to comply with the revised $1,125K certification amount within 12 months of the effective date of the final rule. Licensees currently using the $75K or $150K certification amounts are required to obtain additional financial assurance to comply with the revised $113K or $225K certification amounts within 18 months of the effective date of the final rule. In either case, these licensees could choose the option of basing financial assurance on a decommissioning cost estimate. Licensees that can no longer use the certification amounts, such as large irradiators and waste brokers, are allowed up to 24 months to submit a decommissioning cost estimate.

Discussion of Amendments by Section

Section 30.35 Financial Assurance and Recordkeeping for Decommissioning

Paragraph (a) is amended to require licensees possessing large numbers of sealed sources to base financial assurance on a decommissioning funding plan. Section 30.35(c)(2) revises the certification amount. A new § 30.35(c)(5) requires waste processors and waste collectors to base financial

[7] ''CPI Inflation Calculator,'' U.S. Department of Labor, Bureau of Labor Statistics, *http://www.bls.gov/cpi*.

[8] NUREG–1307, Revision 9, p.6.

[9] ''Analysis of Decommissioning Certification Amounts for Materials Licensees (parts 30, 40, and 70),'' ICF Consulting, 2000.

[10] NUREG–1727 is available in the NRC Public Document Room, Room O-1F23, 11555 Rockville Pike, Rockville, MD. The NRC maintains an Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*.

[11] Waste processor means an entity, operating under a Commission or Agreement State license, whose principal purpose is to process, repackage, or otherwise treat low-level radioactive material or waste generated by others prior to eventual transfer of waste to a licensed low-level radioactive waste land disposal facility.

[12] Waste collector means an entity, operating under a Commission or Agreement State license, whose principal purpose is to collect and consolidate waste generated by others, and to transfer this waste, without processing or repackaging the collected waste, to another licensed waste collector, licensed waste processor, or licensed land disposal facility.

assurance on a site-specific decommissioning cost estimate. Section 30.35(d) increases the certification amounts by 50 percent—new certification amounts are $113K, $225K, and $1,125K. Section 30.35(e) requires that decommissioning funding plans be updated at least every 3 years.

10 CFR 40.36 Financial Assurance and Recordkeeping

Section 40.36(b)(2) increases the applicable certification amount by 50 percent. Section 40.36(c)(2) revises the certification amount. Section 40.36(d) requires that decommissioning funding plans be updated at least every 3 years.

10 CFR 70.25 Financial Assurance and Recordkeeping for Decommissioning

Section 70.25(c)(2) revises the certification amount. Section 70.25(d) increases the applicable certification amounts by 50 percent. Section 70.25(e) requires that decommissioning funding plans be updated at least every 3 years.

Agreement State Compatibility

Under the ''Policy Statement on Adequacy and Compatibility of Agreement State Programs'' that became effective on September 3, 1997 (62 FR 46517), NRC program elements (including regulations) are placed into four compatibility categories. In addition, NRC program elements also can be identified as having particular health and safety significance or as being reserved solely to the NRC.

The sections of 10 CFR parts 30, 40, and 70 dealing with financial assurance that are being changed and their respective compatibility categories are as follows:

Section 30.35 Financial Assurance and Recordkeeping for Decommissioning
Compatibility category D—paragraphs (c), (e), (f)
Health and Safety—paragraphs (a), (b), (d), and (g).

Compatibility category D for paragraphs (c), (e), and (f) is warranted because States are allowed the flexibility to specify different dollar amounts based on jurisdiction and local conditions. The Health and Safety designation for paragraphs (a), (b), and (d) is warranted because these paragraphs address decommissioning funding plans necessary to ensure that funding is available for timely decommissioning. The Health and Safety designation of paragraph (g) is warranted because of the requirement for transfer of certain records (e.g., spills or spread of contamination that could impact health and safety) important to subsequent licensees for decommissioning at the same facility.

Section 40.36 Financial Assurance and Recordkeeping for Decommissioning
Compatibility category D—paragraphs (c) and (e).
Health and Safety—paragraphs (a), (b), (d), and (f).

Compatibility category D for paragraphs (c), and (e) is warranted because States are allowed the flexibility to specify different dollar amounts based on jurisdiction and local conditions. The Health and Safety designation for paragraphs (a), (b), and (d) is warranted because these paragraphs address decommissioning funding plans necessary to ensure that funding is available for timely decommissioning. The Health and Safety designation of paragraph (f) is warranted because of the requirement for transfer of certain records (e.g., spills or spread of contamination that could impact health and safety) important to subsequent licensees for decommissioning at the same facility.

Section 70.25 Financial Assurance and Recordkeeping for Decommissioning
Compatibility category D—paragraphs (c), (e), and (f)
NRC—paragraph (a)
Health and Safety—paragraphs (b), (d), and (g).

Compatibility category D for paragraphs (c), (e), and (f) is warranted because States are allowed the flexibility to specify different dollar amounts based on jurisdiction and local conditions. Paragraph (a) addresses areas reserved to the NRC because it concerns uranium enrichment facilities and special nuclear materials in quantities sufficient to form a critical mass. The Health and Safety designation for paragraphs (b) and (d) is warranted because these paragraphs address decommissioning funding plans necessary to ensure that funding is available for timely decommissioning. The Health and Safety designation of paragraph (g) is warranted because of the requirement for transfer of certain records (*e.g.,* spills or spread of contamination that could impact health and safety) important to subsequent licensees for decommissioning at the same facility.

Plain Language

The Presidential Memorandum dated June 1, 1998, entitled ''Plain Language in Government Writing'' directed that the Government's writing be in plain language. One comment on this rule specifically addressed the clarity and effectiveness of the language used in the financial assurance regulations. The NRC response to the comment is included in the ''Analysis of Public Comments'' section of this notice.

Voluntary Consensus Standards

The National Technology Transfer Act of 1995 (Pub. L. 104–113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this rule, the NRC is making revisions to certain financial assurance requirements for materials licensees. Financial assurance requirements are not standards that have been established by any voluntary consensus organizations.

Environmental Assessment and Finding of No Significant Environmental Impact

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in subpart A of 10 CFR part 51, not to prepare an environmental impact statement for this rule because the Commission has concluded on the basis of the environmental assessment (contained in this notice below) that this rule is not a major Federal action significantly affecting the quality of the human environment.

These amendments revise financial assurance requirements for certain materials licensees. The amendments require certain materials licensees to submit decommissioning cost estimates; increase the amount of financial assurance required by licensees using the certification amounts; and require updates of decommissioning cost estimates at least every 3 years. None of these actions have any adverse impact on the environment. The amendments would not lead to any increase in the effect on the environment of the decommissioning activities already considered in the final decommissioning rule published on June 27, 1988 (53 FR 24018), as analyzed in ''Final Generic Environmental Impact Statement on Decommissioning of Nuclear Facilities'' (NUREG–0586, August 1988).[13] Actions conducted under this rule would not introduce any impacts on the

[13] Copies of NUREG–0586 are available for inspection or copying for a fee from the NRC Public Document Room at O–1F23, 11555 Rockville Pike, Rockville, MD. Copies may be purchased at current rates from the U.S. Government Printing Office, P.O. Box 370892, Washington, DC 20402–9328 (telephone (202) 512–2249); or from the National Technology Information Service by writing NTIS at 5285 Port Royal Road, Springfield, VA 22161.

environment not previously considered by the NRC.

The determination of this environmental assessment is that there will be no significant adverse impact to the quality of the human environment from this action. This action should have a positive impact on the quality of the human environment by providing additional assurance of timely decommissioning. Timely decommissioning should reduce the possibility of contamination of sites, and should enhance safety and protection of the environment. This discussion constitutes the environmental assessment upon which a finding of no significant impact has been found for this rule.

Paperwork Reduction Act Statement

This final rule contains information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). These requirements were approved by the Office of Management and Budget, approval numbers 3150–0009, –0017, and –0020.

The burden to the public for the information collections contained in 10 CFR part 30 is estimated to average 10.4 hours per response, the burden for the information collections contained in 10 CFR part 40 is estimated to average 7.3 hours per response, and the burden for the information collections contained in 10 CFR part 70 is estimated to average 7.5 hours per response. This includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information collection. Send comments on any aspect of these information collections, including suggestions for reducing the burden, to the Records Management Branch (T–5 F52), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by Internet electronic mail to *infocollects@nrc.gov;* and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0009, –0017, and –0020), Office of Management and Budget, Washington, DC 20503.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

Regulatory Analysis

The Commission has prepared a regulatory analysis on this regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The analysis is available for inspection and copying in the NRC Public Document Room at O–1F23, 11555 Rockville Pike, Rockville, MD. Single copies of the regulatory analysis are available from James Morris, telephone (301) 415–0191, e-mail, *jem2@nrc.gov* of the Office of Nuclear Material Safety and Safeguards.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule would not have a significant economic impact on a substantial number of small entities. Some licensees affected by this action may fall within the definition of ''small entities'' set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR part 121. However, while the rule would change the financial assurance requirements for these licensees, such licensees may base their financial assurance on a site-specific decommissioning cost estimate. No licensee would be required to provide financial assurance in excess of what is needed to cover decommissioning costs. Increases in financial assurance amounts required are only the amounts necessary to maintain adequate financial assurance to cover increased decommissioning costs. The regulatory analysis cited for this action contains estimates of cost impacts on different types of licensees.

Backfit Analysis

There are no backfit requirements in 10 CFR parts 30 and 40, and, in accordance with the ''Effective Date Note'' regarding implementation of § 70.76, the provisions of 10 CFR 70.76 on backfitting have not yet gone into effect. Therefore, a backfit analysis is not required. However, the burdens and the benefits associated with this rule are addressed in the Regulatory Analysis.

Small Business Regulatory Enforcement Fairness Act

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

List of Subjects

10 CFR Part 30

Byproduct material, Criminal penalties, Government contracts, Intergovernmental relations, Isotopes, Nuclear materials, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 40

Criminal penalties, Government contracts, Hazardous materials transportation, Nuclear materials, Reporting and recordkeeping requirements, Source material, Uranium.

10 CFR Part 70

Criminal penalties, Hazardous materials transportation, Material control and accounting, Nuclear materials, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material.

■ For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR parts 30, 40, and 70.

PART 30—RULES OF GENERAL APPLICABILITY TO DOMESTIC LICENSING OF BYPRODUCT MATERIAL

■ 1. The authority citation for part 30 continues to read as follows:

Authority: Secs. 81, 82, 161, 182, 183, 186, 68 Stat. 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2111, 2112, 2201, 2232, 2233, 2236, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 30.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 2902, 106 Stat. 3123, (42 U.S.C. 5851). Section 30.34(b) also issued under sec.184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 30.61 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

■ 2. In § 30.35, paragraphs (a), (c)(2), (d), and (e) are revised and a new paragraph (c)(5) is added to read as follows:

§ 30.35 Financial assurance and recordkeeping for decommissioning.

(a)(1) Each applicant for a specific license authorizing the possession and use of unsealed byproduct material of half-life greater than 120 days and in quantities exceeding 10^5 times the applicable quantities set forth in appendix B to part 30 shall submit a

decommissioning funding plan as described in paragraph (e) of this section. The decommissioning funding plan must also be submitted when a combination of isotopes is involved if R divided by 10^5 is greater than 1 (unity rule), where R is defined here as the sum of the ratios of the quantity of each isotope to the applicable value in appendix B to part 30.

(2) Each holder of, or applicant for, any specific license authorizing the possession and use of sealed sources or plated foils of half-life greater than 120 days and in quantities exceeding 10^{12} times the applicable quantities set forth in appendix B to part 30 (or when a combination of isotopes is involved if R, as defined in § 30.35(a)(1), divided by 10^{12} is greater than 1), shall submit a decommissioning funding plan as described in paragraph (e) of this section. The decommissioning funding plan must be submitted to NRC by December 2, 2005.

* * * * *

(c) * * *

(2) Each holder of a specific license issued before July 27, 1990, and of a type described in paragraph (a) of this section shall submit a decommissioning funding plan as described in paragraph (e) of this section or a certification of financial assurance for decommissioning in an amount at least equal to $1,125,000 in accordance with the criteria set forth in this section. If the licensee submits the certification of financial assurance rather than a decommissioning funding plan, the licensee shall include a decommissioning funding plan in any application for license renewal.

* * * * *

(5) Waste collectors and waste processors, as defined in 10 CFR part 20, Appendix G, must provide financial assurance in an amount based on a decommissioning funding plan as described in paragraph (e) of this section. The decommissioning funding plan must include the cost of disposal of the maximum amount (curies) of radioactive material permitted by license, and the cost of disposal of the maximum quantity, by volume, of radioactive material which could be present at the licensee's facility at any time, in addition to the cost to remediate the licensee's site to meet the license termination criteria of 10 CFR part 20. The decommissioning funding plan must be submitted by December 2, 2005.

(d) Table of required amounts of financial assurance for decommissioning by quantity of material. Licensees required to submit the $1,125,000 amount must do so by December 2, 2004. Licensees required to submit the $113,000 or $225,000 amount must do so by June 2, 2005. Licensees having possession limits exceeding the upper bounds of this table must base financial assurance on a decommissioning funding plan.

Greater than 10^4 but less than or equal to 10^5 times the applicable quantities of appendix B to part 30 in unsealed form. (For a combination of isotopes, if R, as defined in § 30.35(a)(1), divided by 10^4 is greater than 1 but R divided by 10^5 is less than or equal to 1)	$1,125,000
Greater than 10^3 but less than or equal to 10^4 times the applicable quantities of appendix B to part 30 in unsealed form. (For a combination of isotopes, if R, as defined in § 30.35(a)(1), divided by 10^3 is greater than 1 but R divided by 10^4 is less than or equal to 1)	225,000
Greater than 10^{10} but less than or equal to 10^{12} times the applicable quantities of appendix B to part 30 in sealed sources or plated foils. (For a combination of isotopes, if R, as defined in § 30.35(a)(1), divided by 10^{10} is greater than, 1, but R divided by 10^{12} is less than or equal to 1)	113,000

(e) Each decommissioning funding plan must contain a cost estsimate for decommissioning and a description of the method of assuring funds for decommissioning from paragraph (f) of this section, including means for adjusting cost estimates and associated funding levels periodically over the life of the facility. Cost estimates must be adjusted at intervals not to exceed 3 years. The decommissioning funding plan must also contain a certification by the licensee that financial assurance for decommissioning has been provided in the amount of the cost estimate for decommissioning and a signed original of the financial instrument obtained to satisfy the requriements of paragraph (f) of this section.

* * * * *

PART 40—DOMESTIC LICENSING OF SOURCE MATERIAL

■ 3. The authority citation for part 40 continues to read as follows:

Authority: Secs. 62, 63, 64, 65, 81, 161, 182, 183, 186, 68 Stat. 932, 933, 935, 948, 953, 954, 955, as amended, secs. 11e(2), 83, 84, Pub. L. 95–604, 92 Stat. 3033, as amended, 3039, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2014(e)(2), 2092, 2093, 2094, 2095, 2111, 2113, 2114, 2201, 2232, 2233, 2236, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688 (42 U.S.C. 2021); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 275, 92 Stat. 3021, as amended by Pub. L. 97–415, 96 Stat. 2067 (42 U.S.C. 2022); sec. 193, 104 Stat. 2835, as amended by Pub. L. 104–134, 110 Stat. 1321, 1321–349 (42 U.S.C. 2243).

Section 40.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 40.31(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 40.46 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 40.71 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

■ 4. In § 40.36, paragraphs (b)(2), (c)(2), and (d) are revised to read as follows:

§ 40.36 Financial assurance and recordkeeping for decommissioning.

* * * * *

(b) * * *

(2) Submit a certification that financial assurance for decommissioning has been provided in the amount of $225,000 by June 2, 2005 using one of the methods described in paragraph (e) of this section. For an applicant, this certification may state that the appropriate assurance will be obtained after the application has been approved and the license issued but before the receipt of licensed material. If the applicant defers execution of the financial instrument until after the license has been issued, a signed original of the financial instrument obtained to satisfy the requirements of paragraph (e) of this section must be submitted to NRC prior to receipt of licensed material. If the applicant does not defer execution of the financial instrument, the applicant shall submit to NRC, as part of the certification, a signed original of the financial instrument obtained to satisfy the requirements of paragraph (e) of this section.

(c) * * *

(2) Each holder of a specific license issued before July 27, 1990, and of a type described in paragraph (a) of this section shall submit a decommissioning funding plan as described in paragraph (d) of this section or a certification of financial assurance for decommissioning in an amount at least equal to $1,125,000 in accordance with the criteria set forth in this section. If the licensee submits the certification of

financial assurance rather than a decommissioning funding plan, the licensee shall include a decommissioning funding plan in any application for license renewal. Licensees required to submit the $1,125,000 amount must do so by December 2, 2004.

* * * * *

(d) Each decommissioning funding plan must contain a cost estimate for decommissioning and a description of the method of assuring funds for decommissioning from paragraph (e) of this section, including means for adjusting cost estimates and associated funding levels periodically over the life of the facility. Cost estimates must be adjusted at intervals not to exceed 3 years. The decommissioning funding plan must also contain a certification by the licensee that financial assurance for decommissioning has been provided in the amount of the cost estimate for decommissioning and a signed original of the financial instrument obtained to satisfy the requirements of paragraph (e) of this section.

* * * * *

(e) Each decommissioning funding plan must contain a cost estimate for decommissioning and a description of the method of assuring funds for decommissioning from paragraph (f) of this section, including means for adjusting cost estimates and associated funding levels periodically over the life of the facility. Cost estimates must be adjusted at intervals not to exceed 3 years. The decommissioning funding plan must also contain a certification by the licensee that financial assurance for decommissioning has been provided in the amount of the cost estimate for decommissioning and a signed original of the financial instrument obtained to satisfy the requirements of paragraph (f) of this section.

* * * * *

Dated at Rockville, Maryland this 29th day of September, 2003.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 03–25093 Filed 10–2–03; 8:45 am]

BILLING CODE 7590–01–P

PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

■ 5. The authority citation for part 70 continues to read as follows:

Authority: Secs. 51, 53, 161, 182, 183, 68 Stat. 929, 930, 948, 953, 954, as amended, sec. 234, 83 Stat. 444, as amended, (42 U.S.C. 2071, 2073, 2201, 2232, 2233, 2282, 2297f); secs. 201, as amended, 202, 204, 206, 88 Stat. 1242, as amended, 1244, 1245, 1246 (42 U.S.C. 5841, 5842, 5845, 5846). Sec. 193, 104 Stat. 2835 as amended by Pub.L. 104–134, 110 Stat. 1321, 1321–349 (42 U.S.C. 2243).

Sections 70.1(c) and 70.20a(b) also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 70.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 70.21(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 70.31 also issued under sec. 57d, Pub. L. 93–377, 88 Stat. 475 (42 U.S.C. 2077). Sections 70.36 and 70.44 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 70.81 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237). Section 70.82 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).

■ 6. In § 70.25, paragraphs (c)(2), (d), and (e) are revised to read as follows:

§ 70.25 Financial assurance and recordkeeping for decommissioning.

* * * * *

(c) * * *

(2) Each holder of a specific license issued before July 27, 1990, and of a type described in paragraph (a) of this section shall submit a decommissioning funding plan as described in paragraph (e) of this section or a certification of financial assurance for decommissioning in an amount at least equal to $1,125,000 in accordance with the criteria set forth in this section. If the licensee submits the certification of financial assurance rather than a decommissioning funding plan, the licensee shall include a decommissioning funding plan in any application for license renewal.

* * * * *

(d) Table of required amounts of financial assurance for decommissioning by quantity of material. Licensees required to submit the $1,125,000 amount must do so by December 2, 2004. Licensees required to submit the $225,000 amount must do so by June 2, 2005. Licensees having possession limits exceeding the upper bounds of this table must base financial assurance on a decommissioning funding plan.

Greater than 10^4 but less than or equal to 10^5 times the applicable quantities of appendix B to part 30. (For a combination of isotopes, if R, as defined in § 70.25(a), divided by 10^4 is greater than 1 but R divided by 10^5 is less than or equal to 1.)	$1,125,000
Greater than 10^3 but less than or equal to 10^4 times the applicable quantities of appendix B to part 30. (For a combination of isotopes, if R, as defined in § 70.25(a), divided by 10^3 is greater than 1 but R divided by 10^4 is less than or equal to 1.)	$225,000

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–372–AD; Amendment 39–13322; AD 2003–20–04]

RIN 2120–AA64

Airworthiness Directives; Saab Model SAAB 2000 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Saab Model SAAB 2000 series airplanes, that requires an inspection to detect chafing or damage to the electrical wire harnesses in the left and right wing fuel tanks, applicable corrective action(s) if necessary, and installation of harnesses. For certain airplanes, this AD also requires modifying the collector tank walls. This action is necessary to prevent chafing damage to the electrical wire harnesses in the left and right wing fuel tanks, which could cause misleading data and erroneous fuel pump cautions to be displayed to the flightcrew, and could result in electrical arcing with consequent increased potential for fire or explosion in the fuel tank. This action is intended to address the identified unsafe condition.

DATES: Effective November 7, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 7, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Rosanne Ryburn, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2139; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Saab Model SAAB 2000 series airplanes was published in the **Federal Register** on July 21, 2003 (68 FR 43042). That action proposed to require an inspection to detect chafing or damage to the electrical wire harnesses in the left and right wing fuel tanks, applicable corrective action(s) if necessary, and installation of harnesses. For certain airplanes, that action also proposed to require modifying the collector tank walls.

Comments

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

Changes to Final Rule

Paragraph (e) of the proposed AD states: ''For all airplanes: Within 18 months after the effective date of this AD, install new electrical wire harnesses by accomplishing all the actions specified in paragraph 2.E. of the Accomplishment Instructions of Saab Service Bulletin SAAB 2000–28–012, dated October 1, 2001.'' In preparing this final rule, we re-examined the requirements of the proposed AD, and in doing so, we find it necessary to clarify that our intent in including paragraph (e) was NOT to require that all operators install ''new'' electrical wire harnesses. Rather, paragraph (e) was intended to capture the recommendation in paragraph 2.E. of the service bulletin, which addresses installation of harnesses following inspection, corrective actions (which may include installing new harnesses for some airplanes), and modification (if applicable).

For purposes of clarifying the requirements of this AD, we have combined paragraphs (a) through (e) of the proposed AD into paragraphs (a) and (b) of this final rule to reference accomplishing the actions specified in the Accomplishment Instructions of the service bulletin.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. These changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Changes to 14 CFR Part 39/Effect on the AD

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

Change to Labor Rate Estimate

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

Cost Impact

The FAA estimates that 3 airplanes of U.S. registry will be affected by this AD, that it will take approximately 80 work hours per airplane to accomplish the required actions, and that the average labor rate is $65 per work hour. Required parts will cost approximately $455 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $16,965, or $5,655 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2003–20–04 Saab Aircraft AB: Amendment 39–13322. Docket 2001–NM–372–AD.

Applicability: Model SAAB 2000 series airplanes, serial numbers SAAB 2000–004 through –063 inclusive, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent chafing damage to the electrical wire harnesses in the left and right wing fuel tanks, which could cause misleading data and erroneous fuel pump cautions to be displayed to the flightcrew, and could result in electrical arcing with consequent increased potential for fire or explosion in the fuel tank, accomplish the following:

Inspection

(a) For all airplanes: Within 18 months after the effective date of this AD, do a detailed inspection to detect chafing or damage to the electrical wire harnesses in the left and right wing fuel tanks (including any applicable repair or replacement of electrical wire harnesses) by accomplishing all actions specified in the Accomplishment Instructions of Saab Service Bulletin 2000–28–012, dated October 1, 2001. Do the actions per the service bulletin. Any applicable repair or replacement of an electrical wire harness with a new electrical wire harness must be accomplished before further flight.

Note 2: For the purposes of this AD, a detailed inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

Modification (for Certain Airplanes)

(b) For airplanes having serial numbers SAAB 2000–007 through -063 inclusive: Within 18 months after the effective date of this AD, modify the collector tank walls by accomplishing all the actions specified in paragraph 2.D. of the Accomplishment Instructions of Saab Service Bulletin 2000–28–012, dated October 1, 2001.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Incorporation by Reference

(e) The actions shall be done in accordance with Saab Service Bulletin 2000–28–012, dated October 1, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Link''ping, Sweden. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in Swedish airworthiness directive 1–168, dated October 1, 2001.

Effective Date

(f) This amendment becomes effective on November 7, 2003.

Issued in Renton, Washington, on September 25, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–24841 Filed 10–2–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–61–AD; Amendment 39–13324; AD 2003–20–06]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–31 and DC–9–32 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–9–31 and DC–9–32 airplanes. This action requires, among other actions, various inspections to detect cracks of the cockpit enclosure window sill, and follow-on and corrective actions, as applicable. This action is necessary to prevent fatigue cracking of the internal doublers and frame structure of the fuselage skin of the cockpit enclosure window sill, which could result in rapid decompression of the fuselage and consequent reduced structural integrity of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective October 20, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 20, 2003.

Comments for inclusion in the Rules Docket must be received on or before December 2, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–61–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-iarcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2003–NM–61–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Wahib Mina, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (562) 627–5324; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: The FAA has received several reports of cracking of the internal doublers and frame structure of the fuselage skin of the cockpit enclosure window sill on McDonnell Douglas Model DC–9 series airplanes. These airplanes had accumulated between 61,624 and 100,238 total flight cycles. The cause of such cracking has been attributed to high-cycle fatigue. Fatigue cracking of the subject area, if not corrected, could result in rapid decompression of the

fuselage and consequent reduced structural integrity of the airplane.

Other Related Rulemaking

On October 11, 2002, the FAA issued AD 2002–21–09, amendment 39–12915 (67 FR 65303, October 24, 2002), applicable to certain McDonnell Douglas Model DC–9–10, –20, –30, –40, and –50 series airplanes, which currently requires, among other actions, various inspections to detect cracks of the cockpit enclosure window sill, and follow-on and corrective actions, as applicable. That AD was prompted by reports of cracking of the internal doublers and frame structure of the fuselage skin of the cockpit enclosure window sill. The actions required by that AD are intended to prevent fatigue cracking of the internal doublers and frame structure of the fuselage skin of the cockpit enclosure window sill, which could result in rapid decompression of the fuselage and consequent reduced structural integrity of the airplane.

Since issuance of that AD, the FAA has determined that the same unsafe condition addressed in that AD may exist on certain additional Model DC–9–31 and DC–9–32 airplanes. The FAA was advised that four Model DC–9–31 and DC–9–32 airplanes (manufacturer's fuselage numbers 0268, 0505, 1039, and 1046) were omitted inadvertently from the applicability of AD 2002–21–09 because those airplanes had been excluded inadvertently from the effectivity of paragraph 1.A. of Boeing Service Bulletin DC9–53–290, Revision 01, dated March 15, 2002. Therefore, these additional airplanes are also subject to the same unsafe condition addressed in AD 2002–21–09.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletin DC9–53–290, Revision 02, dated January 30, 2003. The procedures specified by Revision 02 of the service bulletin are essentially the same as those procedures included in Boeing Service Bulletin DC9–53–290, Revision 01, dated March 15, 2002, as cited in AD 2002–21–09. However, this revision also adds four airplane fuselage numbers to the effectivity. No more work is necessary on the airplanes changed, as shown in Revision 01 of the service bulletin.

Accomplishment of the actions specified in AD 2002–21–09 is acceptable for compliance with the requirements of this AD.

Explanation of Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design that may be registered in the United States at some time in the future, this AD is being issued to prevent fatigue cracking of the internal doublers and frame structure of the fuselage skin of the cockpit enclosure window sill, which could result in rapid decompression of the fuselage and consequent reduced structural integrity of the airplane. This AD requires, among other actions, various inspections to detect cracks of the cockpit enclosure window sill, and follow-on and corrective actions, as applicable. The actions are required to be accomplished in accordance with the service bulletin described previously, except as discussed below.

Difference Between Rule and Service Bulletin

Operators should note that, although the service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions, this AD requires the repair of those conditions to be accomplished in accordance with a method approved by the FAA.

Changes to 14 CFR Part 39/Effect on the AD

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

Change to Labor Rate Estimate

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

Cost Impact

None of the airplanes affected by this action are on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 4 work hours to accomplish the required actions, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of this AD would be $260 per airplane.

Determination of Rule's Effective Date

Since this AD action does not affect any airplane that is currently on the U.S. register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, prior notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register**.

Comments Invited

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

Submit comments using the following format:

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

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments,

in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2003–NM–61–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2003–20–06 McDonnell Douglas: Amendment 39–13324. Docket 2003–NM–61–AD.

Applicability: Model DC–9–31 and DC–9–32 airplanes; fuselage numbers 0268, 0505, 1039 and 1046; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking of the internal doublers and frame structure of the fuselage skin of the cockpit enclosure window sill, which could result in rapid decompression of the fuselage and consequent reduced structural integrity of the airplane, accomplish the following:

Note 1: Where there are differences between the AD and the referenced service bulletin, the AD prevails.

Initial Inspections

(a) Before the accumulation of 40,000 total landings, or within 5,000 landings after the effective date of this AD, whichever occurs later, do the actions specified in paragraphs (a)(1) and (a)(2) of this AD per the Accomplishment Instructions of Boeing Service Bulletin DC9–53–290, Revision 02, dated January 30, 2003.

(1) Do a general visual inspection to determine if any existing repair of the internal doublers and frame structure of the fuselage skin of the cockpit enclosure window sill has been accomplished before the effective date of this AD.

Note 2: For the purposes of this AD, a general visual inspection is defined as: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

(2) Do inspections to detect cracks or loose or missing fasteners of the cockpit enclosure window sill per paragraphs 3.B.1. through 3.B.6. of the Accomplishment Instructions of the service bulletin. The inspections include a general visual inspection to detect loose or missing fasteners or cracks of the upper nose skins of the cockpit; a high frequency eddy current (HFEC) inspection for cracking of Zees; and detailed, borescope, and HFEC inspections for cracking of the skins and frames.

Note 3: For the purposes of this AD, a detailed inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc. may be used. Surface cleaning and elaborate access procedures may be required.''

Note 4: If any cracked Zee is found during any inspection per paragraph (a)(2) of this AD, refer to paragraph (h) of this AD.

Condition 1 (No Previous Repair and No Crack)

(b) If no previous repair and no crack is found during the inspections required by paragraphs (a)(1) and (a)(2) of this AD: Do the actions specified in paragraph (b)(1) or (b)(2) of this AD, at the times specified in those paragraphs.

Condition 1, Option 1: Repetitive Inspections

(1) Condition 1, Option 1: Repeat the inspections required by paragraph (a)(2) of this AD every 5,000 landings, until paragraph (b)(2) of this AD is done. If any crack is found, before further flight, determine the applicable Condition as specified in the Accomplishment Instructions of Boeing Service Bulletin DC9–53–290, Revision 02, dated January 30, 2003, and do the applicable actions required by this AD.

Condition 1, Option 2: Permanent Repair

(2) Condition 1, Option 2: Do paragraphs (b)(2)(i) and (b)(2)(ii) of this AD.

(i) Before further flight, do all actions associated with the permanent repair (including detailed and eddy current inspections of various parts; and repair, replacement, or rework of those parts, as applicable) per Condition 1, Option 2, of the Accomplishment Instructions of Boeing Service Bulletin DC9–53–290, Revision 02, dated January 30, 2003. This terminates the repetitive inspections per paragraph (b)(1) of this AD.

Note 5: Boeing Service Bulletin DC9–53–290, Revision 02, dated January 30, 2003, refers to Boeing Service Rework Drawing SR09530268, Revision D, dated November 29, 2001, as an additional source of service information for identifying parts to be inspected, and repairing, replacing, or reworking those parts.

(ii) Within 40,000 landings after doing the permanent repair required by paragraph (b)(2)(i) of this AD, repeat the inspections specified in paragraph (a)(2) of this AD to detect any crack of the completed repair, per the Accomplishment Instructions of the service bulletin. If no crack is found, repeat the inspections specified in paragraph (a)(2) of this AD every 5,000 landings. If any crack is found, do paragraph (g) of this AD.

Condition 2 (Any Crack Within Flyable Limits for Temporary Repair)

(c) If any crack is found during the initial inspection required by paragraph (a)(2) of this AD, or during any repetitive inspection required by paragraph (b)(1) of this AD, and that crack is within the flyable limits specified in Condition 2 of the Accomplishment Instructions of Boeing Service Bulletin DC9–53–290, Revision 02, dated January 30, 2003: Do the actions specified in paragraph (c)(1) or (c)(2) of this AD.

Note 6: Boeing Service Bulletin DC9–53–290, Revision 02, dated January 30, 2003, refers to Boeing Service Rework Drawing SR09530268, Revision D, dated November

29, 2001, as the source for determining flyable limits.

Condition 2, Option 1: Temporary Repair and Repetitive Inspections

(1) Condition 2, Option 1: Do paragraphs (c)(1)(i), (c)(1)(ii), (c)(1)(iii), and (c)(1)(iv) of this AD, at the times specified in those paragraphs.

(i) Before further flight, do the temporary repair (including installation of doublers) per Condition 2, Option 1, of the Accomplishment Instructions of the service bulletin.

(ii) Within 2,000 landings after doing the temporary repair, do a general visual inspection to detect cracks of the skins and external doublers. If no crack is found that is outside the flyable limits specified in Condition 2 of the Accomplishment Instructions of the service bulletin, repeat the inspection every 2,000 landings until paragraph (c)(2)(i) of this AD is done.

(iii) Within 3,500 landings after doing the temporary repair, do borescope and HFEC inspections to detect cracks of the internal structure. If no crack is found that is outside the flyable limits specified in Condition 2 of the Accomplishment Instructions of the service bulletin, repeat the inspection every 3,500 landings until paragraph (c)(2)(i) of this AD is done.

Note 7: If any crack is found during any inspection per paragraph (c)(1)(ii) or (c)(1)(iii) of this AD, refer to paragraph (f) of this AD.

(iv) Except as provided by paragraph (f) of this AD, within 8,000 landings after doing the temporary repair, do the permanent repair specified in paragraph (c)(2) of this AD.

Condition 2, Option 2: Permanent Repair

(2) Condition 2, Option 2: Do paragraphs (c)(2)(i) and (c)(2)(ii) of this AD at the times specified in those paragraphs.

(i) Before further flight, do all actions associated with the permanent repair (including detailed and eddy current inspections of various parts; and repair, replacement, or rework of those parts, as applicable) per Condition 2, Option 2, of the Accomplishment Instructions of the service bulletin. This terminates the repetitive inspections required by paragraphs (c)(1)(ii) and (c)(1)(iii) of this AD.

(ii) Within 40,000 landings after doing the permanent repair required by paragraph (c)(2)(i) of this AD, repeat the inspections specified in paragraph (a)(2) of this AD to detect any crack of the completed repair, per the Accomplishment Instructions of the service bulletin. If no crack and no crack progression is found, repeat the inspections specified in paragraph (a)(2) of this AD every 5,000 landings. If any crack or crack progression is found, do paragraph (g) of this AD.

Condition 3 (Existing Temporary Repairs Per Certain Service Information)

(d) If any temporary repair is found during any inspection required by paragraph (a)(1) of this AD and that repair was accomplished per the service information identified in Condition 3 of the Accomplishment Instructions of Boeing Service Bulletin DC9–53–290, Revision 02, dated January 30, 2003: Do the actions specified in paragraph (d)(1) or (d)(2) of this AD. Also, if the Station Y=83.550 frames have been repaired before the effective date of this AD per DC–9/MD–80 Structural Repair Manual, Section 53–03, Figure 34, or Boeing Service Rework Drawing S509530127, do a one-time inspection of the frames for crack growth emanating beyond the repair angles. If any crack progression is found, before further flight, replace the frames with new frames per the Accomplishment Instructions of the service bulletin.

Condition 3, Option 1: Repetitive Inspections

(1) Condition 3, Option 1: Do paragraphs (d)(1)(i), (d)(1)(ii), and (d)(1)(iii) of this AD at the times specified in those paragraphs.

(i) Within 2,000 landings after doing the temporary repair, or before further flight after accomplishment of the initial inspections in paragraph (a) of this AD, whichever is later, do a general visual inspection to detect cracks of the skins and external doublers. If no crack is found that is outside the flyable limits specified in Condition 2 of the Accomplishment Instructions of the service bulletin, repeat the inspection every 2,000 landings until paragraph (d)(2)(i) of this AD is done.

Note 8: If any crack outside the flyable limits is found during any inspection per paragraph (d)(1)(i) or (d)(1)(ii) of this AD, refer to paragraph (f) of this AD.

(ii) Within 3,500 landings after doing the temporary repair, or before further flight after accomplishment of the initial inspections in paragraph (a) of this AD, whichever is later, do borescope and HFEC inspections to detect cracks of the internal structure. If no crack is found that is outside the flyable limits specified in Condition 2 of the Accomplishment Instructions of the service bulletin, repeat the inspection every 3,500 landings until paragraph (d)(2)(i) of this AD is done.

(iii) Except as provided by paragraph (f) of this AD, within 8,000 landings after doing the temporary repair, or before further flight if more than 8,000 landings have been accumulated since the temporary repair, do the permanent repair specified in paragraph (d)(2)(i) of this AD.

Condition 3, Option 2: Permanent Repair

(2) Condition 3, Option 2: Do paragraphs (d)(2)(i) and (d)(2)(ii) of this AD at the times specified in those paragraphs.

(i) Before further flight, do all actions associated with the permanent repair (including detailed and eddy current inspections of various parts; and repair, replacement, or rework of those parts, as applicable) per Condition 3, Option 2, of the Accomplishment Instructions of the service bulletin. This terminates the repetitive inspections required by paragraphs (d)(1)(i) and (d)(1)(ii) of this AD.

(ii) Within 40,000 landings after doing the permanent repair required by paragraph (d)(2)(i) of this AD, repeat the inspections specified in paragraph (a)(2) of this AD to detect any crack of the completed repair, per the Accomplishment Instructions of the service bulletin. If no crack and no crack progression is found: Repeat the inspections specified in paragraph (a)(2) of this AD every 5,000 landings. If any crack or crack progression is found, do paragraph (g) of this AD.

Condition 4 (Existing Repairs Per Other Service Information)

(e) If any repair is found during any inspection required by paragraph (a)(1) of this AD, and the repair was not accomplished per the service information identified in Condition 4 of the Accomplishment Instructions of Boeing Service Bulletin DC9–53–290, Revision 02, dated January 30, 2003: Before further flight, repair per a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA.

Condition 5 (Crack Outside Flyable Limits for Temporary Repair)

(f) If any crack is found during any inspection required by paragraph (a)(2), (b)(1), (c)(1)(ii), (c)(1)(iii), (d)(1)(i), or (d)(1)(ii) of this AD; and that crack is outside the limits specified in Condition 2 of the Accomplishment Instructions of Boeing Service Bulletin DC9–53–290, Revision 02, dated January 30, 2003; and a permanent repair was not previously accomplished per this AD: Do paragraphs (f)(1) and (f)(2) of this AD at the times specified in those paragraphs.

(1) Before further flight, do all actions associated with the permanent repair (including detailed and eddy current inspections of various parts; and repair, replacement, or rework of those parts, as applicable) per Condition 5 of the Accomplishment Instructions of the service bulletin.

(2) Within 40,000 landings after doing the permanent repair required by paragraph (f)(1) of this AD, repeat the inspections specified in paragraph (a)(2) of this AD to detect any crack of the completed repair, per the Accomplishment Instructions of the service bulletin. If no crack and no crack progression is found, repeat the inspections specified in paragraph (a)(2) of this AD every 5,000 landings. If any crack or crack progression is found, do paragraph (g) of this AD.

Corrective Actions: Cracking Following Permanent Repair

(g) If any crack or crack progression is found during any inspection required by paragraph (b)(2)(ii), (c)(2)(ii), (d)(2)(ii), or (f)(2) of this AD: Before further flight, repair per a method approved by the Manager, Los Angeles ACO.

Corrective Action for Cracked Zee

(h) If any cracked Zee is found during any inspection performed per paragraph (a)(2) of this AD: Before further flight, replace the cracked Zee with a new part per the Accomplishment Instructions of Boeing Service Bulletin DC9–53–290, Revision 02, dated January 30, 2003.

Credit for Accomplishment of Related AD 2002–21–09, Amendment 39–12915

(i) Accomplishment of the actions specified in AD 2002–21–09 is acceptable for compliance with the requirements of this AD.

Alternative Methods of Compliance

(j)(1) In accordance with 14 CFR 39.19, the Manager, Los Angeles ACO, FAA, is authorized to approve alternative methods of compliance (AMOCs) for this AD.

(2) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by a Boeing Company Engineering Representative (DER) who has been authorized by the Manager, Los Angeles ACO, to make such findings.

Incorporation by Reference

(k) Unless otherwise specified by this AD, the actions shall be done in accordance with Boeing Service Bulletin DC9–53–290, Revision 02, dated January 30, 2003. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles ACO, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(l) This amendment becomes effective on October 20, 2003.

Issued in Renton, Washington, on September 24, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–24681 Filed 10–2–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–CE–29–AD; Amendment 39–13323; AD 2003–20–05]

RIN 2120–AA64

Airworthiness Directives; PILATUS Aircraft Ltd. Model PC–7 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA adopts a new airworthiness directive (AD) for certain PILATUS Aircraft Ltd. (Pilatus) Model PC–7 airplanes. This AD requires you to inspect the forward and aft dihedral fittings for cracks and replace any cracked fitting. This AD also requires you to modify the aft dihedral fitting and spar-cap bolt holes. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Switzerland. The actions specified by this AD are intended to prevent cracks from developing in the forward and aft dihedral fittings, which could result in failure of the wing in certain maneuvers. Such failure could lead to loss of control of the airplane.

DATES: This AD becomes effective on November 14, 2003.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation as of November 14, 2003.

ADDRESSES: You may get the service information identified in this AD from Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland; telephone: +41 41 619 63 19; facsimile: +41 41 619 6224; or from Pilatus Business Aircraft Ltd., Product Support Department, 11755 Airport Way, Broomfield, Colorado 80021; telephone: (303) 465–9099; facsimile: (303) 465–6040.

You may view the AD docket at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–29–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. Office hours are 8 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

What Events Have Caused This AD?

The Federal Office for Civil Aviation (FOCA), which is the airworthiness authority for Switzerland, recently notified FAA that an unsafe condition may exist on certain Pilatus Model PC–7 airplanes. The FOCA reports that an operator of a similar aircraft type design, which uses identical dihedral fittings, reported a crack in one fitting. An inspection of the fleet revealed stress corrosion cracking in six aft dihedral fittings. Each cracked fitting was found on airplanes that had logged more than 3,000 hours time-in-service (TIS) or had been in service for 10 years or more.

What Is the Potential Impact if FAA Took No Action?

Cracks in the forward and aft dihedral fittings could result in failure of the wing in certain maneuvers. Such failure could lead to loss of control of the airplane.

Has FAA Taken Any Action to This Point?

We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Pilatus Model PC–7 airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on July 3, 2003 (68 FR 398970). The NPRM proposed to require you to:

—Inspect the forward and aft dihedral fittings for cracks;

—Replace any cracked fittings found; and

—Modify the aft dihedral fittings and spar-cap bolt holes.

Was the Public Invited To Comment?

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

Conclusion

What Is FAA's Final Determination on This Issue?

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed except for minor editorial corrections. We have determined that these minor corrections:

—Provide the intent that was proposed in the NPRM for correcting the unsafe condition; and

—Do not add any additional burden upon the public than was already proposed in the NPRM.

Changes to 14 CFR Part 39—Effect on the AD

How Does the Revision to 14 CFR Part 39 Affect This AD?

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

Costs of Compliance

How Many Airplanes Does This AD Impact?

We estimate that this AD affects 10 airplanes in the U.S. registry.

What Is the Cost Impact of This AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish the actions of this AD:

INSPECTIONS

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
3 workhours per fitting (4 fittings per airplane) × $60 per hour = $180 per fitting..	Not applicable	$180 × 4 fittings per airplane = $720.	$720 × 10 = $7,200.

FORWARD DIHEDRAL FITTING REPLACEMENT

Labor cost	Parts cost	Total cost per airplane
93 workhours per fitting (2 fittings per airplane) × $60 per hour = $5,580 per fitting.	$142 per replacement fitting	$5,722 per fitting.

AFT DIHEDRAL FITTING REPLACEMENT AND MODIFICATION

Labor cost	Parts cost	Total cost per airplane
20 workhours per fitting for replacement and modification (2 fittings per airplane) × $60 per hour = $1,200 per fitting. 10 workhours per fitting for modification only (2 fittings per airplane) × $60 per hour = $600 per fitting	$76 per replacement fitting and $66 for modification bolts.	$1,200 + $76 + $66 = $1,342 (labor, replacement, and modification per fitting). $600 + $66 = $666 (labor and modification per fitting).

Compliance Time of This AD

What Is the Compliance Time of This AD?

The compliance time of this AD is whichever occurs later: (1) upon the accumulation of 3,000 hours time-in-service (TIS) on the dihedral fittings or 10 years after installation of the dihedral fittings, whichever occurs first; or (2) within 90 days after the effective date of this AD.

Why Is the Compliance Time of This AD Presented in Both Hours TIS and Calendar Time?

Cracking of the dihedral fittings on the affected airplanes is caused by stress corrosion, which starts as a result of high local stress incurred through operation. Corrosion can then develop regardless of whether the airplane is in flight or on the ground. The cracks may not be noticed initially as a result of the stress loads, but could then progress as a result of corrosion. The stress incurred during flight operations or temperature changes could then cause rapid crack growth. In order to ensure that these stress corrosion cracks do not go undetected, a compliance time of specific hours TIS and calendar time is used.

Regulatory Findings

Will This AD Impact Various Entities?

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

Will This AD Involve a Significant Rule or Regulatory Action?

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

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include ''AD Docket No. 2003–CE–29–AD'' in your request.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. FAA amends § 39.13 by adding a new AD to read as follows:

2003–20–05 Pilatus Aircraft Ltd.: Amendment 39–13323; Docket No. 2003–CE–29–AD.

When Does This AD Become Effective?

(a) This AD becomes effective on November 14, 2003.

Are Any Other ADs Affected by This Action?

(b) None.

What Airplanes Are Affected by This AD?

(c) This AD affects the following airplane models and serial numbers that are:

(1) Certificated in any category; and

(2) Equipped with forward and aft dihedral fittings, part number (P/N) 111.34.07.469, 111.34.07.470, 111.34.07.471, and P/N 111.34.07.472.

Model	Manufacturer serial Nos. (MSN)
PC–7	101 through 618.

What Is the Unsafe Condition Presented in This AD?

(d) This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Switzerland. The actions specified by this AD are intended to prevent cracks from developing in the forward and aft dihedral fittings, which could result in failure of the wing in certain maneuvers. Such failure could lead to loss of control of the airplane.

What Must I Do To Address This Problem?

(e) To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) Accomplish the following inspections: (i) Using Impedance-Plane Eddy-Current inspection procedures, inspect the aft dihedral fittings, P/N 111.34.07.469 and P/N 111.34.07.470, for cracks; and (ii) Using Radiographic inspection procedures, inspect the forward dihedral fittings, P/N 111.34.07.471 and P/N 111.34.07.472, for cracks	At whichever of the following occurs later, unless already accomplished: upon the accumulation of 3,000 hours time-in-service (TIS) on the dihedral fittings or 10 years after installation of the dihedral fittings, whichever occurs first; or within 90 days after November 14, 2003 (the effective date of this AD).	Inspect in accordance with Pilatus PC–7 Service Bulletin No. 57–006, Revision No. 3, dated January 15, 2003.
(2) If a crack is found in any aft dihedral fittings, P/N 111.34.07.469 and/or P/N 111.34.07.470, replace with an improved fitting, P/N 557.10.09.071 and/or P/N 557.10.09.072 (as applicable or FAA-approved equivalent P/N), and modify the spar-cap bolt holes	Prior to further flight after the inspection required in paragraph (e)(1) of this AD.	Modify in accordance with Pilatus PC–7 Service Bulletin No. 57–006, Revision No. 3, dated January 15, 2003.
(3) If no cracks are found in any aft dihedral fittings, P/N 111.34.07.469 and P/N 111.34.07.470, modify the fittings and the spar-cap bolt holes	Prior to further flight after the inspection required in paragraph (e)(1) of this AD.	Modify in accordance with Pilatus PC–7 Service Bulletin No. 57–006, Revision No. 3, dated January 15, 2003.
(4) If cracks are found in any forward dihedral fittings, P/N 111.34.07.471 and/or P/N 111.34.07.472, replace with a new part	Prior to further flight after the inspection required in paragraph (e)(1) of this AD.	Not applicable.
(5) If no cracks are found in any forward dihedral fittings, P/N 111.34.07.471 and P/N 111.34.07.472, no further action is required	Not applicable	Not applicable.
(6) Only install aft dihedral fittings that have a P/N of 557.10.09.071 and P/N 557.10.09.072. You must also accomplish the spar-cap bolt hole modification	As of November 14, 2003 (the effective date of this AD).	Modify the spar-cap bolt holes in accordance with Pilatus PC–7 Service Bulletin No. 57–006, Revision No. 3, dated January 15, 2003.

What About Alternative Methods of Compliance?

(f) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.13. Send your request to the Manager, Standards Office, Small Airplane Directorate, FAA. For information on any already approved alternative methods of compliance, contact Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

Is There Material Incorporated by Reference?

(g) Actions required by this AD must be done in accordance with Pilatus PC–7 Service Bulletin No. 57–006, Revision No. 3, dated January 15, 2003. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may get a copy from Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland; telephone: +41 41 619 63 19; facsimile: +41 41 619 6224; or from Pilatus Business Aircraft Ltd., Product Support Department, 11755 Airport Way, Broomfield, Colorado 80021; telephone: (303) 465–9099; facsimile: (303) 465–6040. You may review copies at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Is There Other Information That Relates to This Subject?

(h) Swiss AD HB 2003–196, dated May 12, 2003, also addresses the subject of this AD.

Issued in Kansas City, Missouri, on September 24, 2003.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–24685 Filed 10–2–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NE–27–AD; Amendment 39–13325; AD 2003–20–07]

RIN 2120–AA64

Airworthiness Directives; General Electric Company (GE) CF6–80E1A2 Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for General Electric Company (GE) CF6–80E1A2 turbofan engines with forward engine mount platforms part numbers (P/Ns) 1520M53G04 and 1846M24G15 installed. This AD requires initial and repetitive fluorescent penetrant inspections of cast material forward engine mount platforms. This AD is prompted by the airframe manufacturer's revised analyses of loads on the forward engine mount. We are issuing this AD to prevent engine separation that could result from cracking of the forward engine mount platform.

DATES: Effective November 3, 2003.

We must receive any comments on this AD by December 2, 2003.

ADDRESSES: Use one of the following addresses to submit comments on this AD:

- By mail: The Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–NE–27–AD, 12 New England Executive Park, Burlington, MA 01803–5299.
- By fax: (781) 238–7055.
- By e-mail: *9–ane–adcomment@faa.gov.*

You can get the service information referenced in this AD from General Electric Company via Lockheed Martin Technology Services, 10525 Chester Road, suite C, Cincinnati, Ohio 45215, telephone (513) 672–8400; fax (513) 672–8422.

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

FOR FURTHER INFORMATION CONTACT: Karen Curtis, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7192; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: GE has notified the FAA that an unsafe condition may exist on GE CF6–80E1A2 turbofan engines. GE advises that Airbus Industrie has revised their analyses of Airbus A330 airplane engine mount loads. The revised analyses predict a reduction in calculated low-cycle-fatigue (LCF) life capability for forward mount platforms made from cast material. Airbus Industrie has updated the airplane maintenance manual with revised inspection thresholds and intervals for the affected engine mount components. These revised inspection thresholds and intervals are published in Chapter 5 of the engine manual. This AD is necessary to make those inspection thresholds and intervals mandatory for all operators.

FAA's Determination and Requirements of This AD

Although no airplanes that are registered in the United States use these GE CF6–80E1A2 turbofan engines, the possibility exists that the engines could be used on airplanes that are registered in the United States in the future. The unsafe condition described previously is likely to exist or develop on other GE CF6–80E1A2 turbofan engines of the same type design. We are issuing this AD to prevent engine separation that could result from cracking of the forward engine mount platform. This AD requires initial and repetitive fluorescent penetrant inspections of cast material forward engine mount platforms, P/Ns 1520M53G04 and 1846M24G15. The thresholds and intervals were established to be consistent with inspections required by the airframe manufacturer.

FAA's Determination of the Effective Date

Sine there are currently no domestic operators of GE CF6–80E1A2 turbofan engines, notice and opportunity for public comment before issuing this AD are unnecessary. Therefore, a situation exists that allows the immediate adoption of this regulation.

Changes to 14 CFR Part 39—Effect on the AD

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

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES.** Include ''AD Docket No. 2003–NE–27–AD'' in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it; we will date-stamp your postcard and mail it back to you. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify it. If a person contacts us verbally, and that contact relates to a substantive part of this AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend the AD in light of those comments.

We are reviewing the writing style we currently use in regulatory documents. We are interested in your comments on whether the style of this document is clear, and your suggestions to improve the clarity of our communications with you. You may get more information about plain language at *http://www.faa.gov/language* and *http://www.plainlanguage.gov.*

Examining the AD Docket

You may examine the AD Docket (including any comments and service information), by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. See **ADDRESSES** for the location.

Regulatory Findings

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

For the reasons discussed above, I certify that the regulation:

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

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

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

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include ''AD Docket No. 2003–NE–27–AD'' in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2003–20–07 General Electric Company: Amendment 39–13325. Docket No. 2003–NE–27–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective November 3, 2003.

Affected ADs

(b) None.

Applicability

(c) This AD applies to General Electric Company (GE) CF6–80E1A2 turbofan engines with forward engine mount platforms part numbers (P/Ns) 1520M53G04 and 1846M24G15 installed. These engines are installed on, but not limited to Airbus Industrie A330 airplanes.

Unsafe Condition

(d) This AD is prompted by revised analyses of forward engine mount loads by the airframe manufacturer. We are issuing this AD to prevent engine separation that could result from cracking of the forward engine mount platform.

Compliance

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

Platforms Previously Inspected

(f) For platforms that were inspected using a fluorescent penetrant inspection (FPI) before the effective date of this AD, repeat the FPI within 4,000 cycles-in-service-since last inspection (CSLI).

Platforms Not Previously Inspected

(g) For platforms that were not inspected using an FPI before the effective date of this AD, inspect the platform using an FPI at the next exposure, or before exceeding 6,360 cycles-since-new (CSN), whichever occurs first.

Platform Repetitive Inspections

(h) Repeat the FPI within every 4,000 CSLI.

Alternative Methods of Compliance

(i) The Manager, Engine Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Material Incorporated by Reference

(j) None.

Related Information

(k) GE Aircraft Engines Alert Service Bulletin No. CF6–80E1 S/B 72–A0195 pertains to the subject of this AD. Information on performing FPI can be found in the CF6 component maintenance manual, GEK 99410, section 71–21–02.

Issued in Burlington, Massachusetts, on September 25, 2003.

Peter A. White,

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

[FR Doc. 03–25000 Filed 10–2–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–15461; Airspace Docket No. 03–ACE–59]

Modification of Class E Airspace; Beatrice, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date; rescission of correction.

SUMMARY: This document confirms the effective date of the direct final rule which revises Class E airspace at Beatrice, NE. It also rescinds a correction to that final rule.

EFFECTIVE DATE: 0901 UTC, October 30, 2003.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on July 31, 2003 (68 FR 44875) and subsequently published a correction to the direct final rule in the **Federal Register** on September 9, 2003 (68 FR 53034). Information in the original publication is accurate. The correction was inadvertently published and is hereby rescinded.

The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on October 30, 2003. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Dated: Issued in Kansas City, MO on September 19, 2003.

David W. Hope,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 03–25049 Filed 10–2–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30390; Amdt. No. 3077]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective October 3, 2003. The compliance date for each

SIAP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 3, 2003.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The Flight Inspection Area Office which originated the SIAP; or,

4. The Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC, on September 26, 2003.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

** * * Effective October 30, 2003*

Susanville, CA, Susanville Muni, RNAV (GPS)–A, Orig
Susanville, CA, Susanville Muni, RNAV (GPS) Rwy 29, Orig
Orlando, FL, Executive, VOR/DME Rwy 25, Amdt 2
Orlando, FL, Executive, VOR/DME Rwy 7, Amdt 1
Orlando, FL, Executive, LOC BC Rwy 25, Amdt 21
Orlando, FL, Executive, NDB Rwy 7, Amdt 16
Orlando, FL, Executive, ILS OR LOC Rwy 7, Amdt 22
Orlando, FL, Executive, RNAV (GPS) Rwy 7, Orig
Orlando, FL, Executive, GPS Rwy 7, Orig–A, Cancelled
Orlando, FL, Executive, GPS Rwy 25, Orig–C, Cancelled
Orlando, FL, Executive, RNAV (GPS) Rwy 25, Orig
Indianapolis, IN, Indianapolis Brookside Airpark, VOR OR GPS Rwy 36, Amdt 6, Cancelled
Elkhart, KS, Elkhart-Morton County, RNAV (GPS) Rwy 4, Orig
Elkhart, KS, Elkhart-Morton County, RNAV (GPS) Rwy 17, Orig
Elkhart, KS, Elkhart-Morton County, RNAV (GPS) Rwy 22, Orig
Elkhart, KS, Elkhart-Morton County, RNAV (GPS) Rwy 35, Orig
Elkhart, KS, Elkhart-Morton County, NDB Rwy 35, Amdt 1

Lake Providence, LA, Byerley, NDB Rwy 17, Amdt 2
Ogdensburg, NY, Ogdensburg Intl, RNAV (GPS) Rwy 27, Orig
Ogdensburg, NY, Ogdensburg Intl, LOC Rwy 27, Amdt 2
Ogdensburg, NY, Ogdensburg Intl, NDB Rwy 27, Amdt 1
Williamson/Sodus, NY, Williamson-Sodus, RNAV (GPS) Rwy 10, Orig
Williamson/Sodus, NY, Williamson-Sodus, RNAV (GPS) Rwy 28, Orig
Williamson/Sodus, NY, Williamson-Sodus, GPS Rwy 28, Orig, Cancelled
Corpus Christi, TX, Corpus Christi Intl, RNAV (GPS) Rwy 31, Orig–A
Harlingen, TX, Valley Intl, LOC BC Rwy 35L, Amdt 13A, Cancelled

** * * Effective December 25, 2003*

Kenai, AK, Kenai Muni, NDB–A, Amdt 3B
Rayville, LA, John H. Hooks Jr. Memorial, NDB Rwy 36, Amdt 2
North Myrtle Beach, SC, Grand Strand, NDB Rwy 23, Amdt 11
North Myrtle Beach, SC, Grand Strand, VOR Rwy 5, Amdt 21
Lubbock, TX, Lubbock Intl, VOR/DME RNAV Rwy 8, Amdt 2A, Cancelled

[FR Doc. 03–25053 Filed 10–2–03; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30391 ; Amdt. No. 3078]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective October 3, 2003. The compliance date for each SIAP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 3, 2003.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.
4. The Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK. 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK. 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and section 97.20 of the Federal Aviation's Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAMs for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been canceled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT

Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, Navigation (Air).

Issued in Washington, DC, on September 26, 2003.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

* * * Effective Upon Publication

FDC DATE	STATE	CITY	AIRPORT	FDC NUMBER	SUBJECT
09/03/03	AR	HUNTSVILLE	HUNTSVILLE MUNI	3/8267	VOR/DME OR GPS RWY 12, AMDT 1.
09/03/03	AR	RUSSELLVILLE	RUSSELLVILLE REGIONAL.	3/8269	GPS RWY 25, ORIG–A.
09/03/03	AR	SILOAM SPRINGS	SMITH FIELD	3/8270	VOR OR GPS–A, AMDT 8A.
09/03/03	AR	JONESBORO	JONESBORO MUNI	3/8271	VOR OR GPS RWY 23, AMDT 9A.
09/03/03	AR	FAYETTEVILLE	DRAKE FIELD	3/8272	VOR OR GPS–A, AMDT 24A.
09/03/03	AR	OZARK	OZARK–FRANKLIN COUNTY.	3/8273	VOR/DME OR GPS–A, AMDT 3.
09/03/03	AR	FORT SMITH	FORT SMITH REGIONAL	3/8275	RNAV (GPS) RWY 1, ORIG.
09/03/03	AR	FORT SMITH	FORT SMITH REGIONAL	3/8278	NDB RWY 7, AMDT 8A.
09/03/03	AR	FORT SMITH	FORT SMITH REGIONAL	3/8276	NDB RWY 25, AMDT 24C.
09/03/03	AR	FORT SMITH	FORT SMITH REGIONAL	3/8279	VOR OR TACAN RWY 25, AMDT 20E.
09/03/03	AR	FORT SMITH	FORT SMITH REGIONAL	3/8280	VOR/DME OR TACAN RWY 7, AMDT 11.
09/03/03	AR	FORT SMITH	FORT SMITH REGIONAL	3/8281	RNAV (GPS) RWY 25, ORIG.
09/03/03	AR	FORT SMITH	FORT SMITH REGIONAL	3/8282	RNAV (GPS) RWY 7, ORIG.
09/03/03	AR	FORT SMITH	FORT SMITH REGIONAL	3/8283	ILS RWY 25, AMDT 21.
09/03/03	AR	FORT SMITH	FORT SMITH REGIONAL	3/8284	ILS RWY 7, ORIG.
09/03/03	AR	FORT SMITH	FORT SMITH REGIONAL	3/8285	RADAR–1, AMDT 8.
09/03/03	TX	COLLEGE STATION	EASTERWOOD FIELD	3/8460	VOR/DME RWY 28, AMDT 12B.
09/03/03	TX	BEAUMONT–PORT ARTHUR.	SOUTHEAST TEXAS REGIONAL.	3/8462	ILS RWY 12, AMDT 22.
09/03/03	TX	BEAUMONT–PORT ARTHUR.	SOUTHEAST TEXAS REGIONAL.	3/8463	VOR RWY 12, AMDT 9.
09/03/03	TX	BEAUMONT–PORT ARTHUR.	SOUTHEAST TEXAS REGIONAL.	3/8464	GPS RWY 12, ORIG.
09/03/03	TX	BEAUMONT–PORT ARTHUR.	SOUTHEAST TEXAS REGIONAL.	3/8467	VOR–B, AMDT 6.
09/24/03	TX	HOUSTON	ELLINGTON FIELD	3/9363	RNAV (GPS) RWY 35L, ORIG.
09/04/03	TX	AUSTIN	LAKEWAY AIRPARK	3/8594	GPS RWY 16, ORIG–A.
09/04/03	TX	AUSTIN	LAKEWAY AIRPARK	3/8595	VOR/DME–A, ORIG–A.
09/04/03	TX	CROCKETT	CROCKETT/HOUSTON COUNTY.	3/8606	GPS RWY 20, ORIG.
09/04/03	TX	CROCKETT	CROCKETT/HOUSTON COUNTY.	3/8607	GPS RWY 2, ORIG.
09/04/03	TX	LUBBOCK	LUBBOCK INTL	3/8653	ILS RWY 26, AMDT 2.
09/04/03	TX	LUBBOCK	LUBBOCK INTL	3/8654	NDB RWY 26, AMDT 2A.
09/04/03	TX	LUBBOCK	LUBBOCK INTL	3/8657	VOR–A, AMDT 6.
09/04/03	TX	LUBBOCK	LUBBOCK INTL	3/8661	VOR/DME OR TACAN RWY 26, AMDT 10C.
09/16/03	TX	LUBBOCK	LUBBOCK INTL	3/9105	ILS RWY 17R, AMDT 16.
09/06/03	DE	GEORGETOWN	SUSSEX COUNTY	3/8699	VOR RWY 22, AMDT 6.
09/06/03	DE	GEORGETOWN	SUSSEX COUNTY	3/8698	VOR RWY 4, AMDT 5.
09/06/03	DE	GEORGETOWN	SUSSEX COUNTY	3/8697	RNAV (GPS) RWY 22, ORIG–B.
09/06/03	DE	GEORGETOWN	SUSSEX COUNTY	3/8696	RNAV (GPS) RWY 4, ORIG–B.
09/06/03	DC	WASHINGTON	WASHINGTON DULLES INTL.	3/8521	ILS RWY 1R AMDT 22, ILS RWY 1R(CAT II), AMDT 22, ILS RWY 1R(CAT III), AMDT 22.
09/06/03	DC	WASHINGTON	RONALD REAGAN WASHINGTON NATIONAL.	3/8517	COPTER ILS 007 ORIG.
09/08/03	DC	WASHINGTON	RONALD REAGAN WASHINGTON NATIONAL.	3/8513	VOR/DME OR GPS RWY 19, AMDT 9.

FDC DATE	STATE	CITY	AIRPORT	FDC NUMBER	SUBJECT
09/08/03	MD	INDIAN HEAD	MARYLAND	3/8693	VOR–A, ORIG–A.
09/06/03	MD	INDIAN HEAD	MARYLAND	3/8692	RNAV (GPS) RWY 36, ORIG.
09/06/03	PA	PITTSBURGH	PITTSBURGH INTL	3/8453	RNAV (GPS) RWY 10C, AMDT 2.
09/08/03	VA	TANGIER	TANGIER ISLAND	3/8516	VOR/DME OR GPS RWY 2, ORIG–B.
09/08/03	WV	PINEVILLE	KEE FIELD	3/8695	GPS RWY 26, ORIG–A.
09/06/03	WV	PINEVILLE	KEE FIELD	3/8694	GPS RWY 8, ORIG–A.
09/04/03	GA	ELBERTON	ELBERT CO–PATZ FIELD.	3/8354	VOR/DME OR GPS RWY 10, AMDT 2C; CORRECTION TO TL03–21.
09/12/03	AK	BETHEL	BETHEL	3/8912	VOR/DME–B, ORIG.
09/12/03	AK	BETHEL	BETHEL	3/8913	VOR RWY 18, AMDT 8B.
09/11/03	TX	HOUSTON	ELLINGTON FIELD	3/8976	RNAV (GPS) RWY 4, ORIG–A.
09/15/03	AK	BETHEL	BETHEL	3/9073	VOR/DME RWY 18, AMDT 1.
09/17/03	MA	HYANNIS	BARNSTABLE MUNI-BOARDMAN/ POLANDO FIELD.	3/9125 REPLACES 3/8768	VOR OR GPS RWY 6, AMDT 7C.
09/17/03	TX	LOCKHART	LOCKHART MUNI	3/9122	GPS RWY 36, ORIG–B.
09/11/03	CO	FORT COLLINS (LOVELAND).	FORT COLLINS-LOVELAND MUNI.	3/8900	NDB RWY 33, AMDT 4A.
09/11/03	CO	FORT COLLINS (LOVELAND).	FORT COLLINS-LOVELAND MUNI.	3/8901	ILS RWY 33, AMDT 5B.
09/11/03	PA	PITTSBURGH	PITTSBURGH INTL	3/8948	RNAV (GPS) Z RWY 28L, AMDT 2.
09/15/03	NY	ITHACA	ITHACA TOMPKINS REGIONAL.	3/9037	ILS RWY 32, AMDT 5.
09/18/03	PA	PHILADELPHIA	PHILADELPHIA	3/9160	NDB RWY 27L, AMDT 5B.

[FR Doc. 03–25054 Filed 10–2–03; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Praziquantel Tablets

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Phoenix Scientific, Inc. The ANADA provides for the oral use of praziquantel tablets for the removal and control of certain cestode parasites in dogs.

DATES: This rule is effective October 3, 2003.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV–104), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 301–827–8549, e-mail: *lluther@cvm.fda.gov*.

SUPPLEMENTARY INFORMATION: Phoenix Scientific, Inc., 3915 South 48th St. Terr., St. Joseph, MO 64503, filed ANADA 200–265 that provides for the use of Praziquantel Tablets for the removal and control of certain cestode parasites in dogs. Phoenix Scientific, Inc.'s Praziquantel Tablets are approved as a generic copy of Bayer HealthCare LLC's DRONCIT (praziquantel) Canine Tablets approved under NADA 111–798. The ANADA is approved as of August 28, 2003, and the regulations are amended in 21 CFR 520.1870 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

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

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

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

List of Subjects in 21 CFR Part 520

Animal drugs.

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

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

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

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

■ 2. Section 520.1870 is amended by revising paragraphs (a), (b), and (c)(1) to read as follows:

§ 520.1870 Praziquantel tablets.

(a) *Specifications*. Each tablet contains:

(1) 34 milligrams (mg) praziquantel.

(2) 11.5 or 23 mg praziquantel.

(b) *Sponsors*. See sponsors in § 510.600(c) of this chapter:

(1) No. 000859 for use of the product described in paragraph (a)(1) of this section, as in paragraph (c)(1) of this section; and for use of the product described in paragraph (a)(2) of this section, as in paragraph (c)(2) of this section.

(2) No. 059130 for use of the product described in paragraph (a)(1) of this section, as in paragraphs (c)(1)(i), (c)(1)(ii), and (c)(1)(iii)(B) of this section.

(c) *Conditions of use*—(1) *Dogs*—(i) *Amount*. 5 pounds (lb) and under, 1/2 tablet (17 mg); 6 to 10 lb, 1 tablet (34 mg); 11 to 15 lb, 1 1/2 tablets (51 mg); 16 to 30 lb, 2 tablets (68 mg); 31 to 45 lb, 3 tablets (102 mg); 46 to 60 lb, 4 tablets (136 mg); over 60 lb, 5 tablets maximum (170 mg). Administer directly by mouth or crumbled and in feed.

(ii) *Indications for use*—(A) For removal of canine cestodes *Dipylidium caninum* and *Taenia pisiformis*.

(B) For removal of the canine cestode *Echinococcus granulosus*, and for removal and control of the canine cestode *Echinococcus multilocularis*.

(iii) *Limitations*—(A) If labeled only for use as in paragraph (c)(1)(ii)(A) of this section: Not intended for use in puppies less than 4 weeks of age. Consult your veterinarian before administering tablets to weak or debilitated animals and for assistance in the diagnosis, treatment, and control of parasitism.

(B) If labeled for use as in paragraph (c)(1)(ii)(B) of this section: Federal law restricts this drug to use by or on the order of a licensed veterinarian.

* * * * *

Dated: September 15, 2003.

Linda Tollefson,

Deputy Director, Center for Veterinary Medicine.

[FR Doc. 03–25090 Filed 10–2–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF STATE

22 CFR Part 120

[Public Notice 4505]

RIN 1400–AB86

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

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: This rule amends the International Traffic in Arms Regulations (ITAR) implementing section 38 of the Arms Export Control Act (AECA) (22 U.S.C. 2778), which governs the import and export of defense articles and defense services. The rule reflects the change in the Directorate of Defense Trade Controls whereby two individuals will now hold the separate positions of Deputy Assistant Secretary of State for Defense Trade Controls and Managing Director of Defense Trade Controls.

EFFECTIVE DATE: August 11, 2003.

FOR FURTHER INFORMATION CONTACT: Robert W. Maggi, Managing Director of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State (202) 663–2700 or Michael T. Dixon, Office of Defense Trade Controls Management (202) 663–2798, FAX (202) 261–8199.

SUPPLEMENTARY INFORMATION: Effective August 11, 2003, the Department of State will have two individuals hold the separate positions of Deputy Assistant Secretary for Defense Trade Controls (DAS—Defense Trade Controls) and Managing Director of Defense Trade Controls (MD—Defense Trade Controls). Section 120.1(b)(2) is amended to reflect this change.

This amendment involves a foreign affairs function of the United States and, therefore, is not subject to the procedures required by 5 U.S.C. 553 and 554. It is exempt from review under Executive Order 12866 but has been reviewed internally by the Department to ensure consistency with the purposes thereof. This rule does not require analysis under the Regulatory Flexibility Act or the Unfunded Mandates Reform Act. It has been found not to be a major rule within the meaning of the Small Business Regulatory Enforcement Act of 1996. It will not have substantial direct effects on the States, the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this rule does not have sufficient federalism implications to warrant application of the consultation provisions of Executive Orders 12372 and 13123.

List of Subjects in 22 CFR Part 120

Arms and munitions, Classified information, Exports.

■ Accordingly, for the reasons set forth above, title 22, chapter I, subchapter M, part 120, is being amended as follows:

PART 120—PURPOSE AND DEFINITIONS

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

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

■ 2. Section 120.1(b)(2) is revised to read as follows:

§ 120.1 General authorities and eligibility.

* * * * *

(b) * * *

(1) * * *

(2) In the Bureau of Political-Military Affairs, there is a Deputy Assistant Secretary for Defense Trade Controls (DAS—Defense Trade Controls) and a Managing Director of Defense Trade Controls (MD—Defense Trade Controls). The DAS—Defense Trade Controls and the MD—Defense Trade Controls are responsible for exercising the authorities conferred under this subchapter. The DAS—Defense Trade Controls is responsible for oversight of the defense trade controls function. The MD—Defense Trade Controls is responsible for the Directorate of Defense Trade Controls, which oversees the subordinate offices described in paragraph (b)(2)(i) of this section.

* * * * *

Dated: September 12, 2003.

John R. Bolton,

Under Secretary, Arms Control and International Security, Department of State.

[FR Doc. 03–25169 Filed 10–2–03; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

[OH–249–FOR]

Ohio Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: We are approving a proposed amendment to the Ohio regulatory program (the ''Ohio program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Ohio proposed revisions to its Ohio Administrative Code (OAC) to incorporate a variety of changes related to the certification of blasters. The amendment is intended to facilitate the certification of blasters in the State's non-coal regulatory program as well as to upgrade the coal surface mining blaster certification program.

EFFECTIVE DATE: October 3, 2003.

FOR FURTHER INFORMATION CONTACT: George Rieger, Program Manager, Oversight and Inspection Office, Telephone: 412–937–2153, Internet address: *grieger@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Ohio Program
II. Submission of the Proposed Amendment
III. OSM's Findings
IV. Summary and Disposition of Comments
V. OSM's Decision
VI. Procedural Determinations

I. Background on the Ohio Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders

by demonstrating that its State program includes, among other things, ''a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act.'' See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Ohio program on August 16, 1982. You can find background information on the Ohio program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Ohio program in the August 10, 1982, **Federal Register** (47 FR 34688). You can also find later actions concerning Ohio program and program amendments at 30 CFR 935.11, 935.15, and 935.16.

II. Submission of the Proposed Amendment

By letter dated June 11, 2003, Ohio sent us a proposed amendment to its program (Administrative Record Number OH–2183–00) under SMCRA (30 U.S.C. 1201 *et seq.*). Ohio sent the amendment to include changes made at its own initiative. By electronic mail dated June 18, 2003, Ohio sent us a revised version of the original submittal (Administrative Record Number OH–2183–01).

The provision of the OAC that Ohio proposes to revise is: OAC 1501:13–9–10, concerning training, examination, and certification of blasters. In its original submittal of this amendment, Ohio stated that it has passed legislation extending the requirement for blasting operations to be conducted by a certified blaster to apply to non-coal surface mining as well as coal surface mining. Therefore, Ohio is now proposing to extend OAC Section 1501:13–9–10 to also apply to non-coal surface mining as well as coal surface mining. Ohio is also proposing other amendments to OAC 1501:13–9–10. The specific amendments to OAC 1501:13–9–10 are identified below.

We announced receipt of the proposed amendment in the July 21, 2003, **Federal Register** (68 FR 43063). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the amendments adequacy. The public comment period ended August 20, 2003. We did not hold a public hearing or meeting as no one requested one. We did not receive any comments.

III. OSM's Findings

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment. Any revisions that we do not specifically discuss below concern nonsubstantive wording or editorial changes and changes with no corresponding Federal regulations.

Ohio proposed minor changes to wording, editorial, punctuation, grammatical, recodification, and changes with no corresponding Federal regulations to the following previously approved regulations that implement provisions of the OAC. Ohio proposed these changes at its own initiative in order to improve its blaster certification program.

13–9–10(A), General, is amended at 13–9–10(A)(1) by adding the word ''surface'' and by adding the phrase ''in coal and industrial minerals mines'' to the first sentence. As amended, 13–9–10(A)(1) provides as follows:

> (1) All surface blasting operations in coal and industrial minerals mines, including surface blasting operations incident to underground mining and blasting operations on coal exploration operations, shall be conducted by a certified blaster who has obtained certification pursuant to the requirements of this rule.

The addition of the word ''surface'' does not render the provision less effective than the Federal regulations at 30 CFR 816.61(c). There is no Federal counterpart revision governing industrial mineral mines other than coal mines, but the application of this provision to other mineral operations does not render it inconsistent with SMCRA or the Federal regulations.

13–9–10(A), General, is amended by adding new 13–9–10(A)(3) to provide as follows:

> (3) The chief may grant reciprocity to any blaster who holds a valid certification issued under any state or federal blaster certification program approved by the U.S. Department of the Interior's Office of Surface Mining. However, to obtain certification under this rule, the blaster must apply for and pass an examination on Ohio blasting regulations pertaining to coal and industrial minerals mines, and meet any other requirement deemed necessary by the chief.

There is no direct Federal counterpart to this state provision. However, because all State coal mining regulatory programs are subject to the same minimum Federal standards under SMCRA and the Federal regulations, we find that this provision does not render the Ohio program less effective than the Federal regulations concerning the training, examination and certification of blasters at 30 CFR Part 850.

13–9–10(B), Training, is amended by deleting the word ''coal'' immediately before the words ''mining operations'' in the first sentence. As amended, the sentence provides that ''[t]he chief shall conduct workshops, as necessary, to inform blasters of changes in blasting rules and certification procedures, and shall ensure that courses are available to train persons responsible for the use of explosives in mining operations.'' The effect of this deletion is to make this requirement applicable to all mineral mining operations, rather than just coal mining operations. There is no Federal counterpart revision governing industrial mineral mines other than coal mines, but the application of this provision to other mineral operations does not render it inconsistent with SMCRA or the Federal regulations.

13–9–10(B)(7), Training, is amended by adding the words ''in coal and non-coal surface mines.'' As amended, 13–9–10(B)(7) provides as follows: ''(7) All federal and state rules applicable to the use of explosives in coal and non-coal surface mines * * *.'' There is no federal counterpart revision governing industrial mineral mines other than coal mines, but the application of this provision to other mineral operations does not render it inconsistent with SMCRA or the Federal regulations.

13–9–10(B)(9), Training, is amended by deleting the word ''Schedules'' and replacing that word with the words ''Blast schedules.'' The counterpart Federal regulation, at 30 CFR 850.13(a)(9), uses the word ''schedules.'' However, since 30 CFR Part 850 governs blaster certification, it can be reasonably inferred that ''schedules'' means ''blast schedules.'' Therefore, the change made by Ohio does not render its program less effective than the Federal regulations at 30 CFR 850.13(a)(9).

13–9–10(B)(14), Training, is amended by deleting the word ''Unpredictable'' immediately before the word ''hazards,'' and replacing that word with the word ''Potential.'' Because potential hazards could include both predictable and unpredictable ones, the State provision is now arguably broader than its Federal counterpart at 30 CFR 850.13(a)(14), which requires training in ''unpredictable'' hazards. Thus, the State regulation remains no less effective than its Federal counterpart. In addition, a new item at 13–9–10(B)(14)(e) is added to read as follows: ''(e) Toxic gases.'' The word ''and'' is deleted at the end of subdivision (14)(c), and the word ''and'' is added at the end of subdivision (14)(d). As amended, 13–9–10(B)(14) provides as follows:

(14) Potential hazards, including:
(a) Lightning;
(b) Stray currents;
(c) Radio waves;
(d) Misfires; and
(e) Toxic gases.

The addition of ''toxic gases'' to the list of potential hazards for which training is required makes the state provision more extensive than its Federal counterpart at 30 CFR 850.13(a)(14). Thus, the State regulation remains no less effective than its Federal counterpart.

13–9–10(C)(1), concerning minimum training for certification, is amended by adding the words ''a minimum of 30 hours of'' immediately before the word ''training.'' The word ''in'' immediately following the word ''training'' is deleted and replaced with the word ''covering.'' The words ''division of reclamation'' are deleted and are replaced with the word ''chief.'' As amended, 13–9–10(C)(1) provides as follows:

(1) Received a minimum of 30 hours of training covering all the topics set forth in paragraph (B) of this rule in a course taught under the supervision of the chief, or in a course, or series of courses, deemed equivalent by the chief;

This provision has no direct Federal counterpart, but it is consistent with the Federal regulations pertaining to blaster training, at 30 CFR 850.13.

13–9–10(C)(2), concerning experience required for certification, is amended by deleting most of the existing language and adding language to provide as follows:

(2) Worked on a blasting crew or directly supervised a blasting crew for at least two years in mining, excavation, or an equivalent working environment;

This provision has no direct Federal counterpart, but it is consistent with the experience element of the Federal examination requirements contained in 30 CFR 850.14(a)(2).

13–9–10(C)(3), concerning on-the-job training is new and provides as follows:

(3) Received direction and on-the-job training from a certified blaster;

This provision has no direct Federal counterpart, but it is consistent with the experience element of the Federal examination requirements contained in 30 CFR 850.14(a)(2).

13–9–10(C)(5) ((C)(4) prior to the addition of new (C)(3)), concerning written examination, is amended by correcting a typographical error. The word ''if'' is deleted and replaced by the word ''of.'' This is a non-substantive change that requires no discussion.

13–9–10(D)(1), concerning certification, is amended by deleting the words ''or a certifying authority designated by the chief,'' and replacing those words with the words ''or an authorized representative.'' The phrase ''to accept responsibility for blasting operations'' is amended to read ''to accept responsibility for surface blasting operations in mines.'' The words ''under this rule and rule 1501:13–9–06 of the Administrative Code'' are deleted. As amended, 13–9–10(D)(1) provides as follows:

(1) The chief, or an authorized representative, shall certify for three years those persons examined and found to be competent and to have the necessary experience to accept responsibility for surface blasting operations in mines.

These changes, which clarify the scope of the certification authority, and also confer that authority upon additional persons, do not render the State's certification provisions less effective than the Federal regulations pertaining to certification at 30 CFR 850.15(a).

13–9–10(D)(2)(b), concerning recertification, is deleted in its entirety and replaced with new language to provide as follows:

(b) Received a minimum of 24 hours of continuing education by attending blasting-related courses, seminars or conferences approved by the chief or an authorized representative, with at least 8 hours obtained from an organization or person other than the blaster's employer or its parent company or explosives supplier.

This provision has no direct Federal counterpart, but it is consistent with the Federal recertification requirements at 30 CFR 850.15(c).

13–9–10(E)(1), concerning conditions of certification, is amended by adding the word ''mine'' immediately before the words ''permit area.'' As amended, 13–9–10(E)(1) provides as follows:

(1) A certificate of blaster certification, shall be carried by a blaster, or shall be on file at the mine permit area, during blasting operations.

This provision, though it has no direct Federal counterpart, remains consistent with the Federal regulations at 30 CFR 850.15(e), pertaining to conditions of certification.

13–9–10(E)(2), concerning conditions of certification, is amended by deleting the words ''division of reclamation'' and adding in their place the word ''chief.'' As amended, 13–9–10(E)(2) provides as follows:

(2) Upon request by an authorized representative of the chief or other regulatory authority having jurisdiction over the use of explosives, a blaster shall immediately exhibit his or her certificate to the authorized representative.

As amended, this provision remains no less effective than the Federal regulations at 30 CFR 850.15(e)(1), pertaining to conditions of certification.

13–9–10(E)(5), concerning conditions of certification, is amended by deleting the words ''and certifying authority designated by the chief.'' As amended, 13–9–10(E)(5) provides as follows:

(5) A certified blaster shall take every reasonable precaution to protect his or her certificate from loss, theft, or unauthorized duplication. Any such occurrence shall be reported immediately to the chief.

As amended, this provision remains no less effective than the Federal regulations at 30 CFR 850.15(d), pertaining to protection of certification.

13–9–10(F)(1), concerning suspension and revocation, is amended by deleting the words ''or a certifying authority designated by the chief.'' As amended, 13–9–10(F)(1) provides as follows:

(1) Following written notice and opportunity for a hearing, the chief may, and upon a finding of willful conduct shall, suspend or revoke the certification of a blaster during the term of the certification, or take other necessary action for any of the following reasons:

As amended, this provision remains no less effective than the Federal regulations at 30 CFR 850.15(b), pertaining to suspension and revocation of blaster certification.

13–9–10(F)(1)(b), concerning suspension and revocation, is amended by adding the words ''a blasting-related permit condition'' immediately following the words ''laws or regulations.'' As amended, 13–9–10(F)(1)(b) provides as follows:

(b) Violation of any provision of state or federal explosives laws or regulations, a blasting-related permit condition, or any condition of certification;

The added phrase has no direct Federal counterpart, but it is consistent with the Federal regulations at 30 CFR 850.13(b)(1)(iii), pertaining to suspension and revocation of blaster certification.

13–9–10(F)(1)(f), concerning suspension and revocation, is new and provides as follows:

(f) Conducting a blast where fly rock was cast beyond the permit boundary of any mine.

This provision has no direct Federal counterpart, but it is not inconsistent with the Federal regulations at 30 CFR 816/817.67(c)(3), which prohibit the casting of flyrock beyond the permit boundary, nor is it inconsistent with the Federal regulations at 30 CFR 850.15(b)(1), pertaining to suspension and revocation of blaster certification.

13–9–10(F)(3), concerning suspension and revocation, is amended by deleting the words ''or a designated certifying authority,'' and adding in their place the words ''and may work on a blasting crew only under the direct supervision of a certified blaster.'' As amended, 13–9–10(F)(3) provides as follows:

(3) Upon notice of a suspension or revocation, the blaster shall immediately surrender the suspended or revoked certificate and all copies thereof to the chief, and may work on a blasting crew only under the direct supervision of a certified blaster.

These changes do not render the State provision less effective than the Federal regulations at 30 CFR 850.15(b)(3), pertaining to notice of revocation of blaster certification. Also, the added State language is consistent with 30 CFR 850.13(a)(2), which allows persons who are not certified as blasters to work on blasting crews that are under the direction of certified blasters.

13–9–10(F)(4), concerning suspension and revocation, is amended by deleting the phrase ''during the term of the suspension,'' deleting paragraph (4)(a), paragraph (4)(b) becomes (4)(a); paragraph 4(c) becomes paragraph (4)(b) and then replacing the word ''a'' with the word ''the'' at (4)(b), and adding a new paragraph (4)(c). As amended 13–9–10(F)(4) provides as follows:

(4) To repossess a suspended certificate the blaster must:

(a) Exhibit a pattern of conduct consistent with the acceptance of responsibility for blasting operations;

(b) Pass the written examination administered under paragraph (C) of this rule; and

(c) Meet any other requirements imposed by the chief under the terms of the suspension.

These changes have no direct Federal counterpart, but they are not inconsistent with the Federal regulations at 30 CFR 850.15, pertaining to blaster certification. For the foregoing reasons, we are approving this Ohio amendment in its entirety.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment (Administrative Record Number OH–2183–02), but did not receive any.

Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i) and section 503 (b) of SMCRA, we requested comments on the amendment from various Federal agencies with a potential interest in the Ohio program (Administrative Record Number OH–2183–03), but did not receive any.

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Ohio proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not request concurrence.

On July 3, 2003, we asked for comments from EPA on the amendment (Administrative Record No. OH–2183–03). The EPA did not respond to our request.

V. OSM's Decision

Based on the above findings, we approve the amendment Ohio sent us on June 11, 2003, and as revised on June 18, 2003.

To implement this decision, we are amending the Federal regulations at 30 CFR Part 935, which codify decisions concerning the Ohio program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that the State's program demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this regulation effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations ''consistent with'' regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. The basis for this determination is that our decision is on a State regulatory program and does not involve a Federal program involving Indian lands.

Executive Order 13211—Regulations That Significantly Affect The Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use

of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior 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.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 935

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 9, 2003.

Brent Wahlquist,

Regional Director, Appalachian Regional Coordinating Center.

For the reasons set out in the preamble, 30 CFR part 935 is amended as set forth below:

PART 935—OHIO

1. The authority citation for part 935 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

■ 2. Section 935.15 is amended in the table by adding a new entry in chronological order by ''*Date of final publication*'' to read as follows:

§ 935.15 Approval of Ohio regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
*	*	*
June 11, 2003	October 3, 2003	OAC 1501:13–9–10 (A)(1), (3), (B), (B)(7), (9), (14), (14)(e), (C)(1), (2), (3), (4), (5), (D)(1), (2)(b), (E)(1), (2), (5), (F)(1), (1)(b), (1)(f), (3), (4), (4)(a), (4)(b), and (4)(c).

[FR Doc. 03–25056 Filed 10–2–03; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD09–03–215]

RIN 1625–AA09

Drawbridge Operation Regulation; Milwaukee, Menomonee, and Kinnickinnic Rivers and South Menomonee and Burnham Canals, Milwaukee, WI

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard has revised the drawbridge operating regulation for the Canadian Pacific (formerly Chicago, Milwaukee, St. Paul & Pacific) railroad bridge over the Burnham Canal in Milwaukee, WI, allowing the bridge to remain closed to navigation due to infrequent use. This will allow the bridge owners to reduce maintenance and operation costs at a location where there is no known need for drawbridge openings.

DATES: This rule is effective November 3, 2003.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [CGD09–03–215] and are available for inspection or copying at the Bridge Administration Branch, Ninth Coast Guard District, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Scot Striffler, Bridge Administration Branch, at the address above or phone (216) 902–6084.

SUPPLEMENTARY INFORMATION:

Regulatory History

On July 21, 2003, we published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulation; Milwaukee, Menomonee, and Kinnickinnic Rivers and South Menomonee and Burnham Canals, Milwaukee, WI, in the **Federal Register** (68 FR 43066). We received no letters commenting on the proposed rule. No public meeting was requested, and none was held.

Background and Purpose

The Canadian Pacific Railway bridge at mile 1.74 over Burnham Canal is a swing type bridge with a vertical clearance of approximately eight feet in the closed position. In accordance with 33 CFR 117.1093, it is currently required to open for vessels if at least two-hours advance notice is provided prior to passing. Canadian Pacific Railway requested the Coast Guard allow the bridge to be maintained in the closed to navigation position since there have been no requests from vessels to open the bridge since June 13, 1997. There are no active marine facilities along the canal, and the area in Milwaukee Harbor where the bridge is located is part of a city re-development project. Burnham Canal is a federal waterway. The waterway is reportedly no longer actively maintained by the Corps of Engineers. This final rule allows the bridge to be untended and maintained in the closed to navigation position as per 33 CFR 117.39. However, the Coast Guard will retain the authority, should conditions make such an action necessary, to order the bridge owner to restore the bridge to an operable condition within 12 months of notification from Commander, Ninth Coast Guard District. This rule will allow the railroad bridge to remain closed, as it has been, and still be in compliance with Coast Guard requirements.

In addition to the regulation for the railroad bridge, the current regulation refers to 'all other bridges across the Burnham Canal'. The only other bridge on the canal that falls within the jurisdiction of the Coast Guard Bridge Administration Program is the Interstate 94 bridge at mile 1.79, which is a fixed bridge, and should not be referred to in the drawbridge regulations. Therefore, the Coast Guard is removing this section from 33 CFR 117.1093.

Discussion of Comments and Changes

The Coast Guard did not receive any comments on the NPRM. Therefore, no changes were made to the final rule.

Regulatory Evaluation

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

There is no known commercial or recreational use of Burnham Canal. No information was received by the Coast Guard to demonstrate impending activity on the waterway that would require the drawbridge to be operable. However, as stated, if these conditions were to change, then the bridge would be required to be operational again within 12 months of notification from the Coast Guard.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded 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 (32)(e) of the Instruction, from further environmental documentation.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

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

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

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

■ 2. In § 117.1093, revise paragraph (f) to read as follows:

§ 117.1093 Milwaukee, Menomonee, and Kinnickinnic Rivers and South Menomonee and Burnham Canals.

* * * * *

(f) The draw of the Canadian Pacific Railway bridge, mile 1.74 over Burnham Canal, need not be opened for the passage of vessels.

Dated: September 22, 2003.

R.F. Silva,

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

[FR Doc. 03–25187 Filed 10–2–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD08–03–029]

RIN 1625–AA11

Regulated Navigation Area; Reporting Requirements for Barges Loaded With Certain Dangerous Cargoes, Inland Rivers, Eighth Coast Guard District

AGENCY: Coast Guard, DHS.

ACTION: Interim final rule; request for comments.

SUMMARY: The Coast Guard is establishing a regulated navigation area (RNA) within all inland rivers of the Eighth Coast Guard District. This RNA applies to towing vessel operators and fleeting area managers who are responsible for the movement of barges carrying certain dangerous cargoes on inland rivers and requires them to report their position and other information to the Inland River Vessel Movement Center (IRVMC). This action is necessary to ensure public safety, prevent sabotage or terrorist acts, and facilitate the efforts of emergency services and law enforcement officers responding to terrorist attacks.

DATES: This rule is effective on November 1, 2003. Comments and related material must reach the Coast Guard on or before January 2, 2004.

ADDRESSES: You may mail comments and related material to Commander, Eighth Coast Guard District (m), Hale Boggs Federal Bldg., 501 Magazine Street, New Orleans, LA 70130. Commander, Eighth Coast Guard District (m) 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, are part of docket [CGD08–03–029] and are available for inspection or copying at Commander, Eighth Coast Guard District (m), Hale Boggs Federal Bldg., 501 Magazine Street, New Orleans, LA 70130 between 8 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays. You must also mail comments on collection of information to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard.

FOR FURTHER INFORMATION CONTACT: Commander (CDR) Jerry Torok or Lieutenant (LT) Kevin Lynn, Project Managers for the Eighth Coast Guard District Commander, Hale Boggs Federal Bldg., 501 Magazine Street, New Orleans, LA 70130, telephone (504) 589–6271.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On May 2, 2003, the Coast Guard published a temporary final rule and request for comments entitled ''Regulated Navigation Area; Reporting Requirements for Barges Loaded With Certain Dangerous Cargoes, Inland Rivers, Eighth Coast Guard District'' in the **Federal Register** (68 FR 23393). As of July 9, 2003, we received six written comments on that temporary final rule.

On July 30, 2003, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled ''Regulated Navigation Area; Reporting Requirements for Barges Loaded With Certain Dangerous Cargoes, Inland Rivers, Eighth Coast Guard District'' in the **Federal Register** (68 FR 44696). When drafting the proposed rule in the NPRM, we considered all written comments submitted to the docket in response to the temporary final rule published on May 2, 2003 (68 FR 23393). The Coast Guard's responses to the comments are explained under the ''Discussion of Comments and Changes'' section of the NPRM (68 FR 44698).

As of September 15, 2003, we have received one written comment on the NPRM. No public meeting was requested so one was not held.

As indicated in our ''Discussion of Comments and Changes'' section below, we have considered this comment in this interim final rule and, where appropriate, we have made the rule less burdensome than the temporary final rule currently in effect. In issuing this interim final rule, we have allowed for a comment period before we impose any final rule.

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking [CGD08–03–029], 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 before issuing any final rule.

Public Meeting

We do not now plan to hold a public meeting. You may submit a request for a meeting by writing to Commander, Eighth Coast Guard District (m) 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' abilities to utilize multiple means in different geographic areas thereby increasing their opportunities to maximize destruction.

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). The President found that the security of the U.S. is endangered by the September 11, 2001 attacks and terrorist attacks continue to endanger the international relations of the United States. *See also Continuation of the National Emergency with Respect to Certain Terrorist Attacks,* (68 FR 53665, September 10, 2003); *Continuation of the National Emergency With Respect To Persons Who Commit, Threaten To Commit, Or Support Terrorism,* (68 FR 55189, September 18, 2003). The references to these Presidential Documents as they appear in this interim final rule have updated those referenced in the NPRM (68 FR 44697). 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 also issued Advisory 03–03 informing operators of maritime interests of increased threat possibilities to vessels and facilities and a higher risk of terrorist attacks 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 due to the Al Qaeda organization and other similar organizations who have declared their intentions to conduct armed attacks on U.S. interests worldwide.

Therefore, on April 16, 2003, the Coast Guard established a temporary RNA within the inland rivers of the Eighth Coast Guard District in order to safeguard vessels, ports and waterfront facilities from sabotage or terrorist acts. The temporary RNA remains in effect and applies to barges loaded with certain dangerous cargoes (CDCs) operating on the Mississippi River above mile 235.0, Above Head of Passes, including all its tributaries; the Atchafalaya River above mile 55.0 including the Red River; the Ohio River and all its tributaries; and the Tennessee River from its confluence with the Ohio River to mile zero on the Mobile River and all other tributaries between these two rivers. The RNA affects vessels transporting barges loaded with CDCs that if used as weapons of terrorism could result in substantial loss of life, property, environmental damage, and grave economic consequences. The temporary final rule requires operators of barges loading or loaded with CDCs within the RNA to periodically report their position and other specified information to the IRVMC for protection against sabotage and terrorist acts. The temporary final rule published May 2, 2003, (68 FR 23393) expires on October 31, 2003.

The Coast Guard has determined that there is a need to continue the reporting requirements for barges loaded with CDCs operating on inland rivers and therefore we are issuing an interim rule while we continue to consider alternatives to increase maritime domain awareness on the inland rivers in the Eighth Coast Guard District. This rule allows the Coast Guard to enhance maritime security, protect ports and facilities and high-density population centers (metropolitan areas), control vessel traffic, develop contingency plans, and enforce regulations.

Discussion of Comments and Changes

The Coast Guard appreciates the excellent and professional involvement by the maritime community in the public rulemaking process, which has greatly helped the formulation of this rule to achieve the essential purposes while minimizing its impact.

As of September 15, 2003, we received one written comment on the NPRM. The comment focused generally on 4 concerns: (a) Reporting the planned route, (b) notifying the IRVMC 4 hours prior to originating a voyage within the RNA with one or more CDC barges, (c) notifying the IRVMC upon moving one or more CDC barges from one fleeting area to another fleeting area or facility, and (d) reporting information as directed by the Coast Guard. Each section of this comment is discussed in more detail in the following six paragraphs.

Planned Route. The one comment we received stated that the requirement for submission of a planned route will increase the burden upon the mariner while providing no improvement on the information already required since point-to-point movements rarely allow for more than one route. We agree and have removed the requirement to report the planned route because the IRVMC will be receiving periodic updates on a CDC barge(s)'s location as the towing vessel operator checks in at designated reporting points along the planned route. The requirement to submit a report with the name and location of the destination for each CDC barge and the estimated time of arrival remains unchanged.

Four hour advance notification. The one comment we received stated a concern regarding the requirement to report information 4 hours before originating a voyage within the RNA with one or more CDC barges. The comment indicates that fleeting area managers do not always have 4 hours advance notice of movement between receipt of an order and origination of the voyage. The comment suggested the requirement be amended to allow fleeting area managers to notify the IRVMC as soon as possible after the fleeting area manager receives a request to make up a tow or to deliver a CDC barge at a terminal. While we agree that in certain cases a fleeting area manager will not have sufficient time to make a 4-hour advance notification of movement to the IRVMC, this regulation does not require fleeting area managers to provide such notification. This regulation requires towing vessel operators to notify the IRVMC 4 hours before originating a voyage within the RNA with one or more CDC barges. However, we believe the conceptual basis of the comment applies to this requirement. For example, an operator of a towing vessel without any CDC barges operating in the RNA may receive an order to pick up a CDC barge. If the towing vessel is in close proximity to where the CDC barge is located, the evolution of making up the new tow with the CDC barge and originating the voyage may take less than 4 hours. According to the existing requirement in the NPRM, the towing vessel operator would then qualify as originating a voyage within the RNA with one or more CDC barges and as such would be required to provide the IRVMC with a notice 4 hours before originating the voyage. The Coast Guard understands that delaying the voyage to comply with the 4-hour advance notification requirement could negatively affect commercial operations. To alleviate this potential problem, we are adding an exception to the existing requirement. This exception will permit the towing vessel operator to make the required report to the IRVMC as soon as possible before originating a voyage in the RNA with one or more CDC barges. This exception is valid only if the following conditions exist:

(a) The evolution of making up a tow with a CDC barge will take less than four hours before originating a voyage; and

(b) the towing vessel operator did not receive the order to make up a tow with a CDC barge in advance of four hours before originating the voyage with one or more CDC barges.

If the previous two conditions exist, the towing vessel operator must submit the required report to the IRVMC as soon as possible after receiving orders to make up a tow with one or more CDC barges.

Movement of barges from fleeting area to fleeting area or facility. The one comment we received stated that companies routinely move barges from one fleeting area to another fleeting area or facility and that reporting each of these movements would impose an excessive burden. It further states that one company may operate multiple fleeting areas within a limited geographic area. The comment recommends that the Coast Guard define fleeting areas within a certain geographic area as a ''single fleet'' and allow movement within that ''single fleet'' to occur without reporting each movement to the IRVMC. The purpose of knowing the specific location of a CDC barge is to allow for a more efficient response to an incident or threatened incident. It is the intention of this regulation to give the Coast Guard the necessary information to be able to track and have knowledge of the location of each CDC barge at all times. Under the existing requirements, we are only asking the fleeting area manager to provide limited information regarding the movement of a CDC barge from one fleeting area to another fleeting area or facility. We are not changing this requirement, however, we do feel that definitions are needed for ''fleeting area'', ''fleet tow boat'', and ''towing vessel''. For the purposes of this requirement, the term ''fleeting area'' will be defined to mean any fleet, including any facility, located within the area covered by one single port. The term ''fleet tow boat'' will be defined to mean any size vessel that is used to move, transport, or deliver a CDC barge within a fleeting area. The term ''towing vessel'' will be defined to mean any size vessel that is used to move, transport, or deliver a CDC barge to a fleet or facility that is located in a different port than where the voyage originated.

The following example is provided to illustrate the intention of these definitions: A fleeting area manager is required to provide notification to the IRVMC of the movement of a CDC barge from fleet ''A'' located in port ''A'', to fleet ''B'' located in port ''A'' when such movement is conducted by a fleet tow boat. If the movement of a CDC barge were to occur from fleet ''A'' located in port ''A'', to fleet ''Z'' located in port ''Z'', such movement is considered to have been done by a towing vessel and the notifications requirements would reside with the towing vessel operator when the CDC barge was picked up at fleet ''A'' and dropped off at fleet ''Z''.

When directed by the IRVMC. The one comment we received indicated that there was a lack of coordination within the Coast Guard that led to mariners having to submit duplicate reports of required information. There is a concern that a towing vessel operator may receive multiple calls from various government agencies requesting similar information. These multiple calls could create an unnecessary distraction for the towing vessel operator. The comment requested the Coast Guard clarify the information reporting requirement to read ''As directed by the IRVMC.'' The published NPRM currently reads ''When directed by the IRVMC'' and as such will not be changed. However, we feel it is necessary to explain the different types of calls a towing vessel operator can expect while transporting one or more CDC barges in the RNA. The first type of call would be from the IRVMC for the following reasons: (1) Obtaining missing or illegible information, (2) investigating missed or inaccurate reports, (3) collecting information for the purposes of responding to an incident or threatened incident, (4) responding to an increase in the maritime security level, or (5) advising the mariner on new or unexpected changes in procedures. This list of reasons is not all inclusive. The second type of call would be from the United States Army Corps of Engineers (USACE) requesting information from the mariner as the towing vessel approaches a USACE controlled lock and dam. As many of the reporting points required by this regulation are located at USACE controlled locks and dams, the Coast Guard understands that some information provided by the towing vessel operator will have to be supplied twice—once to the USACE and once to the IRVMC. The Coast Guard and USACE are currently working to address the issue of duplicative reporting and are researching methods to use existing technology to serve as a single point of collection. The third type of call would be from a Coast Guard Captain of the Port office for issues pertaining to the coordination of vessel escorts or boardings or other marine safety issues. Calls for these purposes are unrelated to the information collection requirements outlined by this regulation and are necessary for the Coast Guard Captain of the Port to meet Coast Guard mission requirements. The final type of call would be from a Coast Guard vessel or boarding team located in close proximity to the towing vessel for the purposes of conducting law enforcement operations or vessel escorts. These types of calls are also unrelated to the information collection requirements outlined by this regulation and are necessary to meet Coast Guard mission requirements.

Response to Comments Summary

In response to the received comment the Coast Guard is (1) removing the requirement to report the planned route of one or more CDC barges, (2) establishing an exception to the 4-hour advance notification for originating a voyage in the RNA with one or more CDC barges, (3) defining the terms ''fleeting area'', ''fleet tow boat'', and ''towing vessel'' to clarify fleeting area manager reporting requirements, and (4) explaining the different types of calls a towing vessel operator can expect while transporting one or more CDC barges in the RNA.

Portions of this regulation have been revised to reflect the usage of these new definitions. The addition of the new definitions does not create any substantial changes. The portions of the regulatory text that are affected by these new definitions include the ''Applicability'', ''Definitions'', and ''Regulations'' sections.

Company Representative or Dispatcher Making Required Reports. The NPRM indicated that a company representative or dispatcher would be allowed to report the required information to the IRVMC on behalf of the towing vessel operator or fleeting area manager. With the addition of the definitions for ''fleet tow boat'' and ''towing vessel'', we realized that allowing a company representative or dispatcher to make reports on behalf of a towing vessel operator is contrary to the intentions of this regulation. The intention of this regulation is to provide the Coast Guard with positive reports generated by towing vessel operators and fleeting area managers who have direct control over CDC barges. Because fleets and facilities typically have multiple persons who have direct control over CDC barges, we are allowing a fleeting area manager, company representative, or dispatcher to make the required reports. In contrast, a towing vessel operator is the only person who will have direct control over CDC barges in their tow. As it relates to this regulations, we have clarified the definition of ''towing vessel operator'' to mean the Captain or pilot who is on watch on board a towing

vessel. The portions of the regulatory text that are affected by this clarification include the ''Definitions'' and ''Regulations'' sections.

Discussion of Rule

The Coast Guard is establishing a regulated navigation area for the Mississippi River above mile 235.0, Above Head of Passes, including all its tributaries; the Atchafalaya River above mile 55.0, including the Red River; the Ohio River and all its tributaries; and the Tennessee River from its confluence with the Ohio River to mile zero on the Mobile River and all other tributaries between these two rivers. This rule applies to: (1) Towing vessel operators responsible for one or more CDC barges within the regulated area, and (2) fleeting area managers responsible for CDC barges in a fleeting area. The terms ''barge'', ''certain dangerous cargo or (CDC)'', ''CDC barge'', ''downbound'', ''Eighth Coast Guard District'', ''fleet tow boat'', ''fleeting area'', ''towing vessel'', ''towing vessel operator'', and ''upbound'' are defined in the regulatory section of this rule.

Towing vessel operators responsible for one or more CDC barges are required to report specific information to the IRVMC under the following conditions: (1) Upon point of entry into the RNA with one or more CDC barges; (2) 4 hours prior to originating a voyage within the RNA with one or more CDC barges, except if (a) the evolution of making up a tow with a CDC barge will take less than 4 hours before originating a voyage, and (b) the towing vessel operator did not receive the order to make up a tow with a CDC barge in advance of 4 hours before originating the voyage with one or more CDC barges, in which case the towing vessel operator must submit the required report to the IRVMC as soon as possible after receiving orders to make up a tow with one or more CDC barges (3) upon dropping off one or more CDC barges at a fleeting area or facility; (4) upon picking up one or more additional CDC barges from a fleeting area or facility; (5) at designated reporting points in table 165.830(e); (6) when the estimated time of arrival (ETA) to a reporting point varies by 6 hours from the previously reported ETA; (7) any significant deviation from previously reported information; (8) upon departing the RNA with one or more CDC barges; and (9) when directed by the IRVMC.

Fleeting area managers are required to report specific information to the IRVMC under the following conditions: (1) Once daily, report all CDC barges within the fleeting area; (2) upon moving a CDC barge within a fleeting area by a fleet tow boat; (3) any significant deviation from previously reported information; and (4) when directed by the IRVMC.

A company representative or dispatcher may report the required information to the IRVMC on behalf of the fleeting area manager.

Each report made to the IRVMC by a towing vessel operator or fleeting area manager must contain all the information items specified in tables 165.830(f) and 165.830(g), respectively.

Reports must be made to the IRVMC by telephone to (866) 442–6089, by fax to (866) 442–6107, or by e-mail to *irvmc@cgstl.uscg.mil.* A reporting form and e-mail link is available at *http://www.uscg.mil/d8/Divs/M/IRVMC.htm.*

The Coast Guard will consider and approve alternative reporting methods to meet any reporting requirements if: (1) The request for the alternative is submitted in writing to Commander, Eighth Coast Guard District (m), Hale Boggs Federal Bldg., 501 Magazine Street, New Orleans, LA 70130; and (2) the alternative provides an equivalent level of reporting to that which would be achieved by the Coast Guard with the required check-in points.

The Coast Guard encourages the submission of requests for alternative reporting methods. It is the Coast Guard's hope that companies will embrace current modern technology or future technology as it becomes available to automatically report the locations of the towing vessels and the CDC barges they are responsible for directly to the Coast Guard in real or as close to real time as possible. We believe that the development of such systems will significantly reduce the burden imposed upon the towing vessel operator and fleeting area manager who must submit the reports, as well as those Coast Guard personnel who must process those reports.

Deviation from this rule is prohibited unless specifically authorized by the Commander, Eighth Coast Guard District or the IRVMC.

Regulatory Evaluation

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

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. We present this Regulatory Evaluation for the purposes of information.

Evaluation. The regulatory baseline for this rule is the existing temporary rule. The cost for complying with the rule will differ depending on the means used to make a report to the IRVMC and the type of report, either an initial report or an update. The cost of the rule presented below is based on the average number of reports received by the IRVMC in April 2003 and May 2003.

ESTIMATED ANNUAL COST AND BENEFIT OF THE RULE (2003 DOLLARS)

Item	Cost per initial call	Cost per update call	Total
Personnel	$9462	$17,871	$27,333
Operating expenses	28,386	53,613	81,999
Total	37,848	71,484	109,332

This cost estimate assumes: (1) The average merchant mariner's hourly rate is $30, (2) the average initial call is 6 minutes, (3) the average update call is 2 minutes, (4) the average cost per cell phone call is $1.50 per minute, and (5) 15 percent of all responses are initial reports to the IRVMC. Therefore, based on 177 respondents, the average cost is $618 per CDC barge per year. The reporting requirements are necessary to provide immediate, improved security for the public, vessels, and U.S. ports and waterways. The requirements do not alter normal barge transits. The

minimal hardships that may be experienced by persons or vessels, as a result of this rule, are necessary to the national interest in protecting the public, vessels, and vessel crews from the devastating consequences of acts of terrorism, and from sabotage or other subversive acts, accidents, or other causes of a similar nature.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: Towing vessel operators and fleeting area managers responsible for CDCs barges on inland waterways within the Eighth Coast Guard District. This RNA will not have a significant economic impact on a substantial number of small entities because this rule does not require any alteration of barge operations or transits. The operational communications required by this RNA do not require towing vessel operators or fleeting area managers to obtain new equipment and can be made toll free to the IRVMC.

If you are a small business entity and are significantly affected by the regulation, please contact CDR Jerry Torok or LT Kevin Lynn, Project Managers for the Eighth Coast Guard District Commander, Hale Boggs Federal Bldg, 501 Magazine Street, New Orleans, LA 70130, telephone (504) 589–6271.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking process. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247)

Collection of Information

This rule calls for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). As defined in 5 CFR 1320.3(c), ''collection of information'' comprises reporting, recordkeeping, monitoring, posting, labeling, and other, similar actions. The title and description of the information collection, a description of those who must collect the information, and an estimate of the total annual burden follow. The estimate covers the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection.

This rule revises an existing OMB-approved collection of information (1625–0105). The new collection of information estimate is based on data gathered as a result of the information collected under the temporary rule and is based on actual reports received by the IRVMC, as well as actual observation and tracking, for April 2003 and May 2003.

Title: Regulated Navigation Areas; Reporting Requirements for Barges Loaded with Certain Dangerous Cargoes, Inland Rivers, Eighth Coast Guard District and the Illinois Waterway, Ninth Coast Guard District.

OMB Control Number: 1625–0105.

Summary of the Collection of Information: The Coast Guard requires position and intended movement reporting, and fleeting operations reporting, from barges carrying CDCs in the inland rivers within the Eighth and Ninth Coast Guard Districts. This rule amends 33 CFR part 165 to require:

Towing vessel operators and fleeting area managers responsible for CDC barges must report the following information via toll free telephone, toll free fax, or e-mail:

a. Name of barge and towing vessel;

b. Name of fleeting area and facility;

c. Estimated time of arrival (ETA) at fleeting area and facility;

d. Estimated time of departure (ETD) from fleeting area and facility;

e. Upon entry into the covered geographical area;

f. Four hours prior to originating a voyage with a CDC within the RNA, except if (a) the evolution of making up a tow with a CDC barge will take less than four hours before originating a voyage, and (b) the towing vessel operator did not receive the order to make up a tow with a CDC barge in advance of four hours before originating the voyage with one or more CDC barges, in which case towing vessel operator shall submit the required report to the IRVMC as soon as possible after receiving orders to make up a tow with one or more CDC barges;

g. Upon picking up an additional CDC barge from a fleeting area or facility;

h. Upon dropping off a CDC barge at a fleeting area or facility;

i. Upon moving a CDC barge within a fleeting area by a fleet tow boat;

j. Once daily, all CDC barges within a fleeting area;

k. ETA at approximately 90 designated reporting points within the covered geographical area;

l. At any time the ETA to a reporting point varies by 6 hours from the previously reported ETA;

m. Any significant deviation from previously reported information;

n. Upon departing the covered geographical area; and

o. When directed by the IRVMC.

A company representative or dispatcher may report to the IRVMC on behalf of the fleeting area manager.

Need for Information: To ensure port safety and security and to ensure the uninterrupted flow of commerce, the Coast Guard is issuing regulations requiring position and intended movement reporting and fleeting operations reporting from barges carrying CDCs in the inland rivers within the Eighth and Ninth Coast Guard Districts.

Use of Information: The information is required to enhance maritime security, protect ports and facilities and high-density population centers (metropolitan areas), control vessel traffic, develop contingency plans, and enforce regulations. The Coast Guard will use the information to maintain continuous maritime domain awareness on the inland rivers so that we may respond as appropriate to an actual or threatened terrorist action and enhance maritime security by boarding and/or escorting CDC barges in the vicinity of high-density population areas.

Description of the Respondents: The respondents are owners, agents, masters, towing vessel operators, or persons in charge of barges loaded with CDCs or having CDC residue operating on the inland rivers located within the Eighth and Ninth Coast Guard Districts.

Number of Respondents: The existing OMB-approved collection number of respondents is 3,505. This rule will decrease the number of respondents by 3,328 to a total of 177.

Frequency of Response: Towing vessel operators moving barges carrying CDCs

or CDC residue will submit reports as necessary. The existing OMB-approved collection annual number of responses is 7,711. This rule will increase the number of responses by 13,313 to a total of 21,024.

Burden of Response: The existing OMB-approved collection burden of response is 15 minutes (0.25 hours) (burden of response is the time required to complete the paperwork requirements of the rule for a single response). This rule will decrease the burden of response by 9 minutes (0.15 hours) to a total of 6 minutes (0.10 hours).

Estimate of Total Annual Burden: The existing OMB-approved collection total annual burden is 1,928 hours (total annual burden is the time required to complete the paperwork requirements of the rule for all responses). This rule will decrease the total annual burden by 1017 hours to a total of 911 hours.

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), we have submitted a copy of this rule to the Office of Management and Budget (OMB) for its review and approval of the revised collection of information. The existing OMB-approved collection (1625–1505) expires on October 31, 2003.

We ask for public comment on the collection of information to help us determine how useful the information is, whether it can help us perform our functions better, whether it is readily available elsewhere, how accurate our estimate of the burden of collection is, how valid our methods for determining burden are, how we can improve the quality, usefulness, and clarity of the information, and how we can minimize the burden of collection.

If you submit comments on the collection of information, submit them both to OMB and to the Docket Management Facility where indicated under **ADDRESSES,** by the date under **DATES**.

You need not respond to a collection of information unless it displays a currently valid control number from OMB. If and when OMB approves this revised collection of information, we will publish a separate notice in the **Federal Register**.

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. 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 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 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, from further environmental documentation because this rule is not expected to result in any significant environmental impact as described in NEPA. A final ''Environmental Analysis Check List'' and a final ''Categorical Exclusion Determination'' are available where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Vessels, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 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, 166 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.830 to read as follows:

§ 165.830 Regulated Navigation Area; Reporting Requirements for Barges Loaded with Certain Dangerous Cargoes, Inland Rivers, Eighth Coast Guard District.

(a) *Regulated Navigation Area.* The following waters are a regulated navigation area (RNA): the Mississippi River above mile 235.0, Above Head of Passes, including all its tributaries; the Atchafalaya River above mile 55.0, including the Red River; the Ohio River and all its tributaries; and the Tennessee River from its confluence with the Ohio River to mile zero on the Mobile River and all other tributaries between these two rivers.

(b) *Applicability.* This section applies to towing vessel operators and fleeting area managers responsible for CDC barges in the RNA. This section does not apply to:

(1) Towing vessel operators responsible for barges not carrying CDCs barges, or

(2) Fleet tow boats moving one or more CDC barges within a fleeting area.

(c) *Definitions.* As used in this section—

Barge means a non-self propelled vessel engaged in commerce, as set out in 33 CFR 160.204.

Certain Dangerous Cargo or *(CDC)* includes any of the following:

(1) Division 1.1 or 1.2 explosives as defined in 49 CFR 173.50.

(2) Division 1.5D blasting agents for which a permit is required under 49 CFR 176.415 or, for which a permit is required as a condition of a Research and Special Programs Administration exemption.

(3) Division 2.3 ''poisonous gas'', as listed in 49 CFR 172.101 that is also a ''material poisonous by inhalation'' as defined in 49 CFR 171.8, and that is in a quantity in excess of 1 metric ton per barge.

(4) Division 5.1 oxidizing materials for which a permit is required under 49 CFR 176.415 or, for which a permit is required as a condition of a Research and Special Programs Administration exemption.

(5) A liquid material that has a primary or subsidiary classification of Division 6.1 ''poisonous material'' as listed in 49 CFR 172.101 that is also a ''material poisonous by inhalation'', as defined in 49 CFR 171.8 and that is in a bulk packaging, or that is in a quantity in excess of 20 metric tons per barge when not in a bulk packaging.

(6) Class 7, ''highway route controlled quantity'' radioactive material or ''fissile material, controlled shipment'', as defined in 49 CFR 173.403.

(7) Bulk liquefied chlorine gas and bulk liquefied gas cargo that is flammable and/or toxic and carried under 46 CFR 154.7.

(8) The following bulk liquids—

(i) Acetone cyanohydrin,

(ii) Allyl alcohol,

(iii) Chlorosulfonic acid,

(iv) Crotonaldehyde,

(v) Ethylene chlorohydrin,

(vi) Ethylene dibromide,

(vii) Methacrylonitrile,

(viii) Oleum (fuming sulfuric acid), and

(ix) Propylene oxide.

CDC barge means a barge containing CDCs or CDC residue.

Downbound means the tow is traveling with the current.

Eighth Coast Guard District means the Coast Guard District as set out in 33 CFR 3.40–1.

Fleeting area means any fleet, including any facility, located within the area covered by one single port.

Fleet tow boat means any size vessel that is used to move, transport, or deliver a CDC barge within a fleeting area.

Inland River Vessel Movement Center or *(IRVMC)* means the Coast Guard office that is responsible for collecting the information required by this section.

Towing vessel means any size vessel that is used to move, transport, or deliver a CDC barge to a fleet or facility that is located in a different port than where the voyage originated.

Towing vessel operator means the Captain or pilot who is on watch on board a towing vessel.

Upbound means the tow is traveling against the current.

(d) *Regulations.* The following must report to the Inland River Vessel Movement Center (IRVMC):

(1) The towing vessel operator responsible for one or more CDC barges in the RNA must report all the information items specified in table 165.830(f), in paragraph (f) of this section, to the IRVMC:

(i) Upon point of entry into the RNA with one or more CDC barges;

(ii) Four hours before originating a voyage within the RNA with one or more CDC barges, except if the evolution of making up a tow with a CDC barge will take less than four hours before originating a voyage, and the towing vessel operator did not receive the order to make up a tow with a CDC barge in advance of four hours before originating the voyage with one or more CDC barges, in which case the towing vessel operator shall submit the required report to the IRVMC as soon as possible after receiving orders to make up a tow with one or more CDC barges;

(iii) Upon dropping off one or more CDC barges at a fleeting area or facility;

(iv) Upon picking up one or more additional CDC barges from a fleeting area or facility;

(v) At designated reporting points, set forth in table 165.830(e), in paragraph (e) of this section;

(vi) When the estimated time of arrival (ETA) to a reporting point varies by 6 hours from the previously reported ETA;

(vii) Any significant deviation from previously reported information;

(viii) Upon departing the RNA with one or more CDC barges; and

(ix) When directed by the IRVMC.

(2) The fleeting area manager responsible for one or more CDC barges in the RNA must report all the information items specified in table 165.830(g), in paragraph (g) of this section, to the IRVMC:

(i) Once daily, report all CDC barges within the fleeting area;

(ii) Upon moving one or more CDC barges within a fleeting area by a fleet tow boat;

(iii) Any significant deviation from previously reported information; and

(iv) When directed by the IRVMC.

(3) Reports required by this section may be made by a company representative or dispatcher on behalf of the fleeting area manager.

(4) Reports required by this section must be made to the IRVMC either by telephone to (866) 442–6089, by fax to (866) 442–6107, or by e-mail to *irvmc@cgstl.uscg.mil.* A reporting form and e-mail link are available at *http://www.uscg.mil/d8/Divs/M/IRVMC.htm.*

(5) The general regulations contained in 33 CFR 165.13 apply to this section.

(e) *Eighth Coast Guard District Inland River RNA Reporting points.* Towing vessel operators responsible for one or more CDC barges in the RNA must make reports to the IRVMC at each point listed in this paragraph (e):

(1) Lower Mississippi River (LMR), between Mile Markers (M):

(i) M 235.0–240.0 (Entering & Exiting RNA)

(ii) M 338.0–343.0

(iii) M 430.0–435.0

(iv) M 520.0–525.0

(v) M 621.0–626.0

(vi) M 695.0–700.0

(vii) M 772.0–777.0

(viii) M 859.0–864.0

(ix) M 945.0–950.0

(2) Upper Mississippi River (UMR), between Mile Markers (M) and Departing Lock & Dam (L&D), unless otherwise indicated:

(i) L&D 3

(ii) L&D 4

(iii) L&D 8

(iv) L&D 11

(v) L&D 14

(vi) L&D 18

(vii) L&D 21

(viii) L&D 25

(ix) Arriving Melvin Price L&D (downbound)

(x) Departing Melvin Price L&D (upbound)

(xi) M 150.0–145.0

(xii) M 66.0–61.0

(3) Missouri River (MOR), between Mile Markers (M):

(i) M 54.0–56.0

(ii) M 115.0–117.0

(iii) M 208.0–210.0

(iv) M 326.0–328.0

(v) M 397.0–399.0

(vi) M 487.0–489.0

(vii) M 572.0–574.0

(viii) M 652.0–654.0

(ix) M 745.0–750.0

(4) Illinois River (ILR), at Mile Marker (M) and Lock & Dam (L&D), as indicated:

(i) M 0.0

(ii) Departing New LaGrange L&D

(iii) M 140.0

(iv) M 187.2 (Entering & Exiting RNA)

(5) Ohio River, between Mile Markers (M) and at Lock & Dam (L&D), as indicated:

(i) M 950.0–952.0

(ii) Arriving Smithland L&D

(iii) M 826.0–828.0

(iv) M 748.0–750.0

(v) M 673.0–675.0

(vi) M 628.0–630.0

(vii) M 556.0–559.0
(viii) M 511.0–513.0
(ix) Departing Capt Anthony Meldahl L&D
(x) Arriving Greenup L&D (upbound)
(xi) Departing Greenup L&D (downbound)
(xii) Departing Robert C. Byrd L&D (upbound)
(xiii) Arriving Robert C. Bryd L&D (downbound)
(xiv) Departing Belleville L&D
(xv) Departing Hannibal L&D
(xvi) Departing Montgomery L&D
(6) Allegheny River at Lock & Dam (L&D), as indicated:
(i) Departing L&D 4 (upbound)
(ii) Arriving L&D 4 (downbound)
(7) Monongahela River Departing Lock & Dam (L&D):
(i) Grays Landing L&D
(ii) L&D 3
(8) Kanawha River, at Lock & Dam (L&D), as indicated:
(i) Arriving Winfield L&D (upbound)
(ii) Departing Winfield L&D (downbound)
(9) Cumberland River, between Mile Markers (M) and Departing Lock & Dam (L&D), unless otherwise indicated:
(i) Departing Old Hickory L&D (upbound)
(ii) Arriving Old Hickory L&D (downbound)
(iii) M 127.0–129.0
(iv) Barkley L&D
(10) Tennessee River, between Mile Markers (M) and when Departing Lock & Dam (L&D), unless otherwise indicated:
(i) Fort Loudon L&D
(ii) Watts Bar L&D
(iii) Departing Chickamauga L&D (upbound)
(iv) Arriving Chickamauga L&D (downbound)
(v) Nickajack L&D
(vi) Gunterville L&D
(vii) General Joe Wheeler L&D
(viii) Pickwick Landing L&D
(ix) M 122.0–124.0
(x) Kentucky L&D
(11) Tennessee-Tombigbee River, between Mile Markers (M) and when Departing Lock & Dam (L&D):
(i) Lock D
(ii) Aberdeen L&D
(iii) Aliceville L&D
(iv) M 202.0–203.0
(v) Coffeeville L&D
(12) Mobile River, at Mile Marker (M):
(i) 0.0 (Entering & Exiting RNA)
(ii) [Reserved]
(13) Black Warrior River, when Departing L&D:
(i) Holt L&D
(ii) [Reserved]
(14) Alabama River, when Departing L&D:
(i) Claiborne L&D
(ii) Henry L&D
(15) McClellan-Kerr Arkansas River Navigation System, when Departing Lock & Dam (L&D), unless otherwise indicated:
(i) Chouteau L&D
(ii) W.D. Mayo L&D
(iii) Ozark-Jeta Taylor L&D
(iv) L&D 9
(v) Arriving David D. Terry L&D (upbound)
(vi) Departing David D. Terry L&D (downbound)
(vii) L&D 2
(16) Red River, between Mile Markers (M) and when Departing Lock & Dam (L&D):
(i) L.C. Boggs L&D
(ii) Lock 3
(iii) M 178.0–180.0
(17) Atchafalaya River, at Mile Marker (M):
(i) 55.0 (Entering & Exiting RNA)
(ii) [Reserved]

(f) *Information to be reported to the IRVMC by towing vessel operators.* With the exception noted in paragraph (d)(1)(ii) of this section, towing vessel operators responsible for one or more CDC barges in the RNA must report all the information required by this section as set out in table 165.830(f) of this paragraph.

TABLE 165.830(F).—INFORMATION TO BE REPORTED TO THE IRVMC BY TOWING VESSEL OPERATORS

	24-hour contact number	Name of vessel moving barge(s)	Barge(s) name and official number	Type, name and amount of CDC onboard	Estimated time of departure from fleeting area or facility	Name and location of destination of CDC barge (fleeting area or facility), including estimated time of arrival	Reporting point	Estimated time of arrival (ETA) to next reporting point (If applicable)
(1) Upon point of entry into the RNA with a CDC barge	X	X	X	X	.....	X	X	X
(2) 4 hours before to originating a voyage within the RNA with one or more CDC barges; but see exception in paragraph (d)(1)(ii) of this section	X	X	X	X	X	X	.....	X
(3) Upon dropping off one or more CDC barges at a fleeting area or facility	.....	X	X	.....	.....	.....	.....	.....
(4) Upon picking up one or more additional CDC barges from a fleeting area or facility	.....	X	X	X	.....	.....	.....	.....
(5) At designated reporting points in table 165.830(e)	.....	X	X	(1)	.....	(1)	X	X
(6) When ETA to a reporting point varies by 6 hours from previously reported ETA	.....	X	(1)	(1)	.....	.....	.....	X
(7) Any significant deviation from previously reported information (all that apply)	X	X	X	X	X	X	X	X
(8) Upon departing the RNA with a CDC barge(s)	.....	X	X	.....	.....	.....	X	.....
(9) When directed by the IRVMC	X	X	X	X	X	X	X	X

[1] If changed.

(g) *Information to be reported to the IRVMC by fleeting area managers.* Fleeting area managers responsible for one or more CDC barges in the RNA must report the information required by this section as set out in table 165.830(g) of this paragraph.

TABLE 165.830(G).—INFORMATION TO BE REPORTED TO THE IRVMC BY FLEETING AREA MANAGERS

	24-hour contact number	Barge(s) name and official number	Type, name and amount of CDC onboard	Location of CDC barge (fleeting area or facility)
(1) Once daily, all CDC barges in a fleeting area	X	X	X	X
(2) Upon moving one or more CDC barges within a fleeting area by a fleet tow boat	.....	X	X	X

TABLE 165.830(G).—INFORMATION TO BE REPORTED TO THE IRVMC BY FLEETING AREA MANAGERS—Continued

	24-hour contact number	Barge(s) name and official number	Type, name and amount of CDC onboard	Location of CDC barge (fleeting area or facility)
(3) Any significant deviation from previously reported information (all that apply)	X	X	X	X
(4) When directed by the IRVMC	X	X	X	X

(h) *Alternative reporting.* The Eighth Coast Guard District Commander may consider and approve alternative methods to be used by a reporting party to meet any reporting requirements if—

(1) the request is submitted in writing to Commander, Eighth Coast Guard District (m), Hale Boggs Federal Bldg., 501 Magazine Street, New Orleans, LA 70130; and

(2) the alternative provides an equivalent level of the reporting that which would be achieved by the Coast Guard with the required check-in points.

(i) Deviation from this section is prohibited unless specifically authorized by the Commander, Eighth Coast Guard District or the IRVMC.

Dated: September 26, 2003.

R.F. Duncan,

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

[FR Doc. 03–25165 Filed 9–30–03; 4:43 pm]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP San Diego 03–030]

RIN 1625–AA00

Safety Zone; San Diego Bay, San Diego, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing two temporary safety zones, a stationary safety zone and a moving safety zone, on the navigable waters of San Diego Bay in support of the Fleet Week Sea and Air Parade. These temporary safety zones are necessary to provide for the safety of the crews, spectators, participants of the event, participating vessels and other vessels and users of the waterway. Persons and vessels are prohibited from entering into, transiting through, or anchoring within these safety zones unless authorized by the Captain of the Port, or his designated representative.

DATES: This rule is effective from 11:30 a.m. (PDT) on October 4, 2003, to 3 p.m. (PDT) on October 4, 2003.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket [COTP San Diego 03–030] and are available for inspection or copying at U.S. Coast Guard, Marine Safety Office San Diego, 2716 North Harbor Drive, San Diego, CA 92101–1064, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Petty Officer Austin Murai, USCG, c/o U.S. Coast Guard Captain of the Port, telephone (619) 683–6495.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. In keeping with the requirements of 5 U.S.C. 553(d)(3), the Coast Guard also finds that good cause exists for making this regulation effective less than 30 days after publication in the **Federal Register**. The precise location of the event necessitating promulgation of this safety zone and other logistical details surrounding the event were not finalized until a date fewer than 30 days prior to the event. Delaying the effective date of this rule would be contrary to the public interest because doing such would prevent the Coast Guard from maintaining the safety of the participants of the event and users of the waterway.

Background and Purpose

The San Diego Fleet Week Foundation is sponsoring the 2003 Fleet Week Sea and Air Parade. The Sea and Air Parade is a classic naval review consisting of Navy vessels of various classes, some of which are restricted in their maneuverability. The naval review will transit through San Diego Bay. These temporary safety zones are necessary to provide for the safety of the crews, spectators, and participants of the Fleet Week Sea and Air Parade and are also necessary to protect other vessels and users of the waterway.

Discussion of Rule

This rule creates a stationary safety zone and a moving safety zone. The limits of the stationary safety zone will extend south from the southern shoreline on Harbor Island to the southern most limits of the navigational channel. On the west side the boundary will be a line of longitude equal to 117–12–48 W and on the east side the boundary will be a line of longitude equal to 117–12–00 W.

The limits of the moving safety zone are as follows: 1000 yards forward, 200 yards on either side, and 700 yards behind the Fleet Week parade participants while transiting through San Diego Bay.

The two safety zones will be enforced from 11:30 a.m. (PDT) to 3 p.m. (PDT) on October 4, 2003. These safety zones are necessary to provide for the safety of the crews, spectators, and participants of the Fleet Week Sea and Air Parade and to protect other vessels and users of the waterway. Persons and vessels will be prohibited from entering into, transiting through, or anchoring within these safety zones unless authorized by the U.S. Coast Guard Patrol Commander, or his designated representative from Activities San Diego.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS). We expect the economic impact of this rule to be minimal because of its limited duration of three and a half (3½) hours and the limited geographic scope of the safety zones.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities.

The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners and operators of vessels intending to transit or anchor in the portion of San Diego Bay south of Harbor Island. However, these safety zones will not have a significant economic impact on a substantial number of small entities because these zones are limited in scope and duration. In addition, the Coast Guard will publish local notice to mariners (LNM) and will issue broadcast notice to mariners (BNM) alerts via VHF–FM marine channel 16 before the safety zone is enforced.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If your small business or organization is affected by this rule and you have questions concerning its provisions or options for compliance, please contact Lieutenant Commander Rick Sorrell, U.S. Coast Guard Marine Safety Office San Diego at (619) 683–6495.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. 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 rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded 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, from further environmental documentation because we are creating a safety zone.

A final ''Environmental Analysis Check List'' and a final ''Categorical Exclusion Determination'' are available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 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; 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 a new § 165.T11–048 to read as follows:

§ 165.T11–048 Safety Zone; San Diego Bay, CA.

(a) *Location.* The following areas are safety zones:

(1) *Stationary safety zone.* The limits of the stationary safety zone extend from the shoreline on Harbor Island South to the southern most limits of the navigational channel. On the west side the boundary is a line of longitude 117°12′48″ W and on the east side the boundary is a line of longitude 117°12′00″ W.

(2) *Moving safety zone.* The limits of the moving safety zone are as follows:

1000 yards forward, 200 yards on either side, and 700 yards behind the Fleet Week parade participants transiting through San Diego Bay.

(b) *Effective period.* These safety zones will be in effect from 11:30 a.m. (PDT) until 3 p.m. (PDT) on October 4, 2003. If the event concludes prior tothe scheduled termination time, the Captain of the Port will cease enforcement of this safety zone and will announce that fact via Broadcast Notice to Mariners.

(c) *Regulations.* (1) ''Official Patrol Vessels'' consist of any Coast Guard, other Federal, state or local law enforcement, and any public or sponsor-provided vessels assigned or approved by the Captain of the Port San Diego, to patrol this event.

(2) In accordance with the general regulations in § 165.23 of this part, entering into, transiting through, or anchoring within these safety zones is prohibited, unless authorized by the Captain of the Port, or his designated representative such as a Patrol Commander. Mariners requesting permission to transit through a safety zone may request authorization to do so from the Captain of the Port, Patrol Commander, or other designated representative from Activities San Diego, who may be contacted via VHF–FM Channel 16.

(3) Each person in a safety zone who receives notice of a lawful order or direction issued by an official patrol vessel shall obey the order or direction.

(4) The Patrol Commander is empowered to prohibit entry into and control the movement of all vessels in the regulated area. The Patrol Commander shall be designated by the Captain of the Port San Diego; will be a U.S. Coast Guard commissioned officer, warrant officer or petty officer to act as the Captain of the Port's official representative; and will be located aboard the lead official patrol vessel.

(5) The Patrol Commander may, upon request, allow the transit of vessels through the safety zones when it is safe to do so.

Dated: September 24, 2003.

Stephen P. Metruck,

Commander, U.S. Coast Guard, Captain of the Port, San Diego.

[FR Doc. 03–25045 Filed 10–2–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP San Diego 03–027]

RIN 1625–AA00

Safety Zone; Crazy Horse Campground, Lake Havasu, AZ

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on Lake Havasu, Arizona in support of the International Jet Sports Boating Association World Finals, known locally as Skat Trak World Finals. This temporary safety zone is necessary to provide for the safety of the participants, crew, spectators, participating vessels and other vessels and users of the waterway. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or his designated representative.

DATES: This rule is effective from 7 a.m. (PDT) October 5, 2003 until 6 p.m. (PDT) October 12, 2003.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket [COTP San Diego 03–027] and are available for inspection or copying at Marine Safety Office San Diego, 2716 N. Harbor Drive, San Diego, CA 92101–1064 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Petty Officer Austin Murai, USCG, c/o U.S. Coast Guard Captain of the Port, telephone (619) 683–6495.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Final approval and permitting of this event were not issued in time to engage in full notice and comment rulemaking. Publishing an NPRM and delaying the effective date would be contrary to the public interest since the event would occur before the rulemaking process was complete.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. In addition to the reasons stated above, it would be contrary to the public interest not to publish this rule because the event has been permitted and participants and the public require protection.

Background and Purpose

The International Jet Sports Boating Association is sponsoring the Skat Trak World Finals, which is held at the Crazy Horse Campgrounds, Lake Havasu City, AZ. This temporary safety zone is established in support of the Skat Trak World Finals, a marine event that includes participating vessels racing along an established and marked course on Lake Havasu, AZ. This temporary safety zone is necessary to provide for the safety of the crews, spectators, and participants of the Skat Trak World Finals and is also necessary to protect other vessels and users of the waterway.

Discussion of Rule

The Coast Guard proposes to establish one safety zone that will be enforced from 7 a.m. (PDT) to 6 p.m. (PDT) from October 5, 2003 to October 12, 2003. This safety zone is necessary to provide for the safety of the crews, spectators, and participants of the Skat Trak World Finals and to protect other vessels and users of the waterway. Persons and vessels will be prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or his designated representative.

The limits of this temporary safety zone are from a point on land beginning at 32°28′18″ N, 114°21′04″ W, thence northerly to a point 34°28′06″ N, 114°21′55″ W, thence easterly to a point 34°28′05″ N, 114°21′02″ W, thence southerly along the shoreline to the point of origin.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS). We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary. The safety zone is of a limited duration, only eleven (11) hours per day for a period of eight (8) days, and is limited to a relatively small geographic area.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. The security zone will affect the following entities some of which may be small entities: the owners and operators of pleasure craft engaged in recreational activities and sightseeing. This safety zone would not have a significant economic impact on a substantial number of small entities for several reasons: vessel traffic can pass safely around the area, vessels engaged in recreational activities have ample space outside of the safety zone to engage in these activities, and this safety zone is limited in scope and duration as it is only in effect for only eleven (11) hours per day for a period of eight (8) days, from October 5, 2003 to October 12, 2003. In addition the Coast Guard will publish local notice to mariners (LNM) before the safety zone is enforced.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If your small business or organization is affected by this rule and you have questions concerning its provisions or options for compliance, please contact Lieutenant Commander Rick Sorrell, U.S. Coast Guard Marine Safety Office San Diego at (619) 683–6495.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. 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 rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded 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, from further environmental documentation because we are establishing a safety zone.

A final ''Environmental Analysis Check List'' and a final ''Categorical Exclusion Determination'' will be available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 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; 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 new § 165.T11–045 to read as follows:

§ 165.T11–045 Safety Zone; Crazy Horse Campground, Lake Havasu, Arizona.

(a) *Location.* The limits of this temporary safety zone are from a point on land beginning at 32°28′18″ N, 114°21′04″ W, thence northerly to a

point 34°28′06″ N, 114°21′55″ W, thence easterly to a point 34°28′55″ N, 114°21′02″ W, thence southerly along the shoreline to the point of origin.

(b) *Enforcement dates.* This safety zone will be enforced from 7 a.m. (PDT) to 6 p.m. (PDT), daily, from October 5, 2003 through October 12, 2003. If the need for the safety zone ends before the scheduled termination time, the Captain of the Port will cease enforcement of this safety zone.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into, transit through, or anchoring within this zone by all vessels is prohibited, unless authorized by the Captain of the Port, or his designated representative. Mariners requesting permission to transit through the safety zone may request authorization to do so from the Coast Guard designated representative.

Dated: September 24, 2003.

Stephen P. Metruck,

Commander, U.S. Coast Guard, Captain of the Port, San Diego.

[FR Doc. 03–25046 Filed 10–2–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP San Francisco Bay 03–024]

RIN 1625–AA00

Safety Zone; San Francisco Bay, San Francisco, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in the navigable waters of San Francisco Bay, California, off the San Francisco waterfront for a fireworks display in conjunction with the Pier 39 25th Anniversary Celebration sponsored by Pier 39. This safety zone is necessary to provide for the safety of mariners in the vicinity of the fireworks display and for the safety of the vessel, its crew, and technicians working the fireworks launch barge and the pyrotechnics. Persons and vessels are prohibited from entering into or transiting through the safety zone, which will encompass the navigable waters within a 1000-foot radius of the launch platform that will be located approximately 1000 feet off Pier 39, unless authorized by the Captain of the Port or his designated representative.

DATES: This rule is effective from 8 p.m. (PDT) on October 4, 2003, to 8:45 p.m. (PDT) on October 4, 2003.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket [COTP San Francisco Bay 03–024] and are available for inspection or copying at Coast Guard Marine Safety Office San Francisco Bay, Coast Guard Island, Alameda, California, 94501, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Doug L. Ebbers, U.S. Coast Guard Marine Safety Office San Francisco Bay, at (510) 437–3073.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Logistical details surrounding the event were not finalized and presented to the Coast Guard in time to draft and publish an NPRM. As such, the event would occur before the rulemaking process was complete. Any delay in implementing this rule would be contrary to the public interest since immediate action is necessary to temporarily close the fireworks area and to protect the maritime public from the hazards associated with the fireworks displays, which are intended for public entertainment.

For the same reasons stated above, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

Background and Purpose

Pier 39 is sponsoring a short fireworks display on October 4, 2003 in conjunction with the Pier 39 25th Anniversary Celebration event. These safety zones are necessary to protect the spectators along with vessels and other property from the hazards associated with the fireworks show. These temporary safety zones will consist of portions of the navigable waters of the San Francisco Bay immediately north of Pier 39. The Coast Guard has granted Pier 39 and Pyro Spectaculars a marine event permit for this event.

Discussion of Rule

The temporary safety zone consists of the navigable waters of San Francisco Bay within a 1000-foot radius of the launch platform. The launch platform will be located approximately 1000 feet off Pier 39 in San Francisco, California. Entry into, transit through or anchoring within this safety zone is prohibited, unless authorized by the Captain of the Port or his designated representative.

Regulatory Evaluation

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

Although this safety zone will restrict boating traffic within the San Francisco Bay, the effect of this regulation will not be significant as the safety zone will encompass a small portion of the waterway and will be short in duration. The entities most likely to be affected are pleasure craft engaged in recreational activities and sightseeing.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. As discussed above, the safety zone may affect the following entities, some of which may be small entities: the owners and operators of pleasure craft engaged in recreational activities and sightseeing. The safety zone will not have a significant economic impact on a substantial number of small entities for several reasons: vessel traffic can pass safely around the area, vessels engaged in recreational activities and sightseeing have ample space outside of the safety zone to engage in these activities, and this zone will encompass only a small portion of the waterway for a limited period of time in the evening when vessel traffic is low. The maritime public will be advised of this safety zone via public notice to mariners.

Assistance For Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement

Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or government jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding this rule.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. 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 rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded 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, from further environmental documentation because we are establishing a safety zone.

A final ''Environmental Analysis Check List'' and a final ''Categorical Exclusion Determination'' will be available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 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; 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.T11–096 to read as follows:

§ 165.T11–096 Safety Zone: San Francisco Bay, San Francisco, California.

(a) *Location.* This temporary safety zone shall include the navigable waters of the San Francisco Bay within a radius of 1,000 feet from a fireworks launch barge located approximately 1000 feet north of Pier 39 in approximate position 37°48′54″ N, 122°24′32″ W, San Francisco Bay, San Francisco, California.

(b) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into, transit through, or anchoring within this zone by all vessels is prohibited unless authorized by the Captain of the Port or a designated representative thereof.

(2) Persons desiring to transit the area of the safety zone may contact the Captain of the Port at telephone number 510–437–3073 or on VHF–FM channel 16 (156.8 MHz) to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his designated representative.

(c) *Enforcement.* All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene patrol personnel. Patrol personnel comprise commissioned, warrant, and petty officers of the Coast Guard onboard Coast Guard, Coast Guard Auxiliary, local, state, and federal law enforcement vessels. Upon being hailed by U.S. Coast Guard patrol personnel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

(d) *Effective period.* This section becomes effective at 8 p.m. (PDT) on

October 4, 2003, and will terminate at 8:45 p.m. (PDT) on October 4, 2003.

Dated: September 23, 2003.

Gerald M. Swanson,

Captain, U.S. Coast Guard, Captain of the Port, San Francisco Bay, California.

[FR Doc. 03–25185 Filed 10–2–03; 8:45 am]

BILLING CODE 4910–15–P

POSTAL SERVICE

39 CFR Part 230

Rules Governing Compliance With Subpoenas, Summonses, and Court Orders by Postal Employees Within the Office of Inspector General Where Neither the Postal Service, the United States, Nor Any Other Federal Agency Is a Party

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Postal Service is amending the Code of Federal Regulations to state the rules that govern compliance with subpoenas, summonses, and court orders served on employees of the Office of Inspector General where neither the Postal Service, the United States, nor any other federal agency is a party.

EFFECTIVE DATE: October 3, 2003.

FOR FURTHER INFORMATION CONTACT: Marta Erceg, Director, Legal Services, Office of Inspector General, at (703) 248–2447.

SUPPLEMENTARY INFORMATION: The Postal Service has previously published rules that govern compliance with subpoenas, summonses, and court orders served on Postal Service and Inspection Service employees. This is the first publication of subpoena compliance rules as they apply to Office of Inspector General employees.

List of Subjects in 39 CFR Part 230

Administrative practice and procedure.

■ For the reasons stated in the preamble, the Postal Service amends 39 CFR as follows:

PART 230—OFFICE OF INSPECTOR GENERAL

■ 1. The authority citation for part 230 is revised to read as follows:

Authority: 5 U.S.C. App.3; 39 U.S.C. 401(2) and 1001.

Subpart A—General Policy and Authority

■ 2. Sections 230.1 through § 230.5 are designated as new subpart A and a heading for subpart A is added to read as set forth above.

■ 3. Following Subpart A, add the following new subpart B:

Subpart B—Rules Governing Compliance with Subpoenas, Summonses, and Court Orders by Postal Employees Within the Office of Inspector General Where Neither the Postal Service, the United States, Nor Any Other Federal Agency Is a Party

Sec.

230.10 What do these rules govern?
230.11 What special definitions apply to these rules?
230.12 Can Office of Inspector General employees testify or produce documents that would assist me in my civil proceeding?
230.13 Why are restrictions on Office of Inspector General employees in civil proceedings necessary?
230.14 Who owns the written or recorded notes, memoranda, reports, and transcriptions made pursuant to an official investigation, audit, or review conducted by an employee of the Office of Inspector General?
230.15 What must an Office of Inspector General employee do if served with a demand requiring the production of documents or an appearance in court?
230.16 Is there a prohibition on presenting Office of Inspector General reports or records during an employee's testimony?
230.17 If an attempt is made to compel production of reports and records during the employee's testimony, what is an Office of Inspector General employee directed to do?
230.18 If authorization to testify or produce documents is not obtained by the employee, what is the employee directed to do?
230.19 What criteria will the authorizing official use to determine whether to authorize testimony or production of documents?
230.20 What records will not be released?
230.21 May the General Counsel to the Inspector General and/or a U.S. Department of Justice attorney represent the employee in any appearance?
230.22 May another employee be substituted for the employee requested to appear?.
230.23 May an Office of Inspector General employee testify as an expert or opinion witness?
230.24 How is a demand for employee documents or testimony made to the Office of Inspector General?
230.25 Who pays the costs incurred when the Office of Inspector General responds to a demand for documents or testimony?
230.26 Do these rules affect the service of process requirements of the Federal Rules of Civil Procedure (28 U.S.C. Appendix)?
230.27 Do these rules create any right or benefit enforceable by a party against the Postal Service?

Subpart B—Rules Governing Compliance With Subpoenas, Summonses, and Court Orders by Postal Employees Within the Office of Inspector General Where Neither the Postal Service, the United States, Nor Any Other Federal Agency Is a Party

§ 230.10 What do these rules govern?

(a) Subpart B governs those situations where an employee of the Office of Inspector General has been summoned, subpoenaed, or given a court order in connection with any federal, state, local court, administrative, or legislative proceeding.

(b) The rules in Subpart B do not apply to:

(1) Proceedings where the United States, the Postal Service, or any other federal agency is named as a party;

(2) Congressional requests or subpoenas for testimony or documents;

(3) Employees serving as expert witnesses in connection with professional and consultative services under Title 5, Code of Federal Regulations, Part 7001, provided they state for the record that their testimony reflects their personal opinions and should not be viewed as the official position of the Postal Service;

(4) Employees making appearances in their private capacities in proceedings that do not relate to their Postal Service employment, such as traffic accidents or domestic relations matters; and do not involve professional or consultative services;

(5) Situations where the Inspector General or an official designated by the Inspector General determines that the best interests of the public or the Office of Inspector General would be served by an exemption from the regulations.

(c) These rules should be read together with the Freedom of Information Act (FOIA), which provides additional information about access to records.

§ 230.11 What special definitions apply to these rules?

The following definitions apply to Subpart B:

(a) Authorizing official means the Inspector General or an official designated by the Inspector General to authorize release of documents or permission to testify.

(b) Case or matter means any civil proceeding before a court of law, administrative board, hearing officer, or other body conducting a judicial or administrative proceeding in which the United States, the Postal Service, or another federal agency is not a named party.

(c) Demand includes any request, order, or subpoena for testimony or the production of documents.

(d) Document means all records, papers, or official files, including, but not limited to, official letters, telegrams, memoranda, reports, studies, calendar and diary entries, graphs, notes, charts, tabulations, data analyses, statistical or information accumulations, records of meetings and conversations, film impressions, magnetic tapes, computer discs, and sound or mechanical reproductions.

(e) Employee or Office of Inspector General employee, for the purpose of this subpart only, means a Postal Service employee currently or formerly assigned to the Postal Service Office of Inspector General, student interns, contractors, and employees of contractors who have access to Office of Inspector General information and records.

(f) General Counsel to the Inspector General means the General Counsel of the Office of Inspector General, or a person authorized by the Inspector General to give legal advice to Office of Inspector General employees. General Counsel to the Inspector General does not mean the General Counsel of the Postal Service.

(g) Nonpublic includes any material or information not subject to mandatory public disclosure under § 265.6(b) or which must be kept confidential under the Inspector General Act, 5 U.S.C. App. 3.

(h) Office of Inspector General means the organizational unit within the Postal Service as outlined in part 221 of this chapter.

(i) Office of Inspector General Manual is the document containing the standard operating procedures for criminal investigators, evaluators, and other employees of the Office of Inspector General.

(j) Reports include all written reports, letters, recordings, or other memoralizations made in conjunction with the duties of an Office of Inspector General employee.

(k) Testify or testimony includes both in-person oral statements before any body conducting a judicial or administrative proceeding and statements made in depositions, answers to interrogatories, declarations, affidavits, or other similar documents.

§ 230.12 Can Office of Inspector General employees testify or produce documents that would assist me in my civil proceeding?

No current or former employee within the Office of Inspector General may testify or produce documents concerning information acquired in the course of employment or as a result of his or her relationship with the Postal Service in any proceeding to which this subpart applies (see § 230.10), unless authorized to do so by an authorizing official.

§ 230.13 Why are restrictions on Office of Inspector General employees in civil proceedings necessary?

The restrictions are intended to reduce the risk of inappropriate disclosures that might affect the operations of the Office of Inspector General; prevent the expenditure of Office of Inspector General or Postal Service resources for private purposes; and ensure that employee time is serving the best interests of the public.

§ 230.14 Who owns the written or recorded notes, memoranda, reports, and transcriptions made pursuant to an official investigation, audit, or review conducted by an employee of the Office of Inspector General?

Notes, memoranda, reports, and transcriptions, whether written or recorded and made pursuant to an official investigation, audit, or review conducted by an employee of the Office of Inspector General, are the property of the Office of Inspector General.

§ 230.15 What must an Office of Inspector General employee do if served with a demand requiring the production of documents or an appearance in court?

If an Office of Inspector General employee is served with a demand requiring the production of documents or an appearance in court, the employee must promptly inform the authorizing official of the nature of the documents or testimony sought and all relevant facts and circumstances. Office of Inspector General employees are directed to appear as the subpoena or summons may require, but may not testify or produce documents unless authorized.

§ 230.16 Is there a prohibition on presenting Office of Inspector General reports or records during an employee's testimony?

Yes, Office of Inspector General reports or records will not be presented during an employee's testimony, unless authorized by an authorizing official.

§ 230.17 If an attempt is made to compel production of reports and records during the employee's testimony, what is an Office of Inspector General employee directed to do?

If an attempt is made to compel production of reports and records during the employee's testimony, the employee is directed to decline to produce the item or information and to state that the material cannot be disclosed or produced without the approval of the authorizing official. All such requests, and any other requests for documents in judicial or administrative proceedings in which the United States is not a party, shall be deemed to be a request for records under the Freedom of Information Act and shall be handled pursuant to 39 CFR 230.5.

§ 230.18 If authorization to testify or produce documents is not obtained by the employee, what is the employee directed to do?

Absent written authorization from the authorizing official, the employee must respectfully decline to produce the requested documents, testify, or otherwise disclose the requested information. If the authorization is denied or not received by the return date, the employee, together with counsel, where appropriate, shall appear at the stated time and place, produce a copy of this section, and respectfully decline to testify or produce any document on the basis of the regulations in this section.

§ 230.19 What criteria will the authorizing official use to determine whether to authorize testimony or production of documents?

(a) The authorizing official will determine whether testimony or the production of documents will be authorized according to the following criteria:

(1) Statutory restrictions, as well as any legal objection, exemption, or privilege that may apply;

(2) Relevant legal standards for disclosure of nonpublic information and documents;

(3) Office of Inspector General rules and regulations;

(4) The public interest;

(5) Minimizing or preventing expenditures of Office of Inspector General and Postal Service time and resources solely for private purposes.

(6) Minimizing the appearance of improperly favoring one litigant over another;

(7) Minimizing the possibility that the public will misconstrue variances between personal opinions of Office of Inspector General employees and agency policy; and

(8) Preserving the integrity of the administrative process.

(b) Permission to testify or to release documents in all cases will be limited to matters outlined in the affidavit or declaration described in section 230.24 of this part or to such matters as deemed appropriate by the authorizing official.

If the authorizing official allows the release of documents or testimony to be given by an employee, arrangements shall be made for the taking of testimony or receipt of documents by the method least disruptive to the employee's official duties. Testimony may, for example, be provided by affidavits, answers to interrogatories, written depositions, or depositions transcribed, recorded, or preserved by any other means allowable by law.

(c) Upon issuance of an unfavorable final determination by the authorizing official, the party or the party's counsel seeking testimony or documents may consult or negotiate with the authorizing official to refine and limit the demand.

(d) The Office of Inspector General will offer all possible assistance to the courts, but the question of disclosing information for which an exemption may be claimed is a matter of discretion that rests with the authorizing official. If in the opinion of the authorizing official the documents should not be released or testimony should not be furnished, that determination will be final.

§ 230.20 What records will not be released?

Generally, any record demanded by a subpoena duces tecum or appropriate court order can be released by a properly authorized Office of Inspector General employee, except for the following:

(a) Records required to remain confidential by the Freedom of Information Act, the Privacy Act, and parts 230 and 262 of this chapter,

(b) Records containing information relating to an employee's security or loyalty;

(c) Original records;

(d) Office of Inspector General criminal investigative reports, unless there is specific authorization by an authorizing official, after consulting with General Counsel to the Inspector General; and

(e) The Office of Inspector General Manual and other operating instructions issued to Office of Inspector General employees, unless there is specific authorization by an authorizing official, after consultation with the General Counsel to the Inspector General. If the requested information relates to confidential investigative techniques, confidential sources of information, or information that must be kept confidential under the Inspector General Act, 5 U.S.C. app. 3, because release of the information would adversely affect the duties and obligations or law enforcement mission of the Office of Inspector General, the subpoenaed official, through the Inspector General, or an authorizing official, may request an in camera, ex parte conference to determine the necessity for the release of the information.

§ 230.21 May the General Counsel to the Inspector General and/or a U.S. Department of Justice attorney represent the employee in any appearance?

At the option of the Attorney General, or an authorizing official, an Office of Inspector General legal counsel may represent and assist the employee. The authorizing official designated by the Inspector General may also request assistance from the U.S. Department of Justice in representing and assisting the employee in any appearance.

§ 230.22 May another employee be substituted for the employee requested to appear?

The Inspector General or designee may, where appropriate, designate another Office of Inspector General employee to respond to a request for an appearance.

§ 230.23 May an Office of Inspector General employee testify as an expert or opinion witness?

No, an Office of Inspector General employee may not testify as an expert or opinion witness with regard to any matter arising out of the employee's duties or functions at the Office of Inspector General for any party other than the United States, except that in extraordinary circumstances, and where the anticipated testimony will not be adverse to the interest of the United States, the authorizing official may approve such testimony in private litigation. A litigant must first obtain the permission of an authorizing official designated by the Inspector General before designating an Office of Inspector General employee as an expert or opinion witness.

§ 230.24 How is a demand for employee documents or testimony made to the Office of Inspector General?

(a) All demands for the production of nonpublic documents or testimony of Office of Inspector General employees concerning matters relating to their official duties and subject to the conditions set forth in § 230.601(b) shall be made in writing and conform to the following requirements outlined in paragraphs (b) and (c) of this section.

(b) Before or simultaneously with service of a demand, the requesting party shall serve on the General Counsel to the Inspector General at the Office of Inspector General, 1735 North Lynn Street, Arlington, VA 22209–2020, a summons or subpoena issued in accordance with the appropriate rules of civil procedure along with an affidavit or sworn declaration containing the following information:

(1) The title of the case and the forum where it will be heard;

(2) The party's interest in the case;

(3) The reasons for the demand;

(4) A showing that the requested information is available, by law, to a party outside the Postal Service;

(5) If testimony is sought, a detailed summary of the anticipated testimony;

(6) If testimony is sought, a showing that Office of Inspector General records could not be provided and used in place of the requested testimony;

(7) The intended use of the documents or testimony; and

(8) An affirmative statement that the documents or testimony is necessary for defending or prosecuting the case at issue.

§ 230.25 Who pays the costs incurred when the Office of Inspector General responds to a demand for documents or testimony?

(a) Unless determined by 28 U.S.C. 1821 or other applicable statute, the costs of providing testimony, including the cost of transcripts, shall be borne by the requesting party. Furthermore, unless limited by statute, such costs shall also include reimbursement to the Office of Inspector General for the usual and ordinary expenses attendant upon the employee's absence from his or her official duties in connection with the case or matter, including the employee's salary and applicable overhead charges, and any necessary travel expenses as follows:

(1) The Office of Inspector General is authorized to charge reasonable fees to parties demanding documents or information. Such fees, calculated to reimburse the Office of Inspector General for the cost of responding to a demand, may include the costs of time expended by Office of Inspector General employees, including attorneys, to process and respond to the demand; attorney time for reviewing the demand and for legal work in connection with the demand; expenses generated by equipment used to search for, produce, and copy the requested information; and travel costs of the employee and the agency attorney or other representative, including lodging and per diem. Such fees shall be assessed at the rates and in the manner specified in 39 CFR 265.9.

(2) At the discretion of the Office of Inspector General where appropriate, fees and costs may be estimated and collected before testimony is given.

(b) The provisions of Subpart B do not affect rights and procedures governing

public access to official documents pursuant to the Freedom of Information Act, 5 U.S.C. 552a.

§ 230.26 Do these rules affect the service of process requirements of the Federal Rules of Civil Procedure (28 U.S.C. Appendix)?

No, the rules in subpart B in no way modify the requirements of the Federal Rules of Civil Procedure regarding service of process.

§ 230.27 Do these rules create any right or benefit enforceable by a party against the Postal Service?

No, subpart B is intended to provide instructions to Office of Inspector General employees and members of the public. It does not create any right or benefit, substantive or procedural, enforceable by any party against the Office of Inspector General or the Postal Service.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 03–24619 Filed 10–2–03; 8:45 am]

BILLING CODE 7710–12–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 030430107–3236–02; I.D. 040703A]

RIN 0648–AN87

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Pelagic Sargassum Habitat of the South Atlantic Region

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement the Fishery Management Plan for Pelagic Sargassum Habitat of the South Atlantic Region (FMP). This final rule limits the harvest or possession of pelagic sargassum in or from the exclusive economic zone (EEZ) off the southern Atlantic states to 5,000 lb (2,268 kg) annually, restricts fishing for pelagic sargassum in the South Atlantic EEZ to an area no less than 100 nautical miles offshore of North Carolina and to the months of November through June, requires vessel owners or operators to accommodate NMFS-approved observers on all pelagic sargassum fishing trips, and restricts the mesh and frame sizes of nets used to harvest pelagic sargassum. The FMP also defines the management unit, maximum sustainable yield (MSY), optimum yield (OY), and overfishing parameters. In addition, NMFS informs the public of the approval by the Office of Management and Budget (OMB) of the collection-of-information requirements contained in this final rule and publishes the OMB control numbers for those collections. The intended effects are to conserve and manage pelagic sargassum and to protect essential fish habitat.

DATES: This final rule is effective November 3, 2003.

ADDRESSES: Copies of the final regulatory flexibility analysis (FRFA) may be obtained from the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted to Robert Sadler, Southeast Region, NMFS, at the above address, and by e-mail to *David_Rostker@omb.eop.gov*, or fax to (202) 395–7285.

FOR FURTHER INFORMATION CONTACT: Steve Branstetter, phone: 727–570–5305, fax: 727–570–5583, e-mail: *Steve.Branstetter@noaa.gov*.

SUPPLEMENTARY INFORMATION: The South Atlantic Fishery Management Council (SAFMC) prepared the FMP under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

On April 17, 2003, NMFS announced the availability of the FMP and requested comments on it (68 FR 18942). NMFS published a proposed rule to implement the FMP and requested comments on the proposed rule through June 30, 2003 (68 FR 32450, May 30, 2003). NMFS partially approved the FMP on July 11, 2003; the designation of essential fish habitat (EFH), EFH-habitat areas of particular concern (EFH–HAPCs), and the estimate of maximum fishing mortality threshold (MFMT) were disapproved. The rationale for the measures in the FMP is provided in the preamble to the proposed rule and is not repeated here.

Comments and Responses

NMFS received 22 letters on the FMP and proposed rule. Of those, 18 were in general support of the actions identified in the FMP, 2 were opposed, and 2 letters focused on future research needs regarding the role of pelagic sargassum as habitat in the open ocean environment. A summary of those comments and NMFS's responses are provided below.

Comment 1: Sargassum is extremely important habitat for a variety of marine species. NMFS is urged to approve this FMP and its implementing regulations, which would limit the harvest of sargassum and protect the resource as essential fish habitat (EFH) and EFH habitat areas of particular concern (EFH–HAPC).

Response: NMFS recognizes the importance of sargassum as EFH for managed species, and sargassum's general importance as habitat in the open ocean environment. NMFS has partially approved the FMP, and regulations implemented through this rule will prohibit the harvest of sargassum south of 34° N. lat. in the SAFMC's area of jurisdiction, and restrict the allowable harvest to 5,000 lb (2,268 kg) annually from waters greater than 100 nautical miles offshore of the North Carolina coast. These actions are intended to provide protection to sargassum habitat, which is designated as EFH for snappers, groupers, and coastal migratory pelagic fishes, and is known to be used by threatened and endangered sea turtles and large quantities of other marine life.

Comment 2: Because of the importance of sargassum as habitat, and its designation as EFH and HAPC for several managed finfish species, all harvest of sargassum should be prohibited.

Response: NMFS previously informed the SAFMC that there was insufficient justification to prohibit all harvest of sargassum. Section 303(a)(7) of the Magnuson-Stevens Act requires that the Councils minimize to the extent practicable adverse effects on EFH caused by fishing, but clearly this does not, in every instance, preclude some loss or damage to EFH from fishing impacts. Given the suggested standing crop of sargassum is 9 to 24 billion lbs (4 to 11 million mt) and there has been a documented harvest of 448,000 lb (203 mt) over a 22-year period, NMFS determined that the administrative record does not provide sufficient evidence that there has been an adverse impact on sargassum as EFH, or that harvest should be prohibited.

Comment 3: Quantities of sargassum found off of the east coast of Florida have declined in recent years. The ongoing harvest of sargassum is detrimental to Florida's offshore fisheries and should not be allowed.

Response: Given that sargassum is dispersed northward from the Sargasso Sea to the north Atlantic Ocean via the Gulf Stream and prevailing winds,

NMFS does not believe that the intermittent and limited harvest of sargassum off North Carolina between 1976 and 1997 affected the quantities of sargassum occurring off of more southerly coastlines. NMFS is unaware of any harvest of sargassum in the South Atlantic EEZ during the last 6 years (see also Comment 5). The abundance and density of sargassum off Florida would more likely be affected by changes in local currents and prevailing winds, such as occurred during the El Nino events of 1998 and 2002. Nevertheless, NMFS agrees that sargassum is important habitat to numerous fishes, and many fisheries operate by fishing near sargassum habitat. Regulations implemented by the promulgation of this rule will prohibit the harvest of any sargassum except from areas more than 100 nautical miles from shore off North Carolina.

Comment 4: Excessive quantities of sargassum impede navigation for the U.S. Navy, Coast Guard and merchant marine vessels, clogging cooling water intake ports. Given these issues, there does not appear to be a need to restrict or prohibit harvest. The total 22-year harvest of 448,000 lb (203 mt) is minuscule compared to the potential of the sargassum standing stock to increase its biomass by as much as 1 to 2.4 billion lb (0.4 to 1.1 million mt) within a few day's time.

Response: NMFS agrees that the biological potential for growth of sargassum makes it a highly renewable natural resource. Nevertheless, NMFS agrees with the SAFMC regarding the benefits of maintaining adequate quantities of sargassum as habitat for numerous marine species, including sea turtles, in an environment that is otherwise devoid of much structure and protective habitat. In addition, limiting harvest to areas offshore of North Carolina, during time periods when turtles and other marine life are expected to be least abundant in the sargassum, is intended to reduce the potential incidental capture and mortality of these species.

Comment 5: Allowing a harvest of 5,000 lb (2,268 kg) wet weight or 500 lb (227 kg) dry weight of sargassum per year would put the one known processing firm out of business. The firm is currently processing twice that amount in a month's time, and anticipates an expansion of its sales that would require an annual harvest of 240,000 lb (108.9 mt) wet weight annually. Additionally, very little sargassum is found off North Carolina from November through June, thus year-round harvest would provide the firm with the flexibility to select times when sargassum was most abundant and weather conditions were conducive to taking a vessel offshore.

Response: NMFS and the SAFMC were unaware that the one known processing firm was actively engaged in processing sargassum until the firm submitted these comments. NMFS and the SAFMC were under the impression that no harvesting activity had occurred since 1997. The SAFMC's choices for optimum yield (OY) and total allowable catch (TAC) were based on average annual harvest levels from the most recent data available. To ensure that the SAFMC's proposed actions, and NMFS' decisions, were based on the best available information, NMFS contacted the firm's owner to request updated information regarding the harvest of sargassum in the SAFMC's area of jurisdiction.

The owner reported that the firm was not actively fishing for sargassum; the firm's fishing vessel had been sold. The firm was purchasing sargassum from vendors who had harvested the product from areas outside the SAFMC's area of jurisdiction. According to the firm's comment letter, its current monthly use of 10,000 lb (4.54 mt) wet weight of sargassum is approximately half its historical (1976–1997) average annual harvest. Therefore, it appears that the proposed harvesting restrictions would not affect the firm's opportunity to continue its operations. There is no information available to evaluate the firm's current mode of operation of buying raw product compared to purchasing and operating its own vessel to harvest sargassum.

Comment 6: Some of the preferred alternatives identified in the FMP, if modified to include additional considerations, would better address the conservation and management of sargassum.

Response: The Magnuson-Stevens Act, at Section 304(a)(3), provides the Secretary of Commerce (Secretary), or NMFS as the Secretary's designee, with the authority to approve, disapprove, or partially approve the preferred alternative in any FMP or FMP amendment submitted by a fishery management council. The Secretary does not have discretionary authority to select a rejected alternative, or develop a substitute alternative, for approval and implementation.

Comment 7: Several scientific studies have documented the use of sargassum by various forms of marine life, including sea turtles. NMFS is encouraged to develop better estimates of densities of sea turtle neonates in sargassum habitat. Additional questions that need to be addressed include: What quantity of harvest is acceptable, and what is too much? What seasons are least disruptive in regards to the use of sargassum by the various life stages of finfish and invertebrate species that associate with sargassum? The decision to establish a fishing season appears to be based entirely on an assumption of post-hatchling turtle utilization of the habitat, without accounting for seasonal use of sargassum as a nursery ground by numerous fish species.

Response: NMFS acknowledges that there is a paucity of data regarding the abundance of turtles in sargassum habitat. Several studies, mostly focusing on the western edge of the Gulf Stream, have reported numbers of turtles seen during transect surveys, giving a rough estimate of densities of turtles along this western boundary. The western boundary would be the area that hatchling turtles first encounter during their migration from the nesting beach. Thus, it is likely that densities may decrease toward the eastern Gulf Stream boundary and beyond into the open ocean realm. The FMP notes (page 18) that ''Regional trends in the mean abundance of and biomass of young fish show a decrease in abundance across the continental shelf and into the Gulf Stream and Sargasso Sea, and a decrease from spring through fall. Species richness is generally highest on the outer shelf during spring and summer and further offshore during the fall and winter.'' This same kind of distribution can be assumed for sea turtles as well. To that end, this final rule will prohibit the harvest of sargassum within 100 nautical miles of shore off North Carolina, and during the spring through fall period. The intent of this restriction is to limit the interaction with bycatch during harvesting efforts. The gear restrictions imposed by this final rule are intended to limit those impacts; harvesting nets must be constructed of 4-inch (10.2-cm) stretch mesh or larger fitted to a frame no larger than 4 ft by 6 ft (1.3 m by 2.0 m), which should allow many organisms to escape.

Classification

This final rule has been determined to be not significant for purposes of E.O. 12866.

NMFS prepared an FRFA, based on the Regulatory Impact Review, for this final rule. A summary of the FRFA follows:

The Magnuson-Stevens Act provides the statutory basis for this final rule. The objectives of the FMP are: establish a management structure to manage sargassum habitat; reduce the impact of the sargassum fishery on essential fish habitat; reduce the potential for conflict;

and direct needed research to better determine distribution, production, and ecology of sargassum habitat. The final rule prohibits all harvest and possession of sargassum from the South Atlantic EEZ south of 34° N. lat., the latitude line representing the North Carolina/South Carolina border; prohibits all harvest of sargassum from the South Atlantic EEZ within 100 nautical miles of shore between 34° N. lat. and the latitude line representing the North Carolina/Virginia border; limits harvest of sargassum from the South Atlantic EEZ to the months of November through June; establishes an annual total allowable catch (TAC) of 5,000 lbs (2,268 kg) landed wet weight; requires that a NMFS-approved observer be present on each sargassum harvesting trip; and requires that nets used to harvest sargassum be constructed of 4-inch (10.2-cm) stretch mesh or larger fitted to a frame no longer than 4 ft by 6 ft (1.3 m by 2.0 m). This action is being considered because sargassum harvest represents removal of essential fish habitat or important developmental or foraging habitat for other federally managed species including threatened/endangered sea turtles; no management structure exists to protect sargassum; potential conflicts could arise if harvest occurs where recreational fishing is occurring; and limited information on distribution, production, and ecology of sargassum exists. The rule establishes strict limits on allowable harvest of sargassum.

This final rule will require an observer on board the vessel to monitor harvest of sargassum and associated bycatch. No other projected reporting, record keeping or other compliance requirements are proposed. No duplicative, overlapping or conflicting Federal rules have been identified.

No directed fishery for sargassum currently exists in the South Atlantic. Therefore, no small business entities will be impacted by this final rule. One small business entity was a historical participant in the fishery. This firm harvested an average annual harvest of 14,333 lb (6,501 kg) wet weight (1995–1997 average harvest), valued at $43,000 per year, and employed three persons on a full-time basis and other workers on a part-time basis as needed. A total of 52 trips were made between 1976 and 1997 resulting in the harvest of 448,000 lb (203,209 kg) wet weight (44,800 lb (20,321 kg) dry weight) of sargassum. Harvest peaked at 200,000 lb (90,718 kg) wet weight in 1990. The average harvest over the entire 1976–1997 harvest period was 8,615 lb (3,908 kg) wet weight per trip. Harvest was conducted either through contract with commercial finfish fishing vessels that harvested sargassum in conjunction with their regular fishing trip, or through the use of a converted 63-ft (19.2-m) snapper-grouper vessel acquired to conduct directed harvest trips. No information on harvesting or processing costs is available. Since a small business entity in the commercial fishery is defined as a firm that has annual gross receipts not in excess of $3.5 million, the historical firm, had it remained in the fishery, would be classified as a small business entity. However, no harvest by this firm or any other business entity has been recorded since 1997. The sole historical participant in the fishery has maintained the processing side of the business operation through the purchase of product from vendors harvesting outside the SAFMC's area of jurisdiction. There is no known harvest, therefore, within the SAFMC's area of jurisdiction that would be adversely impacted.

No significant issues were raised by public comments in response to the IRFA. Therefore, no changes were made in the final rule as a result of such comments.

The determination of significant economic impact can be ascertained by examining two criteria, disproportionality and profitability. The disproportionality question is: Will the regulations place a substantial number of small business entities at a significant competitive disadvantage to large business entities? Since no directed fishery for sargassum currently exists, no business entities, large or small, currently participate in the fishery. The sole historical participant, however, qualified as a small business entity. Since no participants in the fishery currently exist, and the sole historical participant was a small business entity, the issue of disproportionality does not arise.

The profitability question is: Will the regulations significantly reduce profit for a substantial number of small entities? Since no directed fishery for sargassum currently exists, the regulations do not significantly reduce profit for a substantial number of small entities. Had the sole historical participant in the fishery continued operation and been dependent upon product harvested from areas within the Council's jurisdiction, the allowable TAC would have reduced average harvest and revenues by 65 percent, from 14,333 lb (6,501 kg) wet weight (1995–1997 average harvest) to 5,000 lb (2,268 kg), valued at from $43,000 to $15,000. Although profit figures are not available, it is obvious that the reduction in profit would also be significant. However, as previously stated, no directed fishery exists, so no reduction in profits will occur for any small business entities.

Since there is no directed fishery for sargassum, this final rule does not generate any negative economic impacts on small entities. Therefore, the issue of significant alternatives to mitigate economic impacts is not relevant. However, in the event that directed harvest is attempted, only the harvest restrictions will result in direct economic impacts. The harvest restrictions are not believed to be sufficient to allow sustained participation in a directed fishery for sargassum since the allowable harvest is only 5,000 lb (2,268 kg) wet weight per year. Two other alternatives, allowing no harvest and prohibiting harvest after January 1, 2001, would similarly not support sustained participation in the fishery and are, therefore, not relevant significant alternatives in that they would not mitigate the negative economic impacts of the proposed rule.

The no action alternative and an alternative establishing the TAC at 100,000 metric tons wet weight would allow unrestricted harvest. Additional alternatives would specify TAC at 20,000 lb (9,072 kg) wet weight and 200,000 lb (90,718 kg) wet weight, which would allow harvests greater than the historic average harvest per year (8,615 lb (3,908 kg) wet weight for 1976–1997 or 14,333 lb (6,501 kg) wet weight for 1995–1997). Any of these alternatives would, therefore, eliminate all negative economic impacts on a directed fishery. These alternatives, however, are inconsistent with the Council's intent to both discontinue unregulated harvest of sargassum and limit expansion of a sargassum fishery. The Council concluded that severe limitation on harvest is likely to increase the productivity of marine life in the ecosystem and, thus, increase consumptive, non-consumptive, and indirect (value to other species as habitat) use values. Furthermore, the Council concluded that maintaining these consumptive, non-consumptive, and indirect use benefits greatly outweigh the costs resulting from severely limiting harvest. In addition, there was overwhelming public support for a measure to prohibit the directed harvest of sargassum.

Copies of the FRFA are available upon request (see **ADDRESSES**).

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 the requirements of the Paperwork Reduction Act (PRA) unless that

collection of information displays a currently valid OMB control number.

This final rule contains the collection-of-information requirements subject to review and approval by OMB under the PRA. These requirements have been approved by OMB under OMB control number 0648–0205 for notification prior to a fishing trip and OMB control number 0648–0358 for vessel identification requirements. The public reporting burden is estimated to be 45 minutes per vessel for vessel identification requirements and 5 minutes for notification prior to a trip, per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates, or any other aspects of the collections of information, including suggestions for reducing the burden, to NMFS and OMB (see **ADDRESSES**).

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: September 29, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

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

■ 2. In § 622.1, table 1, the following entry is added in alphabetical order to read as follows:

§ 622.1 Purpose and scope.

* * * * *

TABLE 1.—FMPS IMPLEMENTED UNDER PART 622

FMP title	Responsible fishery management council(s)	Geographical area
* *	*	* *
FMP for Pelagic Sargassum Habitat of the South Atlantic Region.	SAFMC	South Atlantic

TABLE 1.—FMPS IMPLEMENTED UNDER PART 622—Continued

FMP title	Responsible fishery management council(s)	Geographical area
* *	*	* *

■ 3. In § 622.2, the definition of ''Pelagic sargassum'' is added in alphabetical order to read as follows:

§ 622.2 Definitions and acronyms.

* * * * *

Pelagic sargassum means the species *Sargassum natans* or *S. fluitans,* or a part thereof.

* * * * *

■ 4. In § 622.6, paragraph (a)(1)(i) introductory text is revised to read as follows:

§ 622.6 Vessel and gear identification.

(a) * * *

(1) * * *

(i) *Official number.* A vessel for which a permit has been issued under § 622.4, and a vessel that fishes for or possesses *pelagic sargassum* in the South Atlantic EEZ, must display its official number—

* * * * *

■ 5. In § 622.8, paragraphs (a), (b) introductory text, and (c) introductory text are revised to read as follows:

§ 622.8 At-sea observer coverage.

(a) *Required coverage*—(1) *Pelagic sargassum.* A vessel that harvests or possesses pelagic sargassum on any trip in the South Atlantic EEZ must carry a NMFS-approved observer.

(2) *Golden crab.* A vessel for which a Federal commercial permit for golden crab has been issued must carry a NMFS-approved observer, if the vessel's trip is selected by the SRD for observer coverage.

(b) *Notification to the SRD.* When observer coverage is required, an owner or operator must advise the SRD in writing not less than 5 days in advance of each trip of the following:

* * * * *

(c) *Observer accommodations and access.* An owner or operator of a vessel on which a NMFS-approved observer is embarked must:

* * * * *

■ 6. In § 622.35, paragraph (g) is added to read as follows:

§ 622.35 South Atlantic EEZ seasonal and/or area closures.

* * * * *

(g) *Pelagic sargassum area and seasonal restrictions*—(1) *Area limitations.* (i) No person may harvest pelagic sargassum in the South Atlantic EEZ between 36°34′55 ″ N. lat. (directly east from the Virginia/North Carolina boundary) and 34° N. lat., within 100 nautical miles east of the North Carolina coast.

(ii) No person may harvest or possess pelagic sargassum in or from the South Atlantic EEZ south of 34° N. lat.

(2) *Seasonal limitation.* No person may harvest or possess pelagic sargassum in or from the South Atlantic EEZ during the months of July through October. This prohibition on possession does not apply to pelagic sargassum that was harvested and landed ashore prior to the closed period.

■ 7. In § 622.41, paragraph (k) is added to read as follows:

§ 622.41 Species specific limitations.

* * * * *

(k) *Pelagic sargassum.* The minimum allowable mesh size for a net used to fish for pelagic sargassum in the South Atlantic EEZ is 4.0 inches (10.2 cm), stretched mesh, and such net must be attached to a frame no larger than 4 ft by 6 ft (1.2 m by 1.8 m). A vessel in the South Atlantic EEZ with a net on board that does not meet these requirements may not possess any pelagic sargassum.

■ 8. In § 622.42, paragraph (g) is added to read as follows:

§ 622.42 Quotas.

* * * * *

(g) *Pelagic sargassum.* The quota for all persons who harvest pelagic sargassum in the South Atlantic EEZ is 5,000 lb (2,268 kg), wet, landed weight. See § 622.35(g)(1) for area limitations on the harvest of pelagic sargassum.

■ 9. In § 622.43, paragraph (a)(7) is added and paragraph (b)(2) is revised to read as follows:

§ 622.43 Closures.

* * * * *

(a) * * *

(7) *Pelagic sargassum.* Pelagic sargassum may not be fished for or possessed in the South Atlantic EEZ and the sale or purchase of pelagic sargassum in or from the South Atlantic EEZ is prohibited.

* * * * *

(b) * * *

(2) The prohibition on sale/purchase during a closure for allowable octocoral in paragraph (a)(2) of this section or for pelagic sargassum in paragraph (a)(7) of this section does not apply to allowable octocoral or pelagic sargassum that was

harvested and landed ashore prior to the effective date of the closure.

* * * * *

[FR Doc. 03–25149 Filed 10–2–03; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 030721177–3234–02; I.D. 060903C]

RIN A648–AQ96

Fisheries off West Coast States and in the Western Pacific; Coastal Pelagic Species Fisheries; Annual Specifications

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

ACTION: Final rule.

SUMMARY: NMFS issues a final rule to implement the annual harvest guideline for Pacific mackerel in the exclusive economic zone off the Pacific coast. The Coastal Pelagic Species (CPS) Fishery Management Plan (FMP) and its implementing regulations require NMFS to set an annual harvest guideline for Pacific mackerel based on the formula in the FMP. This action adopts allowable harvest levels for Pacific mackerel off the Pacific coast.

DATES: Effective November 3, 2003.

ADDRESSES: The report *Stock Assessment of Pacific Mackerel with Recommendations for the 2003–2004 Management Season* may be obtained from Rodney R. McInnis, Acting Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802. An environmental assessment/regulatory impact review/final regulatory flexibility analysis (FRFA) may be obtained at this same address.

FOR FURTHER INFORMATION CONTACT: James J. Morgan, Southwest Region, NMFS, (562) 980–4036.

SUPPLEMENTARY INFORMATION: The CPS FMP, which was implemented by publication of the final rule in the **Federal Register** on December 15, 1999 (64 FR 69888), divides management unit species into the categories of actively managed and monitored. Harvest guidelines of actively managed species (Pacific sardine and Pacific mackerel) are based on formulas applied to current biomass estimates. Biomass estimates are not calculated for species that are only monitored (jack mackerel, northern anchovy, and market squid).

At a public meeting each year, the biomass for each actively managed species is reviewed by the Pacific Fishery Management Council's (Council) CPS Management Team (Team). The biomass, harvest guideline, and status of the fisheries are then reviewed at a public meeting of the Council's CPS Advisory Subpanel (Subpanel). This information is also reviewed by the Council's Scientific and Statistical Committee (SSC). The Council reviews reports from the Team, Subpanel, and SSC, then, after providing time for public comment, makes its recommendations to NMFS. The annual harvest guideline and season structure is published by NMFS in the **Federal Register** as soon as practicable before the beginning of the appropriate fishing season. The Pacific mackerel season begins on July 1 of each year and ends on June 30 the following year.

The Team and Subpanel meetings took place at the NMFS Southwest Regional Office in Long Beach, CA on May 21, 2003 (68 FR 23703, May 5, 2003). The SSC meeting took place in conjunction with the June 16–20, 2003, Council meeting in Foster City, CA.

A modified virtual population analysis stock assessment model is used to estimate the biomass of Pacific mackerel. The model employs both fishery dependent and fishery independent indices to estimate abundance. The biomass was calculated through the end of 2002, then estimated for the fishing season that begins July 1, 2003, based on: (1) the number of Pacific mackerel estimated to comprise each year class at the beginning of 2003, (2) modeled estimates of fishing mortality during 2002, (3) assumptions for natural and fishing mortality through the first half of 2003, and (4) estimates of age-specific growth. Based on this approach, the biomass for July 1, 2003, is 68,924 metric tons (mt). Applying the formula in the FMP results in a harvest guideline of 10,652 mt, which is lower than last year but similar to low harvest guidelines of recent years.

The formula in the FMP uses the following factors to determine the harvest guideline:

1. *The biomass of Pacific mackerel.* For 2003, this estimate is 68,924 mt.

2. *The cutoff.* This is the biomass level below which no commercial fishery is allowed. The FMP established the cutoff level at 18,200 mt. The cutoff is subtracted from the biomass, leaving 50,724 mt.

3. *The portion of the Pacific mackerel biomass that is in U.S. waters.* This estimate is 70 percent, based on the historical average of larval distribution obtained from scientific cruises and the distribution of the resource obtained from logbooks of fish-spotters. Therefore, the harvestable biomass in U.S. waters is 70 percent of 50,724 mt, that is, 35,507 mt.

4. *The harvest fraction.* This is the percentage of the biomass above 18,200 mt that may be harvested. The FMP established the harvest fraction at 30 percent. The harvest fraction is multiplied by the harvestable biomass in U.S. waters (35,507 mt), which results in 10,652 mt.

Information on the fishery and the stock assessment are found in the report *Stock Assessment of Pacific Mackerel with Recommendations for the 2003–2004 Management Season*, which may be obtained at the address above (see **ADDRESSES**).

Following recommendations of the fishing industry and Subpanel for the 2002/2003 fishing season, NMFS established (1) a 9,500–mt directed fishery for Pacific mackerel beginning July 1, 2002, and (2) an incidental allowance of 40 percent of Pacific mackerel in landings of any CPS, which would be imposed only if the 9,500 mt were harvested. A 1–mt landing of Pacific mackerel per trip would have been allowed if no other CPS (northern anchovy, Pacific sardine, jack mackerel, market squid) were landed during a trip. NMFS implemented a directed and incidental fishery last season in response to concerns about how a low harvest guideline for mackerel might interfere with the sardine fishery. Pacific mackerel is often caught with sardine; therefore, mackerel might have to be discarded, which would increase bycatch of mackerel. As of June 30, 2003, the end of the 2002/2003 fishing season, only 3,884 mt of Pacific mackerel had been landed in the directed fishery; therefore, imposition of an incidental allowance was not necessary.

At its meeting on May 21, 2003, the Subpanel recommended for the 2003/2004 fishing season implementation of a 7,500–mt directed fishery, leaving the remaining 3,152 mt in the event of an incidental fishery. An incidental allowance of 40 percent of Pacific mackerel in landings of any CPS would become effective only after 7,500 mt of Pacific mackerel is estimated to have been harvested. The Subpanel also recommended to allow 1 mt of mackerel to be landed per trip by any fishing vessel during the incidental fishery without landing any other CPS. The

Subpanel recommended that an inseason review of the mackerel season be completed for the March 2004 Council meeting, with the possibility of reopening the directed fishery as an inseason action if sufficient amount of the harvest guideline reserved for the incidental fishery remains unharvested. At its June 2003 meeting, the Council made these recommendations to NMFS. A proposed rule was published on July 29, 2003 (68 FR 44518). The public comment period ended on August 13, 2003. No comments were received.

In view of the above, the following would be implemented for the fishing season that began on July 1, 2003, and continuing through June 30, 2004.

Based on the estimated biomass of 68,924 mt and the formula in the FMP, a harvest guideline of 10,652 mt will be in effect for the fishery that began on July 1, 2003. This harvest guideline will be available for harvest for the fishing season that began at 12:01 a.m. on July 1, 2003, and continues through June 30, 2004, unless the harvest guideline is attained and the fishery is closed before June 30, 2004. All landings made after July 1, 2003, will be counted toward the 2003/2004 harvest guideline of 10,652 mt. There shall be a directed fishery, followed by an incidental fishery of 3,152 mt. An incidental allowance of 40 percent of Pacific mackerel in landings of any CPS will become effective after the date 7,500 mt of Pacific mackerel is estimated to have been harvested. A landing of 1 mt of Pacific mackerel per trip will be permitted during the incidental fishery for trips in which no other CPS is landed.

Classification

This final rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS prepared an initial regulatory flexibility analysis that describes the economic impact the proposed rule, if adopted, would have on small entities. No comments were received on the economic impacts of the proposed rule. NMFS prepared a FRFA for this final rule. The FRFA is available from NMFS (see **ADDRESSES**). A summary of the FRFA follows:

A description of the action, why it is being considered, and the legal basis for this action are contained in the **SUMMARY** and in the **SUPPLEMENTARY INFORMATION** of this final rule. A harvest guideline is required by the FMP to protect the resource while providing a source of revenue for the fishing industry and other benefits to society. The FMP requires that the harvest guideline be calculated by a specific formula applied to the current estimated biomass. Separating the harvest guideline into a directed and incidental fishery is done to minimize the potential of restricting fishing for other species, such as Pacific sardine, which may occur in mixed schools with Pacific mackerel. If the harvest guideline of Pacific mackerel is reached, a prohibition on landings of Pacific mackerel will hinder the Pacific sardine fishery, increasing the cost of fishing and increasing bycatch of Pacific mackerel. If the Pacific mackerel harvest guideline is large enough to be unlikely to interfere with harvesting other species, there is no need to have an incidental fishery. When the harvest guideline is small, many alternatives to the specific amounts of the harvest guideline allocated to the directed and incidental fisheries are possible, but the amounts essential for an efficient fishery are not predictable because market demand, species availability, and the market for species other than Pacific mackerel vary widely from year to year. The preferred alternative for incidental harvest allowance of 40 percent for the current fishing season was based on experience in recent years. Although changes to the incidental harvest allowance during the fishing season can be made, the Council reserved a significant amount of Pacific mackerel for an incidental fishery and recommended a high incidental harvest rate, which would minimize the need for in-season management actions, thereby minimizing costs and potential interference with the CPS fishery.

This final rule does not duplicate overlap, or conflict with other Federal rules. There are no reporting, record-keeping, or other compliance requirements of the rule.

Approximately 83 vessels harvest Pacific mackerel off the U.S. West Coast. This includes 65 vessels with limited entry permits, which are authorized to fish south of 39° N. lat. (a point north of Monterey, CA). Approximately 18 vessels harvest CPS species in southern California for bait; however, little Pacific mackerel is used for bait. The primary harvesters of Pacific mackerel are the vessels with limited entry permits from Monterey, CA south. Some of the vessels in Monterey may move south to harvest CPS, but may not relocate to harvest Pacific mackerel in all years. All of these vessels would be considered small businesses under the Small Business Administration standards; therefore, there would be no financial impacts resulting from disproportionality between small and large vessels under the proposed action. CPS vessels typically harvest a number of other species, including anchovy, Pacific sardine, and market squid.

Cost data are not available for the 65 vessels with limited entry permits; therefore, average gross revenue per vessel is used as a proxy for changes in profitability. With an estimated increase of $960,000 in gross revenue, the average gross revenue per vessel would be $14,769. Setting a harvest guideline is required by the FMP and Federal regulations. However, for the purposes of measuring impacts, if there is sufficient biomass to allow a fishery, the fishing season begins on July 1 even if a harvest guideline is not determined. Unless action were taken to curtail the fishery, unlimited amounts of Pacific mackerel could be harvested. With such a low biomass, exceeding the MSY would be likely, which would lower the biomass estimate the following year along with the harvest guideline. This would reduce potential future revenue to the fleet. Nevertheless, market conditions and availability of Pacific mackerel in the area of the fishery have a strong effect on landings. Since 1994, fleet revenue has averaged $29.9 million and revenue obtained from Pacific mackerel has averaged 7.8 percent of that revenue. Based on the final harvest guideline, revenue from Pacific mackerel is likely to average less than 7.8 percent because squid landings contribute substantial revenue to the fleet, and squid availability is not expected to be depressed by an El Nino during the 2003–2004 Pacific mackerel season as it was in 1998. In an unrestricted Pacific mackerel fishery, average revenue would be more likely to approach 7.8 percent. In view of the above, the relatively low harvest guideline for the 2003–2004 fishing season will provide a slight increase in revenue and will not have a substantial effect on overall vessel profitability.

The average annual revenue from Pacific mackerel in 2002 in the last 10 years, from 1993 through 2002, is almost $1.8 million. This is the revenue the industry might expect on average given the amount of mackerel available for harvest and market demand. With a harvest guideline of 10,652 mt and an average ex-vessel price per ton of $144.55, potential revenue could be $1.5 million. The harvest guideline for the 2002–2003 fishing season was 12,535 mt; however, only 3,884 mt was landed, primarily because of the lack of availability of the resource in the area of the fishing fleet. Therefore, if the harvest guideline is reached during the 2003–2004 fishing season, there will be an increase of more than $978,000 in ex-vessel revenue above that of the 2002–2003 fishing season. The increase would be beneficial for fishermen and

processors, and will benefit the fishing communities in southern California, where virtually all Pacific mackerel is landed. Enforcement and administrative costs (primarily port sampling) remain unchanged because calls at ports of landing are designed not only to assess the status of Pacific mackerel but all species harvested during the year by the CPS fleet. Average conditions are likely to prevail during the 2003–2004 fishing season, that is, ex-vessel revenue derived from Pacific mackerel will fall between $1.8 million and $1.4 million based on a real ex-vessel price that has varied between $172.59/mt and $126.98/mt from 1993 to 2002.

The final action will yield potentially lower revenue from Pacific mackerel than what otherwise might be possible under environmental conditions more favorable to recruitment of Pacific mackerel; however, the low harvest guideline for the 2003–2004 fishing season will provide a small increase in revenue above that of the 2002–2003 fishing season and will not have a substantial effect on overall vessel profitability.

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

Dated: September 29, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

FR Doc. 03–25141 Filed 10–2–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 021122286–3036–02; I.D. 092903C]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 630 of the Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 630 of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the pollock total allowable catch (TAC) for Statistical Area 630 of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), October 2, 2003, through 2400 hrs, A.l.t., December 31, 2003.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The pollock TAC in Statistical Area 630 is 10,339 metric tons (mt) as established by the final 2003 harvest specifications for groundfish of the GOA (68 FR 9924, March 3, 2003).

In accordance with § 679.20(d)(1)(i), the Regional Administrator, has determined that the pollock TAC in Statistical Area 630 has been reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 10,289 mt, and is setting aside the remaining 50 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 630 of the GOA.

Maximum retainable amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is contrary to the public interest. This requirement is contrary to the public interest as it would delay the closure of the fishery, lead to exceeding the TAC in Statistical Area 630, and therefore reduce the public's ability to use and enjoy the fishery resource.

The AA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: September 29, 2003.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–25140 Filed 9–30–03; 4:03 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 68, No. 192
Friday, October 3, 2003

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 58

[Docket Number DA–03–03]

RIN 0581–AC32

Increase in Fees for Federal Dairy Grading and Inspection Services

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Agricultural Marketing Service (AMS) proposes to increase the hourly fees charged under the Federal dairy grading and inspection program. Dairy grading and inspection services are voluntary and are financed through user-fees assessed to participants in the program. The hourly fees would be adjusted by 10.7 to 11.8 percent to reflect the increased costs of providing service and to ensure that the program operates on a financially self-supporting basis.

DATES: Comments must be received on or before November 3, 2003.

ADDRESSES: Interested persons are invited to submit written comments to Duane R. Spomer, Associate Deputy Administrator for Standards and Grading, USDA, AMS, Dairy Programs, STOP 0230, 1400 Independence Avenue, SW., Washington, DC 20250–0230. Comments may also be submitted electronically to *Duane.Spomer@usda.gov* or faxed to (202) 720–2643.

All comments should reference docket number DA–03–03 and note the date and page number of this issue of the **Federal Register**.

Comments received may be inspected at the above address between 8 a.m. and 4:30 p.m., e.s.t., Monday through Friday, except legal holidays.

FOR FUTHER INFORMATION CONTACT: Duane R. Spomer, Dairy Programs, (202) 720–3171.

SUPPLEMENTARY INFORMATION:

Background

The Secretary of Agriculture is authorized by the Agricultural Marketing Act of 1946 (AMA), as amended (7 U.S.C. 1621, *et seq.*), to provide voluntary Federal dairy grading and inspection services to facilitate the orderly marketing of dairy products and to enable consumers to obtain the quality of dairy products they desire. The AMA also provides for the collection of reasonable fees from users of the Federal dairy grading and inspection services that cover the cost of providing these services. The hourly fees are established by distributing the program's projected operating costs over the estimated hours of service—revenue hours—provided to users of the service on a yearly basis. Program operating costs include employee salaries and benefits—which account for nearly 80 percent of the non-travel related operating costs—training, and administrative costs. Periodically, the fees must be adjusted to ensure that the program remains financially self-supporting.

AMS regularly reviews its user-fee-financed programs to determine if the fees are adequate. The most recent review determined that the existing fee schedule, effective January 4, 1998, would not generate sufficient revenues to recover operating costs for current and near-term periods while maintaining an adequate reserve balance. Costs in FY 2004 are projected at $5.95 million. Without a fee increase, FY 2004 revenues are projected at $5.71, and the trust fund balance would be $2.09 million. With a fee increase, FY 2004 revenues are projected at $6.14 million, and the trust fund balance would be $2.52 million.

Employee salaries and benefits account for approximately 80.0 percent of the non-travel related operating budget. Travel costs are billed directly to the users of services provided by the Dairy Grading Branch on a cost-recovery basis. Since the January 4, 1998, fee increase, Federal salaries and location adjustments have increased annually. The average salary has increased approximately 17.4 percent during this 6-year period. As a result of these increases, annual salary and benefit costs to the program are approximately $556 thousand more today than in 1998. Inflation has also increased the operational and administrative costs associated with this program, and a fee increase is necessary to sustain the program. If the short fall is allowed to continue, it will place the Dairy Grading Branch in an unstable financial position that will adversely affect its ability to provide dairy grading and inspection services.

This proposal will also generate funds to automate current business practices of the Dairy Grading Branch. Automated business practices will also enhance customer services through improvements in office efficiency and timeliness of providing grading and inspection services and information to users of dairy grading and inspection services.

In view of these increased costs, AMS proposes to increase the hourly fees associated with Federal dairy grading and inspection services. Currently the fees are $51.00 per hour for continuous resident services and $56.00 per hour for non-resident services. The proposed increases would result in a fee of $57.00 per hour for continuous resident services and $62.00 per hour for nonresident services between the hours of 6 a.m. and 6 p.m. The fee for nonresident service between the hours of 6 p.m. and 6 a.m. would be $68.20 per hour. The proposed fees represent increases of $6.00 (11.8 percent) per hour for continuous resident and $6.00 (10.7 percent) per hour for nonresident services. For services performed in excess of 8 hours per day and for services performed on Saturday, Sunday, and legal holidays, 1½ times the base fee would apply and as a result, the fee would increase from $84.00 per hour to $93.00 per hour.

Executive Order 12866

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

Regulatory Flexibility Act

Pursuant to the requirements set forth in the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), the AMS has considered the economic impact of this proposed action on small entities. It has determined that its provisions would not have a significant economic effect on a substantial number of small entities.

AMS provides voluntary Federal dairy product grading and inspection services to about 350 users of services provided by the Dairy Grading Branch. Manufacturing operations participating in the voluntary plant inspection program have their facility inspected against established construction and sanitation requirements. Dairy products manufactured in facilities complying with the USDA requirements are eligible to be inspected and graded against official quality standards and specifications established by AMS and certain contract provisions between buyer and seller. Products inspected or graded under the program have certificates issued attesting to the product's quality and condition. Many of these users are small entities under the criteria established by the Small Business Administration (13 CFR 121.201). This rule will raise the fee charged to businesses for voluntary inspection and grading services for dairy and related products and the evaluation of food processing equipment. Even though the fee will be raised, the increase is 10.7 percent for nonresident service and 11.8 percent for resident service and will not significantly affect these entities. These businesses are under no obligation to use these voluntary user-fee based services, and any decision on their part to discontinue the use of the services would not prevent them from marketing their products. The AMS estimates that overall this rule would yield an additional $522,000 annually. The proposed rule reflects certain fee increases needed to recover the cost of inspection and grading services rendered in accordance with the Agricultural Marketing Act of 1946, as amended.

The AMS regularly reviews its user-fee financed programs to determine if fees are adequate and if costs are reasonable. The existing fee schedule will not generate sufficient revenues to cover program costs while maintaining an adequate reserve balance (four months of costs) as called for by Agency policy (AMS Directive 408.1). Without a fee increase, total revenue projections—including travel revenue—for Fiscal Year 2004 would be $5.71 million. Total costs—including travel costs—for the same period of time are projected to increase to $5.95 million. The shortfall, if allowed to continue, would translate into a trust fund balance of $431 thousand or 0.8 months of operating reserve at the end of FY 2007.

This action would raise the hourly fees charged to users of Federal dairy inspection and grading services. AMS estimates this action would provide the Dairy Grading Branch an additional $522 thousand annually. This would generate revenue to recover program costs, automate business practices to minimize the extent of future fee increases, and enhance customer services through improvements in office efficiency and timeliness of providing grading and inspection information to users of these services.

Civil Justice Reform

This action has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Paperwork Reduction Act

This action would not impose any additional reporting or recordkeeping requirements on users of Federal dairy grading and inspection services.

A thirty-day comment period is provided for interested persons to comment on this proposed rule. This period is appropriate in order to implement, as early as possible in FY 2004, any fee changes adopted as a result of this rulemaking action.

List of Subjects in 7 CFR Part 58

Dairy Products, Food grades and standards, Food labeling, Reporting and recordkeeping requirements.

For the reason set forth in the preamble, it is proposed that 7 CFR part 58 be amended as follows:

PART 58—GRADING AND INSPECTION, GENERAL SPECIFICATIONS FOR APPROVED PLANTS AND STANDARDS FOR GRADES OF DAIRY PRODUCTS

1. The authority citation for 7 CFR part 58 continues to read as follows:

Authority: 7 U.S.C. 1621–1627.

Subpart A—[Amended]

§ 58.43 [Amended]

2. In § 58.43, ''$56.00'' is removed and ''$62.00'' is added in its place, and $61.60'' is removed and ''$68.20'' is added in its place.

§ 58.45 [Amended]

3. In § 58.45, ''$51.00'' is removed and ''$57.00'' is added in its place.

Dated: September 30, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–25112 Filed 10–2–03; 8:45 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 52

[Docket No. PRM 52–1]

Nuclear Energy Institute; Denial of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Denial of petition for rulemaking.

SUMMARY: The Nuclear Regulatory Commission (NRC) is denying a petition for rulemaking (PRM 52–1) submitted by the Nuclear Energy Institute (NEI or the petitioner). The petitioner requested that the NRC amend its regulations to allow applicants seeking an early site permit (ESP) and a combined license (COL) to use existing information from prior licensing actions as resolved information that has been approved by the NRC and has been subject to a public hearing. The Commission is denying the petition because most of the efficiencies, regulatory stability and predictability which are the object of the petitioner's proposal can be achieved under existing regulations and the guidance that the Commission has directed the NRC staff to prepare. In addition, several key aspects of the petition are based on a misapplication of the ''current licensing basis'' concept and the Backfit Rule, and the petition does not represent a viable approach for achieving the desired efficiencies.

ADDRESSES: Copies of the petition for rulemaking, the public comments received, and the NRC's letter of denial to the petitioner are available for public inspection, or copying for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. These documents are also available on the NRC's rulemaking web site at *http://ruleforum.llnl.gov.*

FOR FURTHER INFORMATION CONTACT: Stephen S. Koenick, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–1239, e-mail: *ssk2@nrc.gov.*

SUPPLEMENTARY INFORMATION:

Background

By letter dated July 18, 2001, NEI submitted a petition for rulemaking (PRM) to amend 10 CFR part 52. The petitioner requested that the NRC amend its regulations governing ESP and COL applications at existing reactor sites to make the development and regulatory review of the application more efficient. The petitioner proposes to incorporate by reference and treat as resolved, existing information. By so doing, the petitioner wishes to eliminate the need for what it believes is duplicate applicant preparation and NRC review of existing information relating to a licensed facility that has been previously approved by the NRC and has been subject to a public hearing. The petitioner believes that its proposed amendments would enhance the focus and efficiency of the ESP and COL licensing processes.

A notice of receipt of the petition was published in the **Federal Register** on September 24, 2001 (66 FR 48832). The comment period closed on November 8, 2001. The NRC received letters from ten commenters. Nine of the ten commenters were in favor of the petition. Seven of the favorable letters were from nuclear utilities, one was from a vendor, and one was from the petitioner. One commenter, a member of a public advocacy group, opposed the petition. The comments are discussed in this document.

Separately, the NRC is currently conducting rulemaking to amend 10 CFR Part 52. This rulemaking activity addresses lessons learned during previous design certification reviews and addresses certain elements of the ESP, design certification, and COL review processes. NEI requested in its July 18, 2001, letter forwarding the petition that this petition be incorporated into the ongoing rulemaking effort. The Commission has decided further consideration of the petition during the part 52 rulemaking is not necessary, but the Commission will consider any relevant proposals to increase efficiencies, regulatory stability and predictability for part 52 regulatory processes that may be submitted during the public comment period on the proposed Part 52 rule.

The Petition

The petitioner expects that existing licensees will order new nuclear power reactors in the future and that many of the new reactors will be located on sites of currently operating plants. Additionally, the petitioner anticipates that the new reactors will rely on a number of the operational programs currently being used by the existing licensees. The petitioner believes that its proposed §§ 52.16 and 52.80 should be added to part 52 to allow the use of existing information as a baseline and to limit the review and opportunity for a hearing to the consideration of changed circumstances, such as new regulations and significant new information, to improve the efficiency of the ESP and COL licensing processes. In its July 18, 2001, letter forwarding the petition, the petitioner requested that the proposed amendments be included in the part 52 rulemaking now in progress.

The petitioner notes that Subpart A of Part 52 contains provisions governing issuance of ESPs. The petitioner proposes that a new § 52.16 be added to Subpart A to allow an ESP applicant to incorporate, by reference, all or portions of the ''current licensing basis'' for an existing reactor site to the extent that it is valid and applicable to one or more additional nuclear power plants that ''fit within the ESP envelope.'' The proposed § 52.16 also would require that any information incorporated by reference be augmented to include:

1. Significant new safety or environmental information that materially affects the ability of the site to support the proposed additional nuclear facility;
2. Information regarding the cumulative radiological and environmental impacts of the existing facility and the facility as described in the ESP application;
3. An analysis of the potential safety impacts of the existing facility on the suitability of the site for the facility as described in the ESP application;
4. An analysis of the potential safety impacts on the existing facility from the facility as described in the ESP application; and
5. Information that addresses regulations applicable to siting issues that became effective after licensing of the current facility to the extent that these regulations are not addressed in the current licensing basis.

The petitioner states that under proposed § 52.16, the NRC would treat those matters incorporated by reference as resolved, except to the extent that those matters are subject to augmentation with the new information described above. The petitioner also states that this section would allow the NRC to impose a change in the application with respect to the information incorporated by reference to the extent that the change satisfies the principles underlying the Backfit Rule in 10 CFR 50.109. The petitioner believes that in preparing the environmental impact statement (EIS) for the ESP, the NRC should adopt the applicable portions of the existing EIS for the site, modified or supplemented as necessary to reflect the NRC's review of the new environmental information proposed in § 52.16.

The petitioner notes that subpart C of 10 CFR part 52 contains provisions governing issuance of COLs. The petitioner states that proposed § 52.80, with provisions similar to those proposed in § 52.16, would be added to Subpart C. The petitioner also states that proposed § 52.80 would allow a COL applicant to incorporate by reference programmatic information identified in the ''current licensing basis'' of an existing licensed facility located at the same site or at a site owned or operated by the same licensee. Programmatic information, as identified by the petitioner, includes, but is not limited to, radiological emergency response plans, organizational structure, administrative controls to assure safe operation, plans for conducting normal operations, physical security plans, and quality assurance programs. The proposed § 52.80 would require this programmatic information to be augmented to include information on regulations that became effective after the existing facility was licensed to the extent that these regulations are not addressed by the current licensing basis for the existing facility. The petitioner states that under this proposed section, the NRC would treat those matters incorporated by reference from the existing facility as resolved, except to the extent that there is new information. The petitioner believes that the NRC could direct that a change be made in the COL application with respect to the information incorporated by reference to the extent that the change satisfies the principles underlying the Backfit Rule, 10 CFR 50.109.

The petitioner states that the proposed amendments would not only be consistent with NRC's mission to ensure adequate protection of the public health and safety, the common defense and security, and the environment, but also would focus NRC reviews on new information and ''the incremental impact of an additional unit at an existing site.'' The petitioner also states that the proposed amendments would enhance the efficiency of the regulatory process, reduce regulatory burden by eliminating duplicate reviews of matters resolved in previous proceedings, and focus agency resources on new and material information and the impact of a potential new plant on the site.

Public Comments on the Petition

The NRC received ten comments in response to the petition. Nine of the ten comments were in favor of the petition. Seven of the favorable comments were from nuclear utilities, one was from a vendor, and one was from the petitioner. These commenters summarized the arguments in the petition but provided no additional bases in support of the petition. They suggested that the petition be included in the current Part 52 rulemaking activity. One commenter, a member of a public advocacy group, opposed the petition.

Reasons for Denial

The petition requests that the ESP and COL processes set forth in 10 CFR part 52 be amended to allow an applicant to use existing information supplied to support the license for a different facility in an ESP or a COL application and to treat the information as resolved. The petition also discusses prior NRC activities that the petitioner claims are precedent for the petitioner's proposal. The Commission recognizes the advantages of licensing plants in a mature industry environment, rather than an emerging industry as was the case for the majority of the existing plant licenses. For example, referencing already proven programs utilized by a mature industry is much less uncertain than new programs proposed for an emerging industry. To the extent practicable, the Commission expects applicants for ESPs and COLs to rely on previously filed siting and programmatic information, as is permitted under existing NRC regulations. To ensure that future license applicants and the public understand the staff's review process, the Commission has directed the staff to articulate in appropriate guidance documents the specific criteria it will use to make its determination as to whether new siting information or a program modification is necessary. However, there are limitations to using previously filed information and insufficient legal bases for the petitioner's proposals. Existing information may be referenced, however, applicants need to demonstrate the information is technically applicable to the prospective licensing action. In addition, this information cannot be treated as resolved for the purposes of a hearing, in as much as principles of res judicata and collateral estoppel would not provide sufficient legal bases to support the petitioner's rulemaking proposal. Therefore, for these reasons, the Commission is denying the petition.

In addition, certain key aspects of the proposal are based on a misapplication of the ''current licensing basis'' concept and the Backfit Rule. For ESPs and COLs there are no ''current licensing bases'' that exist with respect to a new facility-including a new facility to be located adjacent to a site of an existing licensed facility.

Early Site Permits

According to the petitioner's proposal, the siting information to be used as a basis for evaluating the acceptability of an ESP application for a site that is near a site for which a construction permit or license has been previously issued by the NRC [1] would be established, in part, by the siting information which the applicant proposes to ''incorporate by reference'' from the ''current licensing basis'' for the prior construction permit or license. *See* proposed § 52.16(a). The applicant would have to supplement the incorporated information to the extent that there is significant new information on, inter alia, the ability of the site to support the additional nuclear facility contemplated by the applicant, information on cumulative radiological impacts, and information addressing new regulations. *See* proposed § 52.16(b). The information incorporated by reference that need not be supplemented under paragraph (b), would be treated as resolved, unless the NRC met the Backfit Rule. *See* proposed § 52.16(d). The information incorporated by reference that must be supplemented under paragraph (b) would be subject to NRC review and approval, and the Backfit Rule would not apply. A similar approach would be used for environmental information. *See* proposed § 52.16(c) and (f) [sic].

Use of Information From Prior Licensing Actions

The petitioner's proposal implies that prior regulatory determinations by the NRC staff and licensing decisions in NRC adjudicatory proceedings with respect to siting for currently licensed plants should have preclusive effect in proceedings for ESPs to be located at or near a site for which a construction permit or operating license has been issued for another facility. The Commission recognizes that practical efficiencies may occur through incorporation of previously filed information or reference in some instances to prior adjudicatory hearings.

The Commission's regulations and guidance already afford an applicant the opportunity to use information from prior licensing decisions. Under § 50.32, ''Elimination of Repetition,'' an applicant may incorporate by reference information already filed with the Commission. This regulatory provision may be used by an ESP applicant to reference information from existing sources, including the safety analysis report and the environmental report on the facility which is near the location that the applicant proposes to obtain an ESP for. Although the current part 52 does not contain a provision that explicitly allows ESP applicants to take advantage of § 50.32, it was the intent of the Commission that the licensing provisions in Part 50 would be applicable to the licensing processes in Part 52. *See* SECY–02–0077 (May 8, 2002; ADAMS Accession No.: ML021040011), Attachment at p.10.

With respect to the agency's compliance with the National Environmental Policy Act (NEPA), the current part 51 regulations already permit an applicant or licensee to use prior information. Following the receipt of an ESP application, the NRC would conduct a scoping process involving interested stakeholders. Under the provisions of § 51.29(a), the NRC would use the scoping process to ''identify and eliminate from detailed study those issues which are peripheral or are not significant or which have been covered by prior environmental review'' and to identify other environmental assessments and impact statements which are ''related to but are not part of the scope of the statement under consideration.'' Another process to use prior information is ''tiering.'' Tiering allows federal agencies to rely on previous environmental assessments (EAs) and EISs to aid in the presentation of issues, eliminate repetition, or reduce the size of an EIS. Tiering is encouraged by the Council on Environmental Quality (*see* 40 CFR 1520.20), and the NRC's regulations permit the use of tiering and incorporation by reference (*see* 10 CFR part 51, Appendix A.1.(b)). The Commission expects that both scoping and tiering with be used in appropriate circumstances to limit and focus the environmental issues to be addressed in an EIS for an ESP application for a site near an existing licensed facility.

The Commission also expects that the NRC staff's licensing review of an application for an ESP located at or near the same site as a current or formerly

[1] In pre-application interactions, two of the prospective ESP applicants have identified the physical locations of the proposed facilities to be at different locations on the proposed sites than were considered during the previous licensing actions.

licensed facility will draw upon, and be informed by, the body of information that has already been amassed for that site as part of the previous licensing review. After demonstrating the relevance and technical adequacy of the baseline of information for that site, the ESP application and the NRC's review should be focused on determining whether (1) there is significant new information for determining site characteristics; (2) there are new methodologies or techniques for collecting and analyzing information on site characteristics which have been developed since the earlier review and which are now accepted by the staff for conducting such collections and analyses; and (3) the regulatory requirements governing the site evaluation and the criteria for acceptance of the site have changed since the earlier review. On December 23, 2002, the NRC staff issued NRR Review Standard, RS–002, ''Processing Applications for Early Site Permits: Draft for Interim Use and Public Comment,'' (ADAMS Accession No.: ML023530045). The objective of this document is to ensure that staff reviews of ESP applications and associated environmental reports (ERs) are efficient, effective, and consistent, and that the reviews result in high-quality products. The primary source of guidance for the site safety assessment review is applicable portions of NUREG–0800, ''Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants,'' as modified for the ESP review. The primary source of guidance for the ER review is applicable portions of NUREG–1555, ''Standard Review Plans for Environmental Reviews for Nuclear Power Plants,'' as supplemented by RS–002. The Commission has directed the staff to develop specific criteria that the staff will use in making its determination whether former siting information must be supplemented and new findings made with respect to an ESP application at or near a previously licensed facility. In developing this guidance, the staff will consider the five criteria in proposed § 52.16 for augmenting information. RS–002 and the specific criteria will assist the NRC's review in determining whether the referenced information is technically relevant to the ESP and focus the review on newly identified issues of significant technical merit.

With respect to adjudicatory decisions, it is clear that Commission and Licensing Board holdings on legal issues in an earlier proceeding constitute precedent for all subsequent proceedings where the same legal issue is presented. The Commission also believes that, apart from the issue resolution provisions in Part 52 applicable to an ESP referenced in a COL application, the doctrines of *res judicata* (or ''claim preclusion'') and collateral estoppel (or ''issue preclusion'') may be available to preclude certain claims and issues from being relitigated in an ESP proceeding where the same party has raised the claims and issues in an earlier licensing proceeding at or near a previously licensed facility. However, the Commission does not believe that either *res judicata* or collateral estoppel provides a sufficient basis for adopting the petitioner's rulemaking proposal. *Res judicata* applies where (1) there has been a final adjudication of the merits of a particular cause of action or claim by a tribunal of competent jurisdiction; and (2) one of the parties to that adjudication (or party in privity with such party) subsequently seeks to advance or defeat the same cause of action or claim in either the same proceeding or in a separate proceeding involving the parties to the first action or their privies. Alabama Power Co. (Joseph M. Farley Nuclear Plant, Units 1 and 2), CLI–74–12, 7 AEC 203, 212 (1974). The related doctrine of collateral estoppel applies when (1) the issue for which preclusion is sought is the same issue involved in the previous action; (2) the issue was actually litigated; (3) the issue was determined by a valid final judgment; and (4) determination of the issue was essential to the prior judgment. Carolina Power and Light Co. and North Carolina Eastern Municipal Power Agency (Shearon Harris Nuclear Power Plant), ALAB–837, 23 NRC 525, 536–37 (1986); see also Alabama Power Co. (Joseph M. Farley Nuclear Power Plant, Units 1 and 2), ALAB–182, 7 AEC 210, 213 (1974)(collateral estoppel, unlike *res judicata*, does not require an identity between two causes of action). Additionally, the party in the second litigation, who is to be bound by the judgment of the prior litigation, must be in privity to a party in the earlier litigation.[2] Id. at 1560. The primary purpose of collateral estoppel and *res judicata* is to ''protec[t] litigants from the burden of relitigating an identical issue with the same party or his privy * * *.'' *Parklane Hosiery Co.* v. *Shore,* 439 U.S. 322, 326 (1979). Both doctrines operate in the interest of fairness and efficient case management to bar a party to a prior litigation from relitigating an issue or claim resolved adverse to it in the prior litigation. Neither of these legal doctrines provides a basis for the petitioner's rulemaking proposals, inasmuch as the petitioner's proposed rule would attempt to bar any party, including a nonparty to the original proceeding, from raising the issue in the subsequent ESP proceeding whose application references the earlier proceeding.

The Commission does not agree with the petitioner's suggestion that the petitioner's proposed rule is akin to the License Renewal Rule, 10 CFR part 54, the generic environmental impact statement (GEIS) for license renewal which was adopted by rule in part 51, or part 52, each of which provide for a delineated scope of issue resolution and a bar to litigation. The limited scope of review at license renewal under part 54 was supported by technical bases which were referenced in the part 54 rulemaking. (See 56 FR 6443; December 13, 1991, and 60 FR 22461; May 8, 1995). For the GEIS supporting license renewal, the environmental issues were resolved on their merits as part of a rulemaking adopting the GEIS. (See 10 CFR part 51, appendix B to subpart A; 61 FR 66564; December 18, 1996). By contrast, the petitioner's proposed rule does not include any reviews of the technical basis or a rulemaking finding on the merits of the issues that would be precluded in later proceedings. With respect to part 52, the Commission explicitly stated that the rule establishes a process for determining the adequacy of siting (including related environmental issues) for a period of up to 20 years for the purpose of providing issue resolution in subsequent proceedings where the ESP is referenced. (See 54 FR at 15372, 15378; April 16, 1989). The public is provided notice and opportunity to participate in the ESP through a request for hearing. Thus, Part 52 establishes a regulatory regime whereby the public has fair notice that siting issues must be raised in the ESP proceedings, inasmuch as the Commission's resolution of the adequacy of siting will ordinarily be binding in a subsequent proceeding referencing that ESP. By contrast, when a current plant's siting decisions were considered in the construction permit proceeding, there was no knowledge or contemplation that issues reviewed and resolved in that construction permit proceeding would be given preclusive effect in another proceeding for an entirely different plant to be licensed to a different location on the same site and

[2] The concept of privity is the same for *res judicata* and collateral estoppel. It pertains to the relationship between a party to a suit and a person who was not a party, but whose interest in the action was such that he will be bound by the final judgment as if he were a party.

perhaps an entirely different licensee, as is contemplated under the petitioner's proposed rule. For these reasons, the Commission does not find that any of these rulemakings constitute a valid legal model for the petitioner's proposed rulemaking.

Misapplication of ''Current Licensing Basis'' Concept and the Backfit Rule

While the Commission expects that practical efficiencies, as described above, would be realized from using previously filed information, the petitioner's proposal to treat such information as resolved does not represent a viable approach. Paragraphs (b) through (f) of proposed § 52.16 constitute the heart of petitioner's proposal, viz., resolution of issues in an ESP proceeding. However, the NRC regards the proposal as a misapplication of the ''current licensing basis'' concept and the Backfit Rule. The petitioner's proposal uses the term ''current licensing basis'' in the context of a site for which a construction permit or license has been issued for a different facility at a different location on the site. The NRC developed this concept for renewing nuclear power plant operating licenses under 10 CFR part 54. The NRC uses the concept to determine the scope of the NRC safety review necessary to support the NRC's decision to renew a nuclear power plant's operating license. The NRC limited the scope of the NRC safety review for license renewal partly because the NRC has already made a licensing finding for the facility. Furthermore, as part of the Part 54 rulemaking, the NRC completed a comprehensive examination of NRC's post-licensing regulatory activities and determined that for all facilities the current licensing bases have been subject to continuing NRC oversight and have been appropriately updated. Thus, a broad-scope safety review against current requirements is unnecessary at license renewal. The renewed license is issued to the same facility for which the NRC previously granted operating authority, and except for aging management programs, the operating authority for the facility under the renewed license is identical to the authority under the previous operating license. By contrast, there is no ''current licensing basis'' for a facility not yet granted a license, even if it is located at a site for which a construction permit or operating license has been issued to another facility.

More importantly, information for an existing facility, even if updated in accordance with the NRC's regulatory requirements and oversight activities, may not be applicable from a technical basis to a new facility to be located on the same site as an existing licensed facility. The NRC considered two representative areas that could arise in reviewing an ESP application, to determine if the NRC's findings on these subjects could be used for a new facility to be constructed at the same site without change or supplementation, in order to avoid duplicative NRC review and approval. These areas are geotechnical information and meteorology. In both of these areas, which would not be expected to have significant changes from earlier reviews, the NRC concluded that simple application of the updated information would be insufficient to demonstrate compliance with regulatory requirements in effect at the time of the ESP application (which petitioner's proposal would require, see § 52.16(d)), and accordingly there would be little basis for avoiding necessary NRC review and approval.

In the geotechnical area, the NRC accepted the suitability of the site for construction and operation of a specific facility design. The NRC's findings were based upon the applicant's subsurface investigations to obtain the necessary geologic and seismic data, and the applicant's evaluations of the data to determine the suitability of the site for that facility's reactor design. Even if the proposed ESP is to be located precisely on the footprint of a previously-approved facility that has not been constructed, the NRC believes that additional information must be submitted by the applicant and evaluated by the NRC to demonstrate that the site is suitable.

The applicant would need to demonstrate that the data originally collected to determine the suitability of a specific reactor type to be constructed and operated at a specific location supports the suitability of the site for some as-yet-unspecified design. The certified designs and contemplated designs provide a range of depths of embedment and implications for hydrological radionuclide transport. In addition, the applicant needs to demonstrate that the data collected more than 20 years ago for example is still relevant, given the current knowledge of regional seismic activity, current data collection and analytical methods, and that the acceptance criteria of the previous licensing action are still relevant. There have been advances in the knowledge of seismic activity in the United States and how ground motion propagates from the seismic source to the site, particularly in seismic source zones such as the New Madrid and the Wabash Valley regions in the Midwest. There have been changes in the state-of-the-art techniques for performing subsurface investigations, (*e.g.*, cone penetrometer testing and suspension logging inside one of the deep boreholes rather than across two boreholes). Furthermore, the reactor site criteria in 10 CFR part 100 were significantly revised in 1996, (61 FR 65176, December 11, 1996). Therefore, none of the currently licensed nuclear plants utilized current reactor siting criteria. The applicant would have to supplement the geotechnic information as necessary to meet the current requirements of the revised Part 100.

The NRC would need to evaluate the geotechnical and seismic information against the current knowledge of regional seismic activity, the current data collection and analytical methods, and the current acceptance criteria to make its safety determination against the revised Part 100. Thus, even in the most favorable case, the NRC believes that additional information, analyses and evaluation is necessary to determine whether existing findings on geotechnical data are applicable to a proposed facility which may be constructed on the same footprint as a previously-approved but unconstructed facility.

These concerns about applicability of the data for the existing facility and review effort would only increase if the ESP was for an alternate location on the site. The distance between the existing licensed facility (or footprint for a facility that was authorized but not constructed) and the proposed facility may result in differences in site suitability. Localized subsurface faults which were not adequately characterized during the previous licensing action could bring representativeness of the incorporated geotechnical information into question. There may be other differences in the characteristics of local subsurface materials (*e.g.*, depth of bedrock and soil types) between the existing licensed facility (or footprint for a facility that was authorized but not constructed) and the proposed facility, that may render inapplicable the original data and findings with respect to geotechnical characteristics (or at least require supplementing the original data and findings).

In the area of meteorology, the existing licensee will have collected data that the NRC previously determined was sufficiently representative of the meteorological environment for the (then proposed) facility. While this data will have been supplemented to a certain extent by data

collected throughout the period of operation of the facility, the type of data that has been collected in many cases has been reduced to a limited set necessary to support emergency action determinations. Also, as a technical matter, data collected to support the original findings may not be representative of current meteorological conditions at the proposed site. Localized changes such as changes in land use, the erection of new structures and the removal of existing structures, have the capability to significantly alter the previous characterization of the site's meteorology. These changes in local conditions may not be reflected in the licensing basis for the plant, inasmuch as they are unnecessary to support emergency action determinations. Furthermore, the meteorological data previously collected to support the existing facility's design may be insufficient to characterize the release characteristics unique to the specific design (or the envelope of designs) that may be built under the ESP. For example, the NRC guidance contains different consequence analyses, viz., elevated release versus ground-level release (and therefore the meteorological data necessary to support such analyses), depending upon whether the facility is a boiling water reactor or a pressurized water reactor. The application and review effort would only increase if the ESP was for an alternate location on the site. The distance between the existing licensed facility (or footprint for a facility that was authorized but not constructed) and the proposed facility may result in sufficient terrain differences or orientation differences to call into question the applicability of the meteorological data collected at the existing facility to a facility that may be constructed under the proposed ESP.

In summary, prior NRC findings with respect to the characteristics of a site and compliance with the then-current regulatory requirements with respect to an existing facility, updated in accordance with existing requirements and practices, does not ensure that the data is sufficiently accurate and comprehensive to support a current ESP siting determination. Thus, the petitioner's proposal to extend the concept of a ''current licensing basis'' in the manner contemplated by its proposed § 52.16 is technically inappropriate.

The NRC also believes that the petitioner's proposal would essentially extend the Backfit Rule to situations for which the policies underlying the Backfit Rule are not applicable. The Backfit Rule was intended to address a licensee's expectation of regulatory stability. A licensee expects that the terms and conditions of the licensee's authority under a license will not be changed after the NRC has issued the license, except as permitted in the Backfit Rule. The Backfit Rule established regulatory criteria to be used by the NRC in evaluating the application to existing facilities of proposed new and changed regulatory requirements and changes in NRC interpretations and findings with respect to compliance with those requirements.

An ESP applicant, albeit one that already possesses a construction permit or operating license at the site for which an ESP is being sought, has no regulatory expectation that the NRC's determination of whether the application complies with applicable regulatory standards would be constrained by the ''current licensing basis'' for the earlier-issued construction permit or operating license at the site. An ESP application, submitted years after the issuance of the construction permit or license for an existing facility on the site, cannot reasonably be viewed as implicating the ''regulatory stability'' concept underlying the current Backfit Rule. The NRC further notes that the petitioner's proposal would also permit an ESP applicant that does not have a construction permit or license at the site to reference and treat as resolved the ''current licensing basis'' of another licensee's facility located at the proposed ESP site. Again, under current regulatory practice the ESP applicant does not have any reasonable expectation of regulatory stability with respect to its new application, inasmuch as the NRC has not taken any licensing action for the ESP applicant with respect to a facility located at that site.

Summary of Denial of Petitioner's ESP Proposal

In summary, most of the efficiencies and regulatory stability and predictability which are the object of the petitioner's proposal can be achieved under existing regulations and the guidance that the Commission has directed the staff to prepare. In addition, key aspects of the petition are based on a misapplication of the ''current licensing basis'' concept and the Backfit Rule, and the petition does not represent a viable approach for achieving the desired efficiencies. For these reasons, the Commission is denying the ESP proposal as set forth in the petition.

Combined Licenses

According to the petitioner's proposal, a COL applicant for a facility to be located at a site with a currently licensed facility [3] and a COL applicant who holds a facility license at another site, may incorporate by reference the siting information described in proposed § 52.16 from the ''current licensing basis'' of the currently licensed facility. The incorporation would be subject to the requirements in proposed § 52.16. *See* proposed § 52.80(a). In addition, a COL applicant for a facility to be located at a site where the COL applicant currently holds a facility license, and a COL applicant who holds a facility license at another site, may incorporate by reference the information required to address certain NRC requirements. These ''programmatic requirements,'' which are delineated in proposed § 52.80(b), include: (1) Emergency preparedness plans under § 50.33(g) and compliance with the emergency preparedness provisions of 10 CFR part 50, appendix E; (2) physical security plans under 10 CFR 50.34(c) and safeguard contingency plans under § 50.34(d); (3) the quality assurance (QA) program under § 50.34(f)(3)(iii); and (4) the managerial plan for design and construction activities under § 50.34(f)(3)(vii). The COL applicant would have to supplement the incorporated information to the extent that there are new regulations. *See* proposed § 52.80(b)(1).

The bases for evaluating the acceptability of the COL application would be established, in part, by the siting and programmatic information for which the applicant proposes to incorporate by reference from the ''current licensing basis'' of an existing licensed facility located at the same site or another site owned or operated by the COL applicant. *See* proposed § 52.80(b). The information incorporated by reference that need not be supplemented in accordance with § 52.16(b) or (c), or § 52.80(b)(1), would be treated as resolved, unless the NRC complies with the Backfit Rule. *See* proposed § 52.16(d). The information incorporated by reference that must be supplemented under § 52.16(b) or (c), or § 52.80(b)(1) would be subject to NRC review and approval, and the Backfit Rule would not apply.

[3] The petitioner's proposal would, by its terms, permit an applicant to seek a COL at a site with a facility whose license is not held by the applicant.

Use of Information From Prior Licensing Actions

The petitioner's proposals to give prior NRC staff regulatory determinations and NRC adjudicatory decisions preclusive effect in subsequent COL proceedings are apparently rooted in a desire to maximize regulatory efficiency and predictability. The Commission shares the petitioner's desire that the regulatory processes for review and approval of COLs be fair and efficient and maximize regulatory stability and predictability. Clearly, the nature of review of a program for a new facility, which is based, in whole or in part, on a program currently being implemented at a licensed facility, should be different in approach than where the NRC is reviewing the adequacy of the program for the first time. Moreover, the Commission also recognizes that the context in which programs are reviewed for a new plant is fundamentally different than when currently licensed plants were being reviewed and licensed. The regulatory standards and review criteria for many existing plants were being developed for the first time or were evolving concurrently with the original licensing of those plants. The NRC's review of the adequacy of an operating license applicant's proposed operational programs occurred without extensive operational experience or data, and therefore, took conservative approaches to predicting the efficacy of such programs. Today, however, the NRC has the benefit of a body of regulatory requirements developed over a 45-year time span, and substantial experience and knowledge collected over 40 years on over 100 plants with thousands of reactor-years of operation. The Commission believes that the licensing review process can take advantage of this body of information and experience to focus the NRC's review of COL applications when the application references an existing program currently being implemented at another nuclear power plant. Indeed, there are substantial regulatory advantages where an applicant proposes to implement an existing proven program at a new plant, if the applicant demonstrates that such reliance is appropriate and technically justified. A mature program is likely to have been revised to reflect corrective actions and lessons learned. Application of such a program to a similar situation at a different nuclear power plant may be preferable to developing and implementing a completely new, untested program. This approach would likely avoid the need for overly conservative program elements to compensate for unknowns and unproven assumptions or correcting errors in ineffective programs.

Therefore, the Commission expects that the licensing review for COLs that rely upon existing programs at other plants will draw upon, and be informed by, the body of information associated with that program's approval and implementation over the years, so that review will be focused on technical and legal (or regulatory) issues of merit, and the review will avoid re-review of matters for which there does not appear to be significant new information or technical considerations. In such cases, the NRC's review should be focused on determining whether (1) there is significant new information on relevant issues; (2) there are new methodologies or techniques for complying with relevant regulatory requirements, developed since the original program review and approval, which are now accepted as the ''industry norm'' for complying with that requirement; and (3) the relevant regulatory requirements governing the evaluation and approval of that program have changed since the earlier review and the existing program was not required to comply with the updated requirements. The Standard Review Plan (SRP) contains the staff's acceptance criteria that would be used in reviewing new applications, including COLs. The Commission has directed the staff to develop criteria for review of COL applications when the application references programmatic information from another license.[4] The Commission believes that the SRP, together with the review guidance to be developed, will provide the licensing discipline necessary to ensure that the NRC's review of COL applications is appropriately focused.

In addition, the Commission reiterates that prior adjudicatory holdings on matters of law have precedential weight in subsequent adjudicatory proceedings, and that there may be occasions where *res judicata* and collateral estoppel may be applied in a COL proceeding to avoid relitigation of claims and issues raised by the same parties in an earlier proceeding. However, for the reasons discussed in the context of ESPs, the Commission does not believe that *res judicata* or collateral estoppel would provide a legal basis for the petitioner's rulemaking proposals on COLs.

[4] The COL guidance will use the same ESP criteria for assessing siting information developed in an earlier licensing proceeding, as described in the section on ESPs.

Misapplication of ''Current Licensing Basis'' Concept and the Backfit Rule

As with the ESPs, the Commission expects practical efficiencies may be realized from using previously filed information. However, the petitioner's proposal to treat such information as resolved does not represent a viable approach. The fundamental objective of the petitioner's proposal, viz., resolution of issues and regulatory standards in a COL proceeding referencing an earlier licensing decision, appears to be based on a misapplication of the ''current licensing basis'' concept and backfitting. The ''current licensing basis'' concept was intended only to apply to renewal of a license for a nuclear power plant. It was not intended, and has no regulatory meaning, in the context of licensing another separate and unrelated facility that may be located at the same site—much less a separate facility located at a different site. Moreover, with respect to information on compliance with programmatic requirements which may be incorporated by reference, proposed § 52.80(b) does not require the COL applicant to demonstrate that the programmatic information is relevant and technically applicable to the proposed COL site and facility.[5] For example, under the petitioner's proposal, an applicant referencing an emergency plan from a licensee-owned facility located at a different site need not demonstrate that the siren alerting system for the referenced plant would be effective at the COL site. Thus, the petitioner's proposal to extend the ''current licensing basis'' concept in the manner contemplated by its proposed § 52.80 is not acceptable.

In addition, the NRC does not believe that programmatic information for an existing facility, even if that information was routinely updated in accordance with the NRC's regulatory requirements (*e.g.*, 10 CFR 50.71(e) and 10 CFR 50.59) and oversight activities, may simply be ''imported'' and used at a new facility either at the same site (or a different site). In general, it is unlikely that such wholesale ''importation'' of programmatic information without change or supplementation to reflect the new facility and its location can be justified without NRC evaluation of the

[5] This may have been a drafting error on the part of NEI, which could be corrected by including a provision in the proposed § 52.80 requiring the COL applicant to demonstrate that the programmatic information from the referenced site and facility is relevant and technically applicable to the proposed COL site and facility. However, inclusion of such a provision would not address the other concerns with respect to ''current licensing basis,'' backfitting, and regulatory effectiveness.

acceptability of the information with respect to the specific characteristics and location of the proposed facility. The NRC examined three programmatic areas to determine whether programmatic information for an existing facility may be used without change or supplementation at a different facility, in order to avoid repetitive NRC review and approval: (1) Physical protection, (2) emergency preparedness, and (3) quality assurance (QA).

Proposed § 52.80(c) would provide issue resolution for all or part of the physical security and safeguards contingency plans (including compliance with the provisions of 10 CFR part 73 under § 50.34(c) and § 50.34(d)), which would be incorporated by reference either from an already licensed facility at the site for the proposed COL or from a facility at another site whose license is held by the COL applicant. However, the adequacy of physical protection commitments for a nuclear power reactor depends on the design of the plant, the nature of the site, the location and configuration of the plant on the site (including its proximity to other structures), and the physical characteristics of the surrounding land. Adding a new facility to an existing site—even if located on the footprint of a previously approved but never built facility—would necessitate a reevaluation of the existing physical security plan and the safeguards contingency plan to determine if the proposed facility meets the eight elements of physical security in § 73.55 and the five categories of information for the safeguards contingency plan in appendix C to part 73.[6] For example, the existing physical barriers on the site would need to be evaluated to assure that there are two physical barriers of the appropriate size in place for the vital area of the proposed facility. With respect to the physical security organization, the NRC would evaluate whether the guard force is sufficient to perform their assigned duties and responsibilities for both the existing and proposed facility. Thus, it is unlikely that programmatic information on safeguards and security for an existing facility could be used without change or supplementation at a different facility, with a concomitant need for NRC review and approval of that safeguards and security program.

Proposed § 52.80(c) would provide issue resolution for all or part of an emergency plan (including compliance with 10 CFR part 50, appendix E, and the requirements for the size and configuration of emergency planning zones under § 50.33(g) and § 50.34(b)(6)(v)), which would be incorporated by reference either from an already licensed facility at the site for the proposed COL or from a facility at another site whose license is held by the COL applicant. If the COL applicant referenced an emergency plan for a facility at the site for which the COL would be issued, the NRC believes that the addition of a new facility could have a bearing on whether the existing plans meet the 16 planning standards in 10 CFR 50.47. In addition, the NRC must evaluate the impacts of the proposed facility on the existing facility, as well as any impact the existing facility would have on the proposed facility. The design of the facility determines the type and severity of accidents which need to be addressed by the emergency plan. If the new facility used a different design than the existing facility, the existing emergency plan would need to be evaluated to determine whether it can accommodate the type and severity of accidents associated with the new facility, or whether new provisions (*e.g.*, emergency action levels tailored to the particular accident sequences of the proposed COL facility) are necessary. If the plan cannot accommodate the accidents, the plan would have to be supplemented. For example, with respect to emergency planning zones (EPZs), the NRC would have to determine whether the specific location and configuration of the proposed facility would lead to some adjustment to the existing EPZ. Furthermore, the protective actions associated with the EPZs may not be appropriate for a different design and radioactive inventory associated with the proposed facility. For a COL applicant who references an emergency plan from another site, a new EPZ would have to be developed inasmuch as the existing facility's EPZ could not be used at the COL site. The NRC would also have to identify and consider any differences between the existing site and the proposed COL site in order to determine whether the existing emergency plan meets the § 50.47(b) planning standards. Therefore, the Commission does not believe that emergency planning information for an existing facility could be used at a different facility without change or supplementation, and a concomitant need for NRC review and approval of that emergency planning information.

Proposed § 52.80(c) would provide issue resolution for all or part of a QA program (including compliance with the provisions of appendix B to part 50, under § 50.34(b)(6)(ii), § 50.34(f)(3)(i), § 50.34(f)(3)(ii) and § 50.34(f)(3)(vii)), which would be incorporated by reference either from an already licensed facility at the site for the proposed COL or a facility at another site whose license is held by the COL applicant. The petitioner's proposal does not distinguish between construction and operation. Operational QA programs cannot be used for design and construction of a new facility because the scope and nature of activities performed during construction are different than during operation. A construction QA program focuses on design, procurement, fabrication and construction, whereas an operational QA program focuses on maintenance, modification, and operation. Furthermore, the QA organization is different for construction than for operation because a construction QA program relies heavily on an architect-engineer and an operational QA program relies on licensee personnel. If the COL applicant intended to rely on a construction QA program which it used in construction of an existing facility (either on site or at another site), an extended period of time might have elapsed since the major provisions of that construction QA program had been utilized. Thus, the construction QA program might not address the design, procurement, fabrication and construction activities that the COL applicant proposes to use in the construction of the proposed facility. Moreover, applicable industry standards and practices for construction QA have evolved, so that the NRC may not consider the original construction QA programs to be acceptable for constructing a new facility. For example, American Society of Mechanical Engineers (ASME) NQA–1, ''Quality Assurance Program Requirements for Nuclear Facilities,'' which was referenced in the construction QA programs for many existing plants, has undergone numerous revisions since the 1970s editions. Since the original endorsement of these industry standards, the NRC has withdrawn its endorsement of several quality standards as more effective standards developed by industry groups became available. Accordingly, any construction QA program that was used for an existing facility could not be used

[6] The NRC notes that a proposed facility located on a site with an existing facility could adversely affect the adequacy of the existing facility's physical security and safeguards contingency plans. However, unlike the provisions in proposed § 52.16(b)(1) and (4), § 52.80 would not require the COL applicant to address the impacts of the proposed facility on the existing facility, including cumulative impacts.

at a new facility without substantial change, and concomitant need for NRC review and approval of those changes.

With respect to operational QA, the NRC would need to review the existing operational QA program to assure the licensee's commitments in the QA program area are applicable to the proposed facility. The adequacy of QA program elements depends upon facility design, fabrication and construction technologies, and how systems, structures, and components (SSCs) and services are procured. For example, modular construction, in which portions of the plant are prefabricated off site, transported to the site, and integrated into the portions of the plant constructed on site, will likely involve different QA programs, procedures, and considerations than those for (current generation) plants constructed entirely on site. Another example is the use of SSCs which are procured from sources outside the United States. These components may be manufactured, tested, and qualified to different standards than the standards of the COL applicant's construction QA program. While there may not be the need to make substantial changes to an operational QA program at an existing plant, the Commission believes that an operational QA program could not be used with some changes or supplementation. Those changes or supplementation would need to be reviewed and approved by the NRC.

Based upon the review of these three areas, the NRC does not believe that it is technically possible to apply programs such as physical protection, emergency preparedness, and QA from another facility to a proposed COL without evaluation and consideration of the acceptability of the information with respect to the specific characteristics and location of the proposed facility.

The NRC also believes that the petitioner's proposal would essentially extend the Backfit Rule to situations for which the policies underlying the Backfit Rule are not applicable. A COL applicant simply can have no reasonable regulatory expectation that the NRC's determination of whether the application complies with applicable regulatory standards would be constrained by the ''current licensing basis'' for a previously licensed facility at that site. This is even more true for a COL applicant referencing a previously licensed facility at a different site.

Summary of Denial of Petitioner's COL Proposal

Most of the efficiencies and regulatory stability and predictability which are the object of the petitioner's proposal can be achieved under existing regulations and the guidance that the Commission has directed the staff to prepare. In addition, several key aspects of the petition are based upon a misapplication of the ''current licensing basis'' concept and the Backfit Rule, and the petition does not represent a viable approach for achieving the desired efficiencies. For these reasons, the Commission is denying the COL proposal as set forth in the petition.

NRC Regulatory Activities as Precedents for Petitioner's Proposal

The petitioner cites several examples of NRC's practice to support the petition. The NRC does not believe that these examples are valid precedents for the petitioner's proposals. Each of these examples is addressed below.

License Renewal

The petitioner suggests that its proposal is consistent with the regulatory concepts underlying the Commission's adoption of Parts 51 and 54 for license renewal of power reactors. *See* petition at p.7.

As discussed in the ESP section of the Reasons for Denial, the NRC disagrees with the petitioner's analogy.

License Amendments

The petitioner compares the issuance of an ESP to the issuance of a license amendment for a facility, and argues that the NRC does not conduct a fresh assessment of issues that were thoroughly considered in initial licensing of that facility and that are not affected by the proposed amendment. *See* petition at pp.7–8.

Contrary to the petitioner's suggestion, an application for an ESP or a COL is not analogous to a license amendment. After the NRC licenses a facility, the safety and environmental findings made when NRC initially authorized the facility's construction and operation remain effective throughout the term of the license, and need not be revisited in their entirety in a subsequent license amendment proceeding of limited scope. Only those matters which are within the scope of the proposed license amendment and, therefore, are affected by the amendment, fall within the scope of the NRC's consideration of the license amendment.

The NRC's review of an ESP or COL application is the NRC's initial licensing action. As suggested in the earlier discussion on backfitting, the NRC's licensing decision for a facility located on a specific site is limited to that facility. The NRC never envisioned that its licensing decision for that facility would have any regulatory significance years later for either a new, separate facility (likely of different design) located at the same site, or a new, separate facility to be located at an entirely different site.

Table S–3 and Spent Fuel Storage Casks

The petitioner states that the Table S–3 generic environmental rulemaking and the rulemakings approving spent fuel storage casks are regulatory precedents for making generic findings by rulemaking, and thereby reducing the scope, or eliminating the need for consideration, of matters in a facility-specific hearing.

The NRC does not regard these rulemakings as analogous to the proposed §§ 52.16 and 52.80. In the Table S–3 rulemakings, the Commission made generic environmental findings which were applicable to all light-water-cooled nuclear power plants. In every spent fuel storage cask rulemaking, the Commission made generic safety and environmental findings which were applicable to every spent fuel storage cask constructed in accordance with the specific cask design approved in that rulemaking. Moreover, each cask design was reviewed and approved by the Commission through the rulemaking for generic use across the United States. By contrast, the NRC licensing determinations, which petitioner's proposals would permit an ESP and COL applicant to reference, are not generic but are limited solely to a consideration of an applicant's proposals and relevant information available at the time of the proposal. Nor did the NRC approve the applicant's proposals with the understanding, and notice to the public, that they would be deemed by rule to be acceptable in a subsequent licensing proceeding for a different facility, without a requirement that their suitability for use in the subsequent licensing action be assessed.

Quality Assurance and Facility Procedure Change Process

The petitioner cites the quality assurance (QA) program change process under § 50.54(a)(3)(ii), and the facility and procedure change process under § 50.59(a)(2)(ii) as examples of situations in which the NRC by rule permits a licensee to implement changes that have been previously approved by the NRC for use by other licensees. *See* petition at p.8.

While the NRC acknowledges that these two regulatory provisions permit a licensee to implement changes that have been previously approved by the NRC

for use by other licensees, these provisions both require that the licensee demonstrate that the proposed change previously approved by the NRC is applicable to the licensee's facility. For example, § 50.54(a)(3)(ii) requires a licensee desiring to make a QA program change to demonstrate that ''the bases of the NRC approval are applicable to the licensee's facility.'' Such a demonstration is not required by proposed § 52.80(b). Therefore, the petitioner's analogy to the implementation of changes without prior NRC approval is not valid for original licensing proceedings.

Conclusion

In conclusion, the petitioner proposes to incorporate by reference existing information for the site and, by so doing, eliminate the need for what it believes is duplicate applicant preparation and NRC review of existing information relating to a licensed facility that has been previously approved by the NRC and has been subject to a public hearing. The Commission is denying the petition because most of the efficiencies and regulatory stability and predictability which are the object of the petitioner's proposal, can be achieved under existing regulations and the guidance that the Commission has directed the staff to prepare. In addition, key aspects of the petition are based on a misapplication of the ''current licensing basis'' concept and the Backfit Rule, and the petition does not represent a viable approach for achieving the desired efficiencies.

For these reasons, the Commission denies the petition.

Dated at Rockville, Maryland, this 26th day of September, 2003.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 03–25094 Filed 10–2–03; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–CE–57–AD]

RIN 2120–AA64

Airworthiness Directives; Cessna Aircraft Company Models 402C and 414A Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); reopening of the comment period.

SUMMARY: This document proposes to revise an earlier proposed airworthiness directive (AD) that would supersede Airworthiness Directive (AD) 2000–23–01, which applies to all Cessna Aircraft Company (Cessna) Model 402C airplanes. AD 2000–23–01 currently requires repetitive inspections of the forward, aft, and auxiliary wing spars for cracks, and repair or replacement as necessary. Cessna has performed fatigue and crack growth analyses of the wings of these airplanes, and the Federal Aviation Administration (FAA) has evaluated this information and determined that a wing spar modification and inspections are necessary on the Model 414A airplanes as well as the Model 402C airplanes. The earlier NPRM would have required you to inspect the wing spar caps for fatigue cracks with any necessary repair or replacement and to incorporate a spar strap modification on each wing spar. We received a request to reopen the comment period for this action in order to allow more time to evaluate the impact of the actions of the proposed AD. Therefore, we are reopening the comment period to allow the public additional time to comment on the proposed AD.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before December 8, 2003.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–CE–57–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: *9-ACE-7-Docket@faa.gov.* Comments sent electronically must contain ''Docket No. 2002–CE–57–AD'' in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may get service information that applies to this proposed AD from the Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, Kansas 67277; telephone: (316) 517–5800; facsimile: (316) 942–9006. You may also view this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Paul Nguyen, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4125; facsimile: (316) 946–4107.

SUPPLEMENTARY INFORMATION:

Comments Invited

How Do I Comment on This Proposed AD?

The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the proposed rule's docket number and submit your comments to the address specified under the caption **ADDRESSES.** We will consider all comments received on or before the closing date. We may amend this proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this proposed AD action and determining whether we need to take additional rulemaking action.

Are There Any Specific Portions of This Proposed AD I Should Pay Attention to?

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this proposed rule that might suggest a need to modify the rule. You may view all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each contact we have with the public that concerns the substantive parts of this proposed AD.

How Can I Be Sure FAA Receives My Comment?

If you want FAA to acknowledge the receipt of your mailed comments, you must include a self-addressed, stamped postcard. On the postcard, write ''Comments to Docket No. 2002–CE–57–AD.'' We will date stamp and mail the postcard back to you.

Discussion

What Events Have Caused This Proposed AD?

Reports of fatigue cracks on Cessna 401, 402, and 411 series airplanes caused FAA to take AD action (AD 79–10–15 R2, Amendment 39–3711) to require repetitive inspections of the right and left wing spar lower cap areas for fatigue cracks and to require wing spar cap repair or replacement as necessary.

Cessna Models 402C and 414A airplanes incorporate a similar design to those airplanes affected by AD 79–10–

15 R2. We issued AD 2000–23–01, Amendment 39–11971 (65 FR 70645, November 27, 2000), to require repetitive inspections of the forward, aft, and auxiliary wing spars for cracks on Cessna Models 402C airplanes with repair or replacement as necessary.

There is no similar AD action addressing the Model 414A airplanes.

Since issuance of AD 79–10–15 and AD 2000–23–01, Cessna has analyzed the wing, including fatigue and crack growth analyses, on the affected airplanes. Analysis included:

- A determination of the probable location and modes of damage based on analytical results, available test data, and service information;
- Classical fatigue analyses;
- Crack growth and residual strength analyses including use of linear elastic fracture mechanics methods;
- Full-scale ground testing to validate analytical models; and
- A flight strain survey to develop stress spectra used in the analyses.

The inspections required by AD 79–10–15 R2 in accordance with Cessna Service Bulletin ME79–16, Revision 3, are accomplished using a surface eddy current inspection method.

Based on the analysis, Cessna has found that the eddy current method will not find the crack until it is .03 inch longer than the critical crack length. When the crack reaches the critical length, it is not reliably detectable because it is under the head of the fastener. Once the main spar cap is severed, the remaining structure will no longer meet the residual strength requirements. Wing separation could then occur under loading conditions significantly less than those established for the design limit load.

Cessna reported only one instance where cracks were detected using the nondestructive inspection (NDI) eddy current procedure. There are other reported instances where cracks were detected visually in the wheel well area on the aft flange. The problem with visual inspections is the access doubler flanges cover a large percentage of the forward spar flange. This limits the effectiveness of the visual inspections.

To meet industry NDI standards, cracks need to be found on Cessna Models 402C and 414A airplanes through NDI inspection methods with a 90-percent probability of detection at a 95-percent confidence level.

Cessna's analysis indicates that the probability and confidence levels are not being met.

What Are the Consequences if the Condition Is Not Corrected?

This condition, if not corrected could result in wing spar cap failure due to undetected fatigue cracks. Such failure could result in loss of a wing with consequent loss of airplane control.

Has FAA Taken Any Action to This Point?

We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all Cessna Models 402C and 414A airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on May 15, 2003 (68 FR 26244). The NPRM proposed to require you to:

- Inspect the wing spar caps for fatigue cracks;
- Repair or replace the wing spar caps as necessary; and
- Incorporate a spar strap modification on each wing spar.

You would have to accomplish the proposed actions in accordance with Cessna Service Bulletin MEB02–05 and Cessna Service Kit SK402–47, both dated June 24, 2002.

Was the Public Invited To Comment?

The FAA encouraged interested persons to participate in the making of this amendment. During the comment period, we received requests to extend the comment period. Consequently, we extended the comment period from August 8, 2003, to September 8, 2003.

We have received an additional comment to extend the comment period an additional 6 months action in order to allow more time to evaluate the impact of the actions of the proposed AD. We have evaluated this request and determined the following:

- An additional 60 days is a more appropriate time than 6 months; and
- Instead of extending the comment period, we will need to reopen the comment period because the comment period ending date has passed.

The Supplemental NPRM

The FAA's Determination?

We have determined that an additional 60 days (total of 150 days) is a reasonable time period to allow the public to comment on the proposed AD. Therefore, we are issuing a supplemental NPRM and reopening the comment period to allow the public additional time to comment.

How Does the Revision to 14 CFR Part 39 Affect This Proposed AD?

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

Cost Impact

How Many Airplanes Would This Proposed AD Impact?

We estimate that this proposed AD affects 656 airplanes in the U.S. registry.

What Would Be the Cost Impact of This Proposed AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish the proposed modification and initial inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
485 workhours × $60 per hour = $29,100 per airplane.	$14,000 per airplane.	$29,100 + $14,000 = $43,100 airplane.	$43,100 × 656 = $28,273,600.

The above figures do not take into account the cost of repetitive inspections. The FAA does not have any way of determining the number of repetitive inspections each owner/operator would incur during the operating life of the affected airplanes.

Regulatory Impact

Would This Proposed AD Impact Various Entities?

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

Would This Proposed AD Involve a Significant Rule or Regulatory Action?

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. FAA amends § 39.13 by removing Airworthiness Directive (AD) 2000–23–01, Amendment 39–11971 (65 FR 70645, November 27, 2000), and by adding a new AD to read as follows:

Cessna Aircraft Company: Docket No. 2002–CE–57–AD; Supersedes AD 2000–23–01, Amendment 39–11971.

(a) *What airplanes are affected by this AD?* This AD affects Models 402C and 414A airplanes, all serial numbers, that are certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent wing spar cap failure due to undetected fatigue cracks. Such failure could result in loss of a wing with consequent loss of airplane control.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must inspect the wing spar caps for fatigue cracks and repair or replace the wing spar caps as necessary and incorporate a spar strap modification on each wing spar in accordance with Cessna Service Bulletin MEB02–5, dated June 24, 2002, and Cessna Service Kit SK402–47, dated June 24, 2002, as follows:

Compliance times	Affected airplanes
(1) Inspect and modify at whichever of the following that occurs later and repair or replace as necessary prior to further flight after the inspection, unless already accomplished (no repetitive actions necessary): (i) Upon accumulating 8,500 hours time-in-service (TIS) on a wing spar; or (ii) Within the next 500 hours TIS after the effective date of this AD or 12 months after the effective date of this AD, whichever occurs first	Cessna Models 402C and 414A airplanes, serial number 414A0001 through 414A0047 and 414A0049 through 414A0200.
(2) Inspect and modify at whichever of the following that occurs first and repair or replace as necessary prior to further flight after the inspection, unless already accomplished (no repetitive actions necessary): (i) Upon accumulating 14,500 hours TIS on a wing spar; (ii) Within the next 500 hours TIS after the effective date of this AD or 12 months after the effective date of this AD, whichever occurs first	Cessna Models 402C and 414A airplanes, serial numbers 414A0201 or through 414A1212.

(e) *Can I comply with this AD in any other way?*

(1) To use an alternative method of compliance or adjust the compliance time, follow the procedures in 14 CFR 39.19. Send these requests to the Manager, Wichita Aircraft Certification Office (ACO). For information on any already approved alternative methods of compliance, contact Paul Nguyen, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4125; facsimile: (316) 946–4107.

(2) Alternative methods of compliance approved in accordance with AD 2000–23–01 and AD 99–11–13 are not approved as alternative methods of compliance with this AD.

(f) *How do I get copies of the documents referenced in this AD?* You may get copies of the documents referenced in this AD from the Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, Kansas 67277; telephone: (316) 517–5800; facsimile: (316) 942–9006. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

(g) *Does this AD action affect any existing AD actions?* This amendment supersedes AD 2000–23–01, Amendment 39–11971.

Issued in Kansas City, Missouri, on September 26, 2003.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–25088 Filed 10–2–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–CE–05–AD]

RIN 2120–AA64

Airworthiness Directives; Cessna Aircraft Company Models 401, 401A, 401B, 402, 402A, 402B, 411, and 411A Airplanes

AGENCY: Federal Aviation Administration, Transportation.

ACTION: Supplemental notice of proposed rulemaking (NPRM); Reopening of the comment period.

SUMMARY: This document proposes to revise an earlier proposed airworthiness directive (AD) that would supersede Airworthiness Directive (AD) 79–10–15

R2, which applies to all Cessna Aircraft Company (Cessna) Models 401, 401A, 401B, 402, 402A, 402B, 411, and 411A airplanes. AD 79–10–15 R2 currently requires repetitive inspections of the right and left wing spar lower cap areas for fatigue cracks and requires wing spar cap repair or replacement as necessary. Cessna has performed fatigue and crack growth analyses of the wings of these airplanes, and the Federal Aviation Administration (FAA) has evaluated this information and determined that a wing spar modification is necessary as well as periodic inspections. The earlier NPRM would have required you to repetitively inspect the wing spar caps for fatigue cracks with any necessary repair or replacement on all airplanes and incorporate a spar strap modification on each wing spar on certain airplanes. We received a request to reopen the comment period for this action in order to allow more time to evaluate the impact of the actions of the proposed AD. Therefore, we are reopening the comment period to allow the public additional time to comment on the proposed AD.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before December 8, 2003.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–CE–05–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: *9-ACE-7-Docket@faa.gov.* Comments sent electronically must contain ''Docket No. 2002–CE–05–AD'' in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may get service information that applies to this proposed AD from the Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, Kansas 67277; telephone: (316) 517–5800; facsimile: (316) 942–9006. You may also view this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Paul Nguyen, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4125; facsimile: (316) 946–4107.

SUPPLEMENTARY INFORMATION:

Comments Invited

How Do I Comment on This Proposed AD?

The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the proposed rule's docket number and submit your comments to the address specified under the caption **ADDRESSES.** We will consider all comments received on or before the closing date. We may amend this proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this proposed AD action and determining whether we need to take additional rulemaking action.

Are There Any Specific Portions of This Proposed AD I Should Pay Attention to?

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this proposed rule that might suggest a need to modify the rule. You may view all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each contact we have with the public that concerns the substantive parts of this proposed AD.

How Can I Be Sure FAA Receives My Comment?

If you want FAA to acknowledge the receipt of your mailed comments, you must include a self-addressed, stamped postcard. On the postcard, write ''Comments to Docket No. 2002–CE–05–AD.'' We will date stamp and mail the postcard back to you.

Discussion

What Events Have Caused This Proposed AD?

Reports of fatigue cracks on Cessna 401, 402, and 411 series airplanes caused FAA to take AD action (AD 79–10–15 R2, Amendment 39–3711) to require repetitive inspections of the right and left wing spar lower cap areas for fatigue cracks and to require wing spar cap repair or replacement as necessary.

Accomplishment of the inspections required by AD 79–10–15 R2 is required in accordance with Cessna Service Bulletin ME79–16, Revision 3, dated February 8, 1980.

AD 79–10–15 R2 allowed for the incorporation of Cessna Service Kit SK402–36 or SK411–56 on the front wing spar lower cap as terminating action for the repetitive inspections on the applicable wing.

Since issuance of AD 79–10–15, Cessna has analyzed the wing, including fatigue and crack growth analyses, on the affected airplanes. Analysis included:

- A determination of the probable location and modes of damage based on analytical results, available test data, and service information;
- Classical fatigue analyses;
- Crack growth and residual strength analyses including use of linear elastic fracture mechanics methods;
- Full-scale ground testing to validate analytical models; and
- A flight strain survey to develop stress spectra used in the analyses.

The inspections required by AD 79–10–15 R2 in accordance with Cessna Service Bulletin ME79–16, Revision 3, are accomplished using a surface eddy current inspection method.

Based on the analysis, Cessna has found that the eddy current method will not find the crack until it is .03 inch longer than the critical crack length. When the crack reaches the critical length, it is not reliably detectable because it is under the head of the fastener. Once the main spar cap is severed, the remaining structure will no longer meet the residual strength requirements. Wing separation could then occur under loading conditions significantly less than those established for the design limit load.

Cessna reported only one instance where cracks were detected using the nondestructive inspection (NDI) eddy current procedure. There are other reported instances where cracks were detected visually in the wheel well area on the aft flange. The problem with visual inspections is the access doubler flanges cover a large percentage of the forward spar flange. This limits the effectiveness of the visual inspections.

To meet industry NDI standards, cracks need to be found on Cessna Models 401, 401A, 401B, 402, 402A, 402B, 411, and 411A airplanes through NDI inspection methods with a 90-percent probability of detection at a 95-percent confidence level.

Cessna's analysis indicates that the probability and confidence levels are not being met.

What Are the Consequences if the Condition Is Not Corrected?

This condition, if not corrected could result in wing spar cap failure due to undetected fatigue cracks. Such failure could result in loss of a wing with consequent loss of airplane control.

Has FAA Taken Any Action to This Point?

We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all Models 401, 401A, 401B, 402, 402A, 402B, 411, and 411A airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on May 15, 2003 (68 FR 26239). The NPRM proposed to require you to either (depending on the aircraft configuration):

• *For airplanes that do not incorporate one of certain Cessna Service Kits:* Repetitively inspect the wing spar caps for fatigue cracks and repair or replace the wing spar caps as necessary and incorporate a spar strap modification on each wing spar; or

• *For airplanes that incorporate one of certain Cessna Service Kits:* Repetitively inspect the wing spar caps for fatigue cracks and repair or replace the wing spar caps as necessary.

You would have to accomplish the proposed actions in accordance with Cessna Service Bulletin MEB01–06 and Cessna Service Kit SK402–46, both dated September 24, 2001; and Cessna Service Bulletin MEB01–07 and Cessna Service Kit SK411–59, both dated September 24, 2001.

Was the Public Invited To Comment?

The FAA encouraged interested persons to participate in the making of this amendment. During the comment period, we received requests to extend the comment period. Consequently, we extended the comment period from August 8, 2003, to September 8, 2003.

We have received an additional comment to extend the comment period an additional 6 months action in order to allow more time to evaluate the impact of the actions of the proposed AD. We have evaluated this request and determined the following:

• An additional 60 days is a more appropriate time than 6 months; and

• Instead of extending the comment period, we will need to reopen the comment period because the comment ending date has passed.

The Supplemental NPRM

The FAA's Determination?

We have determined that an additional 60 days (total of 150 days) is a reasonable time period to allow the public to comment on the proposed AD. Therefore, we are issuing a supplemental NPRM and reopening the comment period to allow the public additional time to comment.

How Does the Revision to 14 CFR Part 39 Affect This Proposed AD?

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

Cost Impact

How Many Airplanes Would This Proposed AD Impact?

We estimate that this proposed AD affects 400 airplanes in the U.S. registry.

What Would Be the Cost Impact of This Proposed AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish the proposed modification and initial inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
485 workhours × $60 per hour = $29,100 per airplane.	$1,763 per airplane	$29,100 + $1,763 = $30,863 per airplane.	$30,863 × 400 = $12,345,200.

The above figures do not take into account the cost of repetitive inspections. The FAA does not have any way of determining the number of repetitive inspections each owner/operator would incur during the operating life of the affected airplanes.

Regulatory Impact

Would This Proposed AD Impact Various Entities?

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

Would This Proposed AD Involve a Significant Rule or Regulatory Action?

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. FAA amends § 39.13 by removing Airworthiness Directive (AD) 79–10–15 R2, Amendment 39–3711, and by adding a new AD to read as follows:

Cessna Aircraft Company: Docket No. 2002–CE–05–AD; Supersedes AD 79–10–15 R2, Amendment 39–3711.

(a) *What airplanes are affected by this AD?* This AD affects Models 401, 401A, 401B, 402, 402A, 402B, 411, and 411A airplanes, all serial numbers, that are certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent wing spar cap failure due to undetected fatigue cracks. Such failure could result in loss of a wing with consequent loss of airplane control.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must repetitively inspect the wing spar caps for fatigue cracks and repair or replace the wing spar caps as necessary and incorporate a spar strap modification (as specified) on each wing spar in accordance with Cessna Service Bulletin MEB01–6 and Cessna Service Kit SK402–46, both dated September 24, 2001; or Cessna Service Bulletin MEB01–7 and Cessna Service Kit SK411–59, both dated September 24, 2001, as follows:

Initial and repetitive compliance times	Affected airplanes
(1) Inspect and modify at whichever of the following that occurs later and repair or replace as necessary prior to further flight after the inspection, unless already accomplished, and repetitively inspect at the intervals specified in paragraphs (d)(3)(i), (d)(3)(ii), and (d)(3)(iii) of this AD: (i) Upon accumulating 5,500 hours time-in-service (TIS) on a wing spar; or (ii) Within the next 200 hours TIS after the effective date of this AD or 12 months after the effective date of this AD, whichever occurs first	Cessna Models 411 and 411A airplanes that do not incorporate Cessna Service Kit SK411–56, SK411–56A, or SK411–56B.
(2) Inspect and modify at whichever of the following that occurs first and repair or replace as necessary prior to further flight after the inspection, unless already accomplished, and repetitively inspect at the intervals specified in paragraphs (d)(4)(i) and (d)(4)(ii) of this AD: (i) Upon accumulating 6,500 hours TIS on a wing spar; or (ii) Within the next 200 hours TIS after the effective date of this AD or 12 months after the effective date of this AD, whichever occurs first	Cessna Models 401, 401A, 401B, 402, 402A, and 402B airplanes that do not incorporate Cessna Service Kit SK402–36, SK402–36B, or SK402–36C.
(3) Inspect in the following areas (modification not required for these airplanes) and repair or replace as necessary prior to further flight after the inspection where cracks are found. Inspection areas are defined in the Cessna Model 411 Supplemental Inspection Document (SID): (i) *Area "A" (Inspection ID 57–10–11):* Initially upon accumulating 5,400 hours TIS after incorporating the applicable service kit on a wing spar or within the next 100 hours TIS after the effective date of this AD, whichever occurs later, unless already accomplished, and thereafter at intervals not to exceed 2,500 hours TIS (ii) *Area "B" (Inspection ID 57–10–12):* Initially upon accumulating 5,400 hours TIS after incorporating the applicable service kit on a wing spar or within the next 100 hours TIS after the effective date of this AD, whichever occurs later, unless already accomplished, and thereafter at intervals not to exceed 1,000 hours TIS (iii) *Area "C" (Inspection ID 57–10–08):* Upon accumulating 19,900 hours TIS after incorporating the applicable service kit on a wing spar or within the next 100 hours TIS after the effective date of this AD, whichever occurs later, unless already accomplished, and thereafter at intervals not to exceed 2,000 hours TIS	Cessna Models 411 and 411A airplanes that incorporate Cessna Service Kit SK411–56, SK–411–56A, SK411–56B, or SK411–59. This includes airplanes that had Cessna Service Kit SK411–59 incorporated as required by paragraph (d)(1) of this AD.
(4) Inspect in the following areas (modification not required for these airplanes) and repair or replace as necessary prior to further flight after the inspection. Inspection areas are defined in the Cessna Model 401/402 Supplemental Inspection Document (SID): (i) *Area "A" (Inspection ID 57–10–11) and Area "B" (Inspection ID 57–10–12):* Initially upon accumulating 7,400 hours TIS after incorporating the applicable service kit on a wing spar or within the next 100 hours TIS after the effective date of this AD, whichever occurs later, unless already accomplished, and thereafter at intervals not to exceed 5,000 hours TIS (ii) *Area "C" (Inspection ID 57–10–08):* Initially upon accumulating 19,900 hours TIS after incorporating the applicable service kit on a wing spar or within the next 100 hours TIS after the effective date of this AD, whichever occurs later, unless already accomplished, and thereafter at intervals not to exceed 2,500 hours TIS	Cessna Models 401, 401A, 401B, 402, 402A, and 402B airplanes that incorporate Cessna Service Kit SK402–36, SK402–36A, SK402–36B, SK402–36C, or SK402–46. This includes airplanes that had Cessna Service Kit SK402–46 incorporated as required by paragraph (d)(2) of this AD.

(e) *Can I comply with this AD in any other way?*

(1) To use an alternative method of compliance or adjust the compliance time, follow the procedures in 14 CFR 39.19. Send these requests to the Manager, Wichita Aircraft Certification Office (ACO). For information on any already approved alternative methods of compliance, contact Paul Nguyen, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4125; facsimile: (316) 946–4107.

(2) Alternative methods of compliance approved in accordance with AD 79–10–15 R2, which is superseded by this AD, are not approved as alternative methods of compliance with this AD.

(f) *How do I get copies of the documents referenced in this AD?* You may get copies of the documents referenced in this AD from the Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, Kansas 67277; telephone: (316) 517–5800; facsimile: (316) 942–9006. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

(g) *Does this AD action affect any existing AD actions?* This amendment supersedes AD 79–10–15 R2, Amendment 39–3711.

Issued in Kansas City, Missouri, on September 26, 2003.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–25089 Filed 10–2–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

[KY–245–FOR]

Kentucky Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We are announcing the proposed removal of a required amendment to the Kentucky regulatory program (The ''Kentucky program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or ''the Act''). We are seeking comments on whether a policy letter received from the State meets the requirements of the required amendment, thereby eliminating the need for a change in the Kentucky program.

This document gives the times and locations that the Kentucky program and proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4 p.m., e.s.t. November 3, 2003. If requested, we will hold a public hearing on the amendment on October 28, 2003. We will accept requests to speak at a hearing until 4 p.m., e.s.t. on October 20, 2003.

ADDRESSES: You should mail or hand deliver written comments and requests to speak at the hearing to Mr. William J. Kovacic at the address listed below.

You may review copies of the Kentucky program, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays.

William J. Kovacic, Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 2675 Regency Road, Lexington, Kentucky 40503, Telephone: (859) 260–8400. E-mail: *bkovacic@osmre.gov.*

Carl E. Campbell, Commissioner, Natural Resources and Environmental Protection Cabinet, Department for Surface Mining Reclamation and Enforcement, 2 Hudson Hollow Complex, Frankfort, Kentucky 40601, Telephone: (502) 564–6940.

FOR FURTHER INFORMATION CONTACT: William J. Kovacic, Telephone: (859) 260–8400. Internet: *bkovacic@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Kentucky Program
II. Description of the Proposed Amendment
III. Public Comment Procedures
IV. Procedural Determinations

I. Background on the Kentucky Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, ''a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * *;'' and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act. See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Kentucky program on May 18, 1982. You can find background information on the Kentucky program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Kentucky program in the May 18, 1982, **Federal Register** (47 FR 21434). You can also find later actions concerning Kentucky's program and program amendments at 30 CFR 917.11, 917.12, 917.13, 917.15, 917.16, and 917.17.

II. Description of the Proposed Amendment

The required amendment at 30 CFR 917.16(k) reads as follows:

> By October 1, 1993, Kentucky shall submit to OSM either proposed amendments or a schedule for the submission of proposed amendments to Kentucky Administrative Regulations to require that the assessment conference officer's report mentioned in 405 KAR 7:092 section 4(5) be served in a manner consistent with 405 KAR 7.091 section 5, and to specify that the time allowed under 405 KAR 7:092 section 6(1)(b) to file a petition for administrative review of the proposed penalty set forth in the conference officer's report does not begin to run until service is obtained in this manner.

On April 3, 2003 (Administrative Record No. KY 1576), we received a letter from the Office of Administrative Hearings, Kentucky Natural Resources and Environmental Protection Cabinet, requesting that its policy of requiring all conference officers' reports be sent by certified mail be considered by us as fulfilling the requirements of the above-mentioned amendment. Included in its letter was a copy of a memorandum, dated April 2, 2002 (Administrative Record No. KY–1576), sent to the Hearing Officer and Assessment Conference Officer which reminded it of this requirement and its relationship to the Federal provisions for service of penalty assessment reports (Administrative Record No. KY–1576).

We are thus seeking public comment on whether Kentucky's policy as described meets the terms of the required amendment.

III. Public Comment Procedures

Written Comments

Send your written or electronic comments to OSM at the address given above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We will not consider or respond to your comments when developing the final rule if they are received after the close of the comment period (*see* **DATES**). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the Lexington Field Office may not be logged in.

Electronic Comments

Please submit Internet comments as an ASCII or Word file avoiding the use of special characters and any form of encryption. Please also include ''Attn: SATS No. KY–245–FOR'' and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Lexington Field Office at (859) 260–8400.

Availability of Comments

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their

request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their 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 review in their entirety.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., e.s.t. on October 20, 2003. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT.** We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by Section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA. Section 503(a)(7) requires that State programs contain rules and regulations ''consistent with'' regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. This proposed rule applies only to the Kentucky program and therefore does not affect tribal programs.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of Section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior 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.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in

costs or prices for consumers, individual industries, Federal, State, or local governmental agencies or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 917

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 18, 2003.

Brent Wahlquist,

Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 03–25055 Filed 10–2–03; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[I.D. 092403I]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery Management Plan; Red Grouper Fishery of the Gulf of Mexico; Environmental Assessment for Secretarial Amendment 1

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

ACTION: Notice announcing preparation of an environmental assessment (EA).

SUMMARY: NOAA Fisheries is preparing an EA, in accordance with the National Environmental Policy Act (NEPA), for Secretarial Amendment 1 to the Reef Fish FMP.

FOR FURTHER INFORMATION CONTACT: Phil Steele, telephone: 727–570–5305, fax: 727–570–5583, e-mail: *Phil.Steele@noaa.gov*

SUPPLEMENTARY INFORMATION: Red grouper in the Gulf of Mexico were declared to be overfished and undergoing overfishing by NOAA Fisheries in October 2000. Secretarial Amendment 1 was developed to establish a rebuilding plan. As the actions being considered were likely to have significant social and economic impacts under NEPA, a Draft Supplemental Environmental Impact Statement (DSEIS) was planned instead of initially preparing a less comprehensive EA. A Notice of Intent to prepare this DSEIS was published in the **Federal Register** on February 15, 2002 (32 FR 7123).

In September 2002, the Council's Reef Fish Stock Assessment Panel reviewed a new red grouper stock assessment prepared by the Southeast Fishery Science Center. The 2002 assessment confirmed the previous conclusion that red grouper were overfished in 1997, but found that the stock was in an improved condition by 2001. However, it had not yet reached the level needed to produce maximum sustainable yield on a continuing basis (B_{MSY}). Therefore, a rebuilding plan is still needed. Because the current (2001) stock biomass is closer to B_{MSY} than the biomass in 1997, a less restrictive rebuilding plan is needed to attain B_{MSY} within 10 years or less. The original version of this Secretarial Amendment proposed a rebuilding plan divided into 3–year intervals. For the first 3–year interval, the original plan called for a 45–percent reduction from the 1990–2001 average harvest, with harvest levels in subsequent years to be determined by future stock assessments. In the current version, a 9.5–percent reduction from the 1999–2001 average harvest is the first 3–year target.

The proposed actions in Secretarial Amendment 1 are not presently expected to have a significant impact on the human environment. Consequently, NOAA Fisheries is initially preparing an EA, rather than proceeding directly to a DSEIS, in support of Secretarial Amendment 1 to the Reef Fish FMP. If the EA results in a Finding of No Significant Impact (FONSI), the EA and FONSI will be the final environmental documents required by NEPA. If the EA reveals that significant environmental impacts may be reasonably expected to result from the proposed actions, NOAA Fisheries will prepare a DSEIS to further evaluate those impacts.

This announcement is intended to inform the public of the change from preparation of a DSEIS to preparation of an EA for Secretarial Amendment 1 to the Reef Fish FMP.

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

Dated: September 29, 2003.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–25147 Filed 10–2–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[I.D. 092403H]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Proposed Amendment 13 to the Fishery Management Plan (FMP) for the Shrimp Fishery of the Gulf of Mexico; Notice of Preparation of Environmental Assessment

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

ACTION: Notice announcing preparation of an environmental assessment (EA).

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) intends to prepare an EA, in accordance with the National Environmental Policy Act (NEPA), for Amendment 13 to the Shrimp FMP.

FOR FURTHER INFORMATION CONTACT: Phil Steele, telephone: 727–570–5305, fax: 727–570–5583, e-mail: *Phil.Steele@noaa.gov*.

SUPPLEMENTARY INFORMATION: The proposed actions in Amendment 13 would establish a bycatch reporting methodology, as well as status criteria and benchmarks such as maximum sustainable yield, optimum yield, minimum stock size threshold, and maximum fishing mortality threshold, for penaeid and Royal Red shrimp stocks in the Gulf of Mexico. These actions were originally combined with other actions the Council was evaluating in Amendment 13 to the Shrimp FMP. However, this earlier Amendment 13 had become very complicated with the addition of measures to reduce effort and alternatives for a bycatch quota. The highest priorities were the establishment of status criteria and

benchmarks, and development of a standardized bycatch reporting methodology. At the May 2003 meeting, the Council voted to move all other parts of Amendment 13 into Amendment 14. Amendment 14 includes alternatives for vessel permits, effort reduction, bycatch quotas and improvement of collection of effort data.

As some of the requirements being considered in the original Amendment 13 were likely to have significant social and economic impacts under NEPA, a Notice of Intent to prepare a Draft Supplemental Environmental Impact Statement (DSEIS) was published in the **Federal Register** on August 19, 2002 (67 FR 53769). Once Amendment 14 was created, however, these requirements were moved into the new amendment.

The proposed actions remaining in Amendment 13 are not presently expected to have a significant impact on the human environment. Consequently, an EA will initially be prepared rather than proceeding directly with a DSEIS. If the EA results in a Finding of No Significant Impact (FONSI), the EA and FONSI will be the final environmental documents required by NEPA. If the EA reveals that significant environmental impacts may be reasonably expected to result from the proposed actions, the Council will prepare a DSEIS to further evaluate those impacts.

This document is intended to inform the public of the change from the direct preparation of a DSEIS to the initial preparation of an EA for Amendment 13 to the Shrimp FMP.

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

Dated: September 29, 2003.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–25148 Filed 10–2–03; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 68, No. 192

Friday, October 3, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

South Manti Timber Salvage; Manti-La Sal National Forest, Sanpete and Sevier Counties, UT

AGENCY: Forest Service, USDA.

ACTION: Revised notice of intent to prepare environmental impact statement.

SUMMARY: On March 14, 2002, U.S. District Court Judge Dale A. Kimball issued an adverse opinion that affected the South Manti Timber Salvage project (Record of Decision was signed by acting Forest Supervisor, Crockett Dumas, on May 22, 2000). Based upon this decision, it was determined that another NEPA analysis and decision (non-significant Forest Plan Amendment) would be made to evaluate blue grouse as a Management Indicator Species (MIS) and to replace with the northern gashawk before the Forest made another decision related to the South Manti Timber Salvage project. The Forest has developed an non-significant Forest Plan Amendment that was signed on June 16, 2003. This Amendment changed one MIS from the blue grouse to the northern gashawk.

On March 20, 2003, a team met to review the existing document relative to section 18 of the Forest Service NEPA Handbook. Consequently, the Forest is developing an addendum to the Final Environmental Impact Statement (FEIS) to make simple corrections and update the document.

FOR FURTHER INFORMATION CONTACT: Please contact Doug Jones, Timber Program Manager and Team Leader, Manti-La Sal National Forest, phone (435) 636–2817.

SUPPLEMENTARY INFORMATION: Due to the court decision, the implementation of this project has been substantially delayed. It is anticipated that a new decision will be completed by December of 2003. It has not been determined if additional public scoping will be completed. If additional scoping is necessary, a legal notice will be printed in the paper of record and the original commenters will be contacted. The deciding official will be Alice Carlton. In the new decision, there will be no entry into any Inventorized Roadless Areas. This action will amend the original NOI dated February 17, 1998 (volume 63, No. 31).

Dated: July 16, 2003.

Melissa Blackwell,

Acting Forest Supervisor, Manti-La Sal National Forest.

[FR Doc. 03–25129 Filed 10–2–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Meeting of the Land Between the Lakes Advisory Board

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Land Between the Lakes Advisory Board will hold a meeting on Thursday, October 23, 2003. Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

The meeting agenda includes the following:

(1) Welcome/Introductions/Agenda.

(2) LBL Land and Resource Management Plan (LRMP).

(3) Environmental Education Programs.

(4) Board Discussion of Comments Received.

(5) Update on LBL Activities.

The meeting is open to the public. Written comments are invited and may be mailed to: William P. Lisowsky, Area Supervisor, Land Between the Lakes, 100 Van Morgan Drive, Golden Pond, Kentucky 42211. Written comments must be received at Land Between The Lakes by October 15, 2003, in order for copies to be provided to the members at the meeting. Board members will review written comments received, and at their request, oral clarification may be requested at a future meeting.

DATES: The meeting will be held on Thursday, October 23, 2003, 8:30 a.m. to 12:30 p.m., CDT.

ADDRESSES: The meeting will be held at Kenlake State Resort Park, Aurora, KY, and will be open to the public.

FOR FURTHER INFORMATION CONTACT: Sharon Byers, Advisory Board Liaison, Land Between the Lakes, 100 Van Morgan Drive, Golden Pond, Kentucky 42211, 270–924–2002.

SUPPLEMENTARY INFORMATION: None.

Dated: September 23, 2003.

William P. Lisowsky,

Area Supervisor, Land Between The Lakes.

[FR Doc. 03–25080 Filed 10–2–03; 8:45 am]

BILLING CODE 3410–11–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from procurement list.

SUMMARY: The Committee is proposing to add to the Procurement List products and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete products previously furnished by such agencies.

Comments Must be Received on or Before: November 2, 2003.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice for each product or service will be required to procure the products and service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and service to the Government.

2. If approved, the action will result in authorizing small entities to furnish the products and service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and service proposed for addition to the Procurement List. Comments on this certification are invited.

Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following products and service are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Products

Product/NSN: CD/DVD Label Kit and Refills, 7530–00–NIB–0660 (Kit)
7530–00–NIB–0688 (Refill)
NPA: North Central Sight Services, Inc., Williamsport, Pennsylvania
Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York.
Product/NSN: Dustpan and Brush Set M.R. 1020
NPA: The Lighthouse for the Blind, Inc. (Seattle Lighthouse), Seattle, Washington
Contract Activity: Defense Commissary Agency (DeCA), Ft. Lee, VA
Product/NSN: GOJO/SKILCRAFT Hair & Body Shampoo
8520–00–NIB–0028, 800 mL
8520–00–NIB–0029, 2000 mL
8520–00–NIB–0066, 1000 mL
Product/NSN: GOJO/SKILCRAFT Lotion Hand Soap
8520–00–NIB–0012, 12 oz.
8520–00–NIB–0024, 800 mL
8520–00–NIB–0025, 2000 mL
8520–00–NIB–0065, 1000 mL
Product/NSN: GOJO/SKILCRAFT Natural Orange Hand Cleaner with Pumice
8520–00–NIB–0069, .5 Gal
8520–00–NIB–0070, 1 Gal
Product/NSN: MICRELL/SKILCRAFT Antibacterial Hand Soap
8520–00–NIB–0010, 800 mL
8520–00–NIB–0027, 2000 mL
8520–00–NIB–0067, 1000 mL
Product/NSN: PURELL/SKILCRAFT Instant Hand Sanitizer
8520–00–NIB–0008, 800 mL
8520–00–NIB–0017, 2 oz.
8520–00–NIB–0058, 1000 mL
Product/NSN: PURELL/SKILCRAFT Instant Hand Sanitizer with Aloe 8520–00–NIB–0060, 4.25 oz.
8520–00–NIB–0061, 12 oz.
8520–00–NIB–0062, 800 mL
8520–00–NIB–0063, 1000 mL
Product/NSN: GOJO/SKILCRAFT Wall Dispenser
4510–00–NIB–0001, 800 mL
4510–00–NIB–0002, 2000 mL
4510–00–NIB–0003, 1000 mL
4510–00–NIB–0007, 1000 mL
4510–00–NIB–0008, 800 mL
4510–00–NIB–0009, 2000 mL
Product/NSN: PURELL/SKILCRAFT Wall Dispenser
4510–00–NIB–0005, 1000 mL
4510–00–NIB–0006, 1000 mL
NPA: Travis Association for the Blind, Austin, Texas
Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York
Product/NSN: Hydration On-the-Move System
8465–00–NIB–0071, Bravo 70 oz Woodland
8465–00–NIB–0072, Bravo 70 oz Desert
8465–00–NIB–0073, Bravo 70 oz Black Night Ops
8465–00–NIB–0074, Delta 100 oz Woodland
8465–00–NIB–0075, Delta 100 oz Desert
8465–00–NIB–0076, Delta 100 oz Black Night Ops
8465–00–NIB–0077, Alpha 120 oz Woodland
8465–00–NIB–0078, Alpha 120 oz Desert
8465–00–NIB–0079, Alpha 120 oz Black Night Ops
8465–00–NIB–0092, Warrior 100 oz Woodland
8465–00–NIB–0093, Warrior 100 oz Desert
8465–00–NIB–0094, Warrior 100 oz Black Night Ops
8465–00–NIB–0095, Sierra 100 oz Woodland
8465–00–NIB–0096, Sierra 100 oz Desert
8465–00–NIB–0097, Sierra 100 oz Black Night Ops
Product/NSN: Canteen, One Quart, Flexible
8465–00–NIB–0041, Echo 1 qt
NPA: The Lighthouse for the Blind, Inc. (Seattle Lighthouse), Seattle, Washington
Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York
Product/NSN: Safety-Walk, Tapes & Treads
7220–00–NIB–0022, 710 Black Coarse Tape
7220–00–NIB–0031, 710 Black Coarse Tape
7220–00–NIB–0032, 610 Black General Purpose
7220–00–NIB–0046, 630 Yellow General Purpose
7220–00–NIB–0053, 510 Black Conformable
7220–00–NIB–0054, 510 Black Conformable
7220–00–NIB–0061, 530 Yellow Conformable
7220–00–NIB–0065, 310 Black Medium Resilient
7220–00–NIB–0075, 370 Gray Medium Resilient
7220–00–NIB–0136, 710 Black Coarse Tape
7220–00–NIB–0137, 610 Black General Purpose
7220–00–NIB–0138, 620 Clear General Purpose
7220–00–NIB–0139, 630 Yellow General Purpose
7220–00–NIB–0140, 660 Brown General Purpose
7220–00–NIB–0141, 510 Black Conformable
7220–00–NIB–0142, 520 Yellow Conformable
7220–00–NIB–0143, 310 Black Medium Resilient
7220–00–NIB–0144, 370 Gray Medium Resilient
NPA: Louisiana Association for the Blind, Shreveport, Louisiana
Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York.

Service

Service Type/Location: Grounds Maintenance, Darnall Army Community Hospital/Clinics (Buildings 420, 2242, 2245, 2255, 2250, 7015, 9440, 56503, 4222, 33001, 33003, 39033, 4441, 4909, 76022, 90043, 36000, 36001, 36007, 36014, 36017) Fort Hood, Texas
NPA: Professional Contract Services, Inc., Austin, Texas
Contract Activity: III Corps and Fort Hood Contracting Command, Fort Hood, Texas

Deletions

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. If approved, the action will result in authorizing small entities to furnish the products to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products proposed for deletion from the Procurement List.

End of Certification

The following products are proposed for deletion from the Procurement List:

Products

Product/NSN: Cleaner, Water Soluble
6840–01–367–2913
7930–01–367–2964
7930–01–367–2967
7930–01–367–2968
7930–01–367–2970
NPA: Association for the Blind & Visually Impaired & Goodwill Industries of Greater Rochester, Rochester, New York
Contract Activity: GSA, Southwest Supply Center, Fort Worth, Texas

Product/NSN: Clipboard File 7520–01–439–3404
NPA: Industries of the Blind, Inc., Greensboro, North Carolina
Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York

Sheryl D. Kennerly,
Director, Information Management.
[FR Doc. 03–25156 Filed 10–2–03; 8:45 am]
BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from procurement list.

SUMMARY: This action adds to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List products previously furnished by such agencies.

EFFECTIVE DATE: November 2, 2003.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION:

Additions

On July 25, August 1, 2003, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (68 FR 44039, 45217) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services and impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action will result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

End of Certification

Accordingly, the following services are added to the Procurement List:

Services

Service Type/Location: Administrative Service, Federal Office Building, Martinsburg, West Virginia.
NPA: Job Squad, Inc., Clarksburg, West Virginia.
Contract Activity: GSA, PBS, Mid Atlantic Region (3PKC), Philadelphia, Pennsylvania.
Service Type/Location: Janitorial/Custodial, Bureau of Land Management, Salt Lake Field Office and Warehouse, Salt Lake City, Utah.
NPA: Community Foundation for the Disabled, Inc., Salt Lake City, Utah.
Contract Activity: Bureau of Land Management—Utah State Office, Salt Lake City, Utah.
Service Type/Location: Janitorial/Grounds Maintenance, Veterans Affairs Regional Office, Montgomery, Alabama.
NPA: Lakeview Center, Inc., Pensacola, Florida.
Contract Activity: Veterans Affairs Regional Office, Montgomery, Alabama.

Deletions

On August 1, 2003, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (68 FR 45218) of proposed deletions to the Procurement List. After consideration of the relevant matter presented, the Committee has determined that the products listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action may not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the products to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products deleted from the Procurement List.

End of Certification

Accordingly, the following products are deleted from the Procurement List:

Products

Product/NSN: Cushion, Chair, 7210–00–205–1173, 7210–00–205–1175.
NPA: None currently authorized.
Contract Activity: GSA, Southwest Supply Center, Fort Worth, Texas.
Product/NSN: Gown, Patient Examining, 6532–00–421–7828.
NPA: Riverside Industries, Inc., Easthampton, Massachusetts.
Contract Activity: Defense Supply Center Philadelphia, Philadelphia, Pennsylvania.
Product/NSN: Sheet, Bed—Disposable, 7210–00–144–6082.
NPA: Riverside Industries, Inc., Easthampton, Massachusetts.
Contract Activity: Defense Supply Center Philadelphia, Philadelphia, Pennsylvania.

Sheryl D. Kennerly,
Director, Information Management.
[FR Doc. 03–25157 Filed 10–2–03; 8:45 am]
BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1300]

Approval for Expanded Manufacturing Authority (Motor Vehicles), Foreign-Trade Subzone 98A; Mercedes-Benz U.S. International, Inc., Tuscaloosa County, AL

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the City of Birmingham, Alabama, grantee of Foreign-Trade Zone 98, has requested authority on behalf of Mercedes-Benz U.S. International, Inc. (MBUSI), operator of FTZ 98A, at the MBUSI motor vehicle manufacturing plant in Tuscaloosa County, Alabama, to expand the scope of manufacturing authority to include new manufacturing capacity under FTZ procedures (FTZ Doc. 59–2002, filed 12–17–2002);

Whereas, notice inviting public comment was given in the **Federal Register** (67 FR 79046, 12–27–2002);

Whereas, the Board adopts the findings and recommendations of the

examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now Therefore, the Board hereby approves the request, subject to the FTZ Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC this 17th day of 2003.

James J. Jochum,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 03–25161 Filed 10–2–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1301]

Grant of Authority for Subzone Status; Lion Oil Company (Oil Refinery Complex), El Dorado, AR

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for ''* * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

Whereas, the Arkansas Department of Economic Development, grantee of Foreign-Trade Zone 14, has made application to the Board for authority to establish special-purpose subzone status at the oil refinery complex of Lion Oil Company, located in El Dorado, Arkansas (FTZ Docket 2–2003, filed 1/15/03);

Whereas, notice inviting public comment was given in the **Federal Register** (68 FR 4167, 1/28/03); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations would be satisfied, and that approval of the application would be in the public interest if approval is subject to the conditions listed below;

Now, therefore, the Board hereby grants authority for subzone status at the oil refinery complex of Lion Oil Company, located in El Dorado, Arkansas (Subzone 14D), at the locations described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28, and subject to the following conditions:

1. Foreign status (19 CFR 146.41, 146.42) products consumed as fuel for the petrochemical complex shall be subject to the applicable duty rate.

2. Privileged foreign status (19 CFR 146.41) shall be elected on all foreign merchandise admitted to the subzone, except that non-privileged foreign (NPF) status (19 CFR 146.42) may be elected on refinery inputs covered under HTSUS Subheadings #2709.00.10, #2709.00.20, #2710.11.25, #2710.11.45, #2710.19.05, #2710.19.10, #2710.19.45, #2710.91.00, #2710.99.05, #2710.99.10, #2710.99.16, #2710.99.21 and #2710.99.45 which are used in the production of:

—Petrochemical feedstocks (examiners report, Appendix ''C'');
—products for export;
—and, products eligible for entry under HTSUS # 9808.00.30 and # 9808.00.40 (U.S. Government purchases).

Signed at Washington, DC this 17th day of September 2003.

James J. Jochum,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 03–25162 Filed 10–2–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 47–2003]

Foreign-Trade Zone 37—Orange County, New York; Request for Manufacturing Authority, Minolta Advance Technology, Inc. (Toner Products)

An application has been submitted to the Foreign-Trade Zones Board (the Board) by Orange County, New York, grantee of FTZ 37, on behalf of Minolta Advance Technology, Inc. (Minolta), requesting authority to manufacture bulk toner and toner cartridges under FTZ procedures within FTZ 37—Site 7. The application was formally filed on September 23, 2003.

The Minolta facility is located at (1 bldg., 88,039 sq. ft. (with a possible 125,000 sq. ft. to be added in the future) on 19.2 acres). The plant (40 employees) produces bulk toner (HTSUS 3707, 6.5%), toner cartridges for computer printers (HTSUS 8473, duty-free) and photocopiers (HTSUS 9009, duty-free to 3.7%), and remanufactures toner cartridges (HTSUS 8473 and HTSUS 9009, duty-free to 3.7%).

Foreign-sourced materials will account for some 40–80 percent of finished product value, and may include items from the following general categories: inorganic acids; artificial corundum; aluminum oxide; iron oxides; silicates; organo-sulfur compounds; heterocyclic compounds; other organic compounds; artificial and prepared waxes; chemical preparations for photographic uses, propylene/styrene/acrylic polymers; polyacetals; self-adhesive sheets/plates of plastics; other sheets/plates of plastics; plastic lids/stoppers; articles of vulcanized rubber, belts; paper and paperboard; cartons; paper; printed booklets and leaflets; seals and tapes for cartridges; aluminum foils; records, tapes and other recorded media; parts and accessories (other than carrying cases) for use with machines under HTSUS 8469 to 8472; parts sutiable for use with apparatus of HTSUS 8525 or 8528; electrical apparatus for switching or protecting electrical circuits.

Zone procedures would exempt Minolta from Customs duty payments on foreign materials used in production for export. Some 12 percent of the plant's shipments are currently exported and are projected to increase to some 30 percent in the future. On domestic sales, the company would be able to choose the duty rates that apply to the finished products (primarily duty-free, and some up to 6.5%), rather than the duty rates that would otherwise apply to the foreign-sourced materials noted above (duty-free to 8 percent, weighted average 6.5%). At the outset, the company is requesting to manufacture toner cartridges for multi-function printers (HTSUS 8473.40.8000, duty-free) from bulk toner (HTSUS 3707.90.3290, 6.5%) sourced abroad. The application indicates that the savings from zone procedures will help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the

Board's Executive Secretary at one of the following addresses:

1. Submissions Via Express/Package Delivery Services: Foreign-Trade-Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th St. NW., Washington, DC 20005; or

2. Submissions Via the U.S. Postal Service: Foreign-Trade-Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Ave. NW., Washington, DC 20230.

The closing period for their receipt is December 2, 2003. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to December 17, 2003).

A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at address Number 1 listed above, and at the U.S. Department of Commerce Export Assistance Center, 707 Westchester Avenue, Suite 209, White Plains, New York 10604.

Dated: September 23, 2003.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 03–25163 Filed 10–2–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 49–2003]

Foreign-Trade Zone 171—Liberty County, TX, Area; Application for Expansion

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the Liberty County Economic Development Corporation, grantee of Foreign-Trade Zone 171, requesting authority to expand FTZ 171, in the Liberty County, Texas, area, adjacent to the Houston Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on September 24, 2003.

FTZ 171 was approved on January 4, 1991 (Board Order 501, 56 FR 1166, 1/11/91) and was expanded on August 9, 1999 (Board Order 1049, 64 FR 46181, 8/24/99) and April 15, 2002 (Board Order 1225, 67 FR 20087, 4/24/02). The zone project currently consists of the following sites: *Site 1* (150 acres)—City of Cleveland's International Industrial Park, on Highway FM 2025, west of U.S. Highway 59; *Site 2* (45 acres)—Port of Liberty County Industrial Park, located on the Trinity River; *Site 3* (27 acres)—industrial park on the Trinity River, some 2 miles south of U.S. Highway 90, City of Liberty; *Site 4* (24 acres)—within the Cleveland Municipal Airport facility, Highway FM 787, Liberty County; *Site 5* (583 acres)—Sjolander Plastics Storage Railyard facility, adjacent to Highway 146, approximately 2 miles south of Dayton (Liberty County); and, *Site 6* (200 acres, 3 parcels)—located between West Bay Road and FM 1405, within the western portion of the 15,000-acre Cedar Crossing Industrial Park in the City of Baytown (Chambers County).

The applicant is now requesting authority to expand the general-purpose zone to include three additional sites (306 acres) in Huntsville (Walker County), Texas: *Proposed Site 7* (200 acres)—75 South Industrial Park, adjacent to Highway 75 and Interstate 45, Huntsville; *Proposed Site 8* (103 acres)—75 North Industrial Park, adjacent to Highway 75 and Interstate 45, Huntsville; and, *Proposed Site 9* (3 acres)—M&M Designs Industrial Park, 1981 Quality Boulevard, Huntsville. All three sites are located within a State-sponsored Enterprise Zone. No specific manufacturing authority is being requested at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the addresses below:

1. Submissions via Express/Package Delivery Services: Foreign-Trade Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099—14th Street, NW., Washington, DC 20005; or

2. Submissions via the U.S. Postal Service: Foreign-Trade Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Avenue, NW., Washington, DC 20230.

The closing period for their receipt is December 2, 2003. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to December 17, 2003).

A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at the first address listed above, and at the U.S. Department of Commerce Export Assistance Center, 15600 John F. Kennedy Boulevard, Suite 530, Houston, Texas 77032.

Dated: September 24, 2003.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 03–25164 Filed 10–2–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

[Docket No. 02–BXA–02

In the Matter of: Adbulamir Mahdi, aka Amir Mahdi and aka Jasin Khafaf, 20 Huntingwood Drive, Carborough, Ontario, Canada, M1W1A2 and Ots Refining Equipment Corporation, 7030 Woodbine Avenue, NE., Suite 500, Markham, Ontario, Canada L3R 6G2, Respondents

Decision and Order

On November 22, 2002, the Bureau of Industry and Security (BIS) [1] issued an amended charging letter against the respondents, Abdulamir Mahdi, also known as Amir Mahdi and Jasin Khafaf (''Mahdi''), and OTS Refining Equipment Corporation (OTS), that alleged six violations of the Export Administration Regulations (EAR).[2] The charges are related to the export of U.S.-origin oil filed equipment to Iran through Canada. The specific charges as amended were: (1) One charge under section 764.2(d) of the EAR of conspiring to export the equipment to Iran without the required authorization from the U.S. Government; (2) two charges under § 764.2(a) of the EAR of making such unauthorized exports to Iran; (3) one charge under § 764.2(c) of the EAR of soliciting or attempting an unauthorized export to Iran; (4) one charge under § 764.2(g) of the EAR of making a false statement on a Shipper's Export Declaration; and (5) one charge under § 764.2(e) of the EAR of transferring and forwarding goods to Iran with knowledge that the items were exported from the United States in violation of the EAR. See BIS Amended Charging Letter of November 22, 2002.

On September 6, 2002, the ALJ issued an order that granted in part BIS's motion for summary decision. That

[1] The Bureau of Industry and Security was formerly known as the Bureau of Export Administration. The name of the Bureau was changed pursuant to an order assigned by the Secretary of Commerce on April 16, 2002.

[2] The Export Administration Regulations are codified at 15 CFR 730–799.

order found Mahdi liable on the conspiracy charged based on the collateral estoppel effect of his prior criminal conviction for conspiracy. BIS's motion for summary decision was denied on other charges. See ALJ Order of September 6, 2002.

On May 13, 2003, the ALJ conducted an evidentiary hearing in this matter. On August 26, 2003, the ALJ issued a Recommended Decision and Order, in which he found that Mahdi and OTS each committed the six violations described above. The ALJ also recommended the denial of the export privileges of Mahdi and OTS for 20 years. See Recommended Decision and Order of August 26, 2003.

Pursuant to § 766.22 of the EAR, the ALJ's Recommended Decision and Order has been referred to me for final action. Based on my review of the entire record, I find that the record supports the ALJ's findings of fact and conclusions of law regarding each of the above-referenced charges. I also find that the penalty recommended by the ALJ is appropriate, given the nature of the violations, the scope of the respondent's efforts to make unauthorized exports, and the importance of preventing future unauthorized exports to Iran, an embargoed country. I therefore affirm the findings of fact and conclusions of law in the ALJ's Recommended Decision and Order.[3]

It is hereby ordered,

First, that for a period of 20 years from the date on which this Order takes effect, Abdulamir Mahdi, also known as Amir Mahdi and Jasin Khafaf, 20 Huntingwood Drive, Scarborough, Ontario, Canada, M1W1A2, and OTS Refining Equipment Corporation, 7030 Woodbine Avenue, NE., Suite 500, Markham, Ontario, Canada, L3R6G2, (hereinafter collectively referred to as ''Denied Persons'' and individually referred to as ''as Denied Person''), and all of their successors or assigns, officers, representatives, agents, and employees, may not, directly or indirectly, participate in any way in any transaction involving any commodity, software, or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR; or

C. Benefiting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or in connection with any other activity subject to the EAR.

Second, that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of a Denied Person any item subject to the EAR;

B. Take any action that facilitates the acquisition or attempted acquisition by a Denied Person of the ownership, possession, or control of any item subject to the EAR that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby a Denied Person acquires or attempts to acquire such ownership, possession, or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from a Denied Person of any item subject to EAR that has been exported from the United States;

D. Obtain from a Denied Person in the United States any item subject to the EAR with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the EAR that has been or will be exported from the United States and that is owned, possessed, or controlled by a Denied Person, or service any item, of whatever origin, that is owned, possessed, or controlled by a Denied Person if such service involves the use of any item subject to the EAR that has been or will be exported from the United States. For purposes of this paragraph, ''servicing'' means installation, maintenance, repair, modification, or testing.

Third, that after notice and opportunity for comment as provided in Section 766.23 of the EAR, any person, firm, corporation, or business organization related to a Denied Person by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this Order.

Fourth, that this Order shall be served on the Denied Persons and on BIS, and shall be published in the **Federal Register**. In addition, the ALJ's Recommended Decision and Order, except for the section with the heading ''Recommended Order,'' shall be published in the **Federal Register**.

This Order, which constitutes the final agency action in this matter, is effective upon publication in the **Federal Register**.

Dated: September 29, 2003.

Kenneth I. Juster,

Under Secretary of Commerce for Industry and Security.

Recommended Decision and Order

Before: Hon. Peter A. Fitzpatrick, Administrative Law Judge, United States Coast Guard.

Appearances:

Philip D. Golrick, Esq.—For the Bureau of Industry and Security

Abdulamir Mahdi—PRO SE

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[3] There are two minor clarifications to the ALJ's Recommended Decision and Order that need to be made:

(1) The language in paragraph 2 of Part V of the Recommended Decision and Order indicates that Canada does not require licenses for non-munitions items of Canadian-origin to Iran. However, while Canada does not control the oil field equipment exported by Mahdi and OTS to Iran, it does in fact control the export of certain other non-munitions items of Canadian-origin to Iran.

(2) The language quoted from the Iranian Transactions Regulations at 31 CFR 560.204(a) in Part VII.A of the Recommended Order was not in effect until after the conduct at issue in this case. However, the language of § 560.204 that was in effect at the time of respondents' conduct plainly reached their actions. See *United States* v. *Ehsan,* 163 F.3d 855, 858–59 (4th Cir. 1998) (shipment to the United Arab Emirates ultimately intended for Iran ''fits the plain meaning of an 'exportation'to Iran'' under 31 CFR 560.204).

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II. Summary of Decision

This case involved covert operations by Respondents Abdulamir Mahdi and, his wholly owned company, OTS Refining Equipment Corporation (''OTS''), to unlawfully ship oil field equipment from the United States to Iran through Canada in violation of the Export Administration Act of 1979 (''Act'' or ''EAA'') and the Export Administration Regulations (''EAR''). *See* 50 U.S.C. App. Secs. 2401–2420 (1991), *amended by* Pub. L. 106–508, 114 Stat. 2360 (Supp. 2002) (EAA); 15 CFR parts 730–74 (1997–1999) (EAR). The EAA and its underlying regulations establish a ''system of controlling exports by balancing national security, foreign policy and domestic supply needs with the interest of encouraging export to enhance * * * the economic well being'' of the United States. *See Times Publ'g Co.* v. *United States Dep't of Commerce,* 236 F.3d 1286, 1290 (11th Cir. 2001); *see also* 50 U.S.C. App. 2401–02.[1]

Here, six violations of the EAR are alleged and the Bureau of Industry and Security, United States Department of Commerce (''Bureau'' or ''BIS'') seeks denial of the Respondents' export privileges from the United States for a period of 20 years. This case was brought while Mr. Mahdi was serving a 4-year and 3-month sentence in Federal prison based on a Plea of Guilty to one count of conspiracy to export oil field equipment from the United States to Iran and Iraq without authorization, and in accordance with the judgment and sentence of the United States District Court for Middle District of Florida on November 22, 1999. *See United States* v. *Mahdi,* 99–128–CF0ORL–22B. Charge 1 in this administrative proceeding is nearly identical to the conspiracy charge before the District Court to which Mr. Mahdi plead Guilty and for which the court entered a judgment and sentence. At a preliminary stage in this administrative proceeding, the Bureau's Motion for Summary Decision with respect to Charge 1 was granted. The undersigned found that District Court's judgment collaterally estopped Mr. Mahdi from contesting Charge 1 relating to conspiracy. However, the Motion for Summary Decision was denied as to the remaining five charges.

At the administrative hearing, the Bureau presented substantial, reliable and probative evidence to support the remaining charges. Mr. Mahdi made a brief appearance at the hearing but refused to participate in the remainder of these proceedings, Thus, most of the evidence on this record is uncontested. Each of the remaining charges (Charges 2–6) is found Proved. The Bureau's request for a Denial Order of 20 years is well founded in view of the number of violations involved and the continuing efforts of Mr. Mahdi and his brother to unlawfully export items to Iran.

Finally, although the regulations require this proceeding to be concluded within one year from the filing of the charging letter, the undersigned Judge extended the period for issuance of the decision for good cause. *See* 15 CFR 766.17(d). In this case, the period was extended until January 17, 2004 to allow Mr. Mahdi to serve his Federal prison sentence, and afford him an opportunity to adequately prepare for the hearing. *See* Order dated October 10, 2003, at 9–10.

III. Preliminary Statement

In an amended charging letter dated November 22, 2002, the Bureau alleged that Respondents Mahdi and OTS committed six violations of the EAR.[2] The Agency sought denial of Respondents export privileges for a period of 20 years.[3] The charges were as follows:

Charge I alleged that between in or about March 1997, and in or about April 1998, the Respondents violated §§ 746.7 and 764.2(d) of the EAR by conspiring and acting in concert with others known and unknown to obtain oil field equipment from the United States and export it to Iran through Canada.

Charge 2 and 3 alleged that on or about October 30, 1997, and on or about February 2, 1998, the Respondents violated §§ 746.7 and 764.2(a) of the EAR by exporting oil field equipment from the United States through Canada to Iran without obtaining prior authorization from the Office of Foreign Assets Control (''OFAC''), a division of the Treasury Department.

Charge 4 alleged that on or about April 21, 1998, to on or about March 17, 1999, the Respondents violated §§ 746.7 and 764.2(c) of the EAR by soliciting or attempting to export oil field equipment from the United States through Canada to Iran without obtaining prior authorization from OFAC.[4]

Charge 5 alleged that on or about October 30, 1997, the Respondents violated § 764.2(g) of the EAR by making a false and misleading statement of material fact on a Shipper's Export Declaration that the country of ultimate destination of the oil field equipment was Iran.

[1] The EAA and all regulations under it expired on August 20, 2001. *See* 50 U.S.C. App. 2419. Three days before its expiration, the President declared that the lapse of the EAA constitutes a national emergency. *See* Exec. Order. No. 13222, reprinted in 3 C.F.R. at 783–784, 2001 Comp. (2002). Exercising authority under the International Emergency Economic Powers Act (''IEEPA''), 50 U.S.C. 1701–1706 (2002), the President maintained the effectiveness of the EAA and its underlying regulations throughout the expiration period by issuing Exec. Order. No. 13222 on August 17, 2001. *Id.* The effectiveness of the export control laws and regulations were further extended by Notice issued by the President on August 14, 2002. *See* Notice of August 14, 2002: Continuation of Emergency Regarding Export Control Regulations, reprinted in 3 CFR at 306 (2003). Courts have held that the continuation of the operation and effectiveness of the EAA and its regulations through the issuance of Executive Orders by the President constitutes a valid exercise of authority. *See Wisconsin Project on Nuclear Arms Control* v. *United States Dep't of Commerce,* 317 F.3d 275, 278–79 (D.C. Cir. 2003); *Times Publ'g Co., supra,* 236 F.3d at 1290.

[2] The ''Bureau of Export Administration'' or ''BXA'' issued the original charging letter on January 17, 2002. Through an internal organizational order, the Department of Commerce changed the name of BXA to BIS. *See* Industry and Security Programs: Change of Name, 67 FR 20630 (Apr. 26, 2002). Pursuant to the Savings Provision of the order, ''Any actions undertaken in the name of or on behalf of the Bureau of Export Administration, whether taken before, on, or after the effective date of this rule, shall be deemed to have been taken in the name of or on behalf of the Bureau of Industry and Security.'' *Id.* at 20631.

[3] Neither the original charging letter, nor the amended charging letter specified the exact nature of relief sought by the Agency. In the Agency's ''Pre-Hearing Memorandum'' dated February 26, 2003, BIS revealed that it was seeking a 20-year denial of export privileges. The Agency also moved to withdraw the charges against a third respondent, Tech-Link Development Corporation (''Tech-Link'') because BIS was unable obtain service of the charging letter on Tech-Link. The charges were dismissed without prejudice in an Order dated March 3, 2003.

[4] Charge 4 in the original charging letter alleged that Respondents exported oil field equipment from the United States, through Canada, to Iran on or about April 21, 1998. Following the partial denial of summary decision, BIS filed a Motion for Reconsideration or Clarification on September 12, 2002. On September 18, 2002, BIS filed a Partial Withdrawal of the Motion for Reconsideration or Clarification with respect to Charge 4 and moved to amend that charge because the Bureau determined that the oil field equipment was not exported to Iran as alleged. The motion to amend Charge 4 was granted in an Order dated October 10, 2002. The Bureau filed a Notice of Filing Amended Charging Letter on November 22, 2002 and served the amended charging letter on Mr. Mahdi and OTS.

Charge 6 alleged that on October 30, 1997, the Respondents violated § 764.2(e) of the EAR by transferring and forwarding the oil field equipment from Canada to Iran knowing that those goods had been exported from the United States in violation of the EAR.

By Order dated September 6, 2002, summary decision was granted against Respondent Mahdi Solely on the conspiracy to export oil field equipment to Iran through Canada in violation of 15 CFR 746.7 and 764.2(d) alleged in Charge 1. Summary decision with respect to the remaining charges was denied. The hearing in this matter was continued numerous times over 18 months to accommodate Mr. Mahdi who represented himself and his company OTS. *See* Order dated May 9, 2002; Order dated October 9, 2002; Transcript of Pre-Hearing Conference dated January 8, 2003; Order dated January 13, 2003; Order Dismissing, Without Prejudice, Charges Against Tech-Link Development Corporation and Scheduling Order dated March 3, 2003; *see also* (Transcript 24–25, 27–28, 35–47, 56–60, 73–77; Gov't Ex. 1A). The evidentiary hearing was held before this Judge in Baltimore, Maryland on May 13, 2003 at 9:30 a.m., EST. Because of the failure to secure approval of a parole application for reentry into the United States in accordance with the Immigration and Nationalization Services Regulations codified at 8 CFR part 212 (2002), Mr. Mahdi was not able to be physically present at the hearing to represent himself and OTS. *See* Transcript at 7–8, 35–47. However, arrangements were made for Mr. Mahdi to call into a telephone pool conference number and participate via telephone in the hearing. *Id.* at 5–7.[5]

Although Mr. Mahdi was advised in writing of the exact time and date of the hearing, he did not call into the telephone pool conference number until nearly 45 minutes into the proceeding. *Id.* at 3–8, 47–62; *see also* Order Dismissing, Without Prejudice, Charges Against Tech-Link Development Corporation and Scheduling Order dated March 3, 2003, at 3; Order dated April 14, 2003; Order Denying Request for Continuance dated April 15, 2003. At that time, Mr. Mahdi declared that he was mentally incompetent and did not want to participate in the hearing: then he hung up the telephone. (Transcript at 51–62). Mr. Mahdi only participated in these proceedings for a total of 15–20 minutes. Following a brief recess, connection to the telephone pool conference number was reestablished so that Mr. Mahdi could participate in the hearing if he changed his mind. *Id.* at 63. The telephone pool conference number remained open until approximately 12:30 p.m. *Id.* at 163–65. Mr. Mahdi did not change his mind and did not participate any further in the hearing or these administrative proceeding.[6]

At the hearing, one witness, Special Agent Roy Gilfix of the Office of Export Enforcement, U.S. Department of Commerce (''OEE'') testified for the Agency and thirty-three exhibits were admitted into evidence. The exhibit list is provided in Attachment A. Following receipt of the transcript, Mr. Golrick also filed a Post-Hearing Submission, including proposed findings of fact and conclusion. Ruling on the proposed findings of fact and conclusions of law are contained in Attachment B. The record is now closed.

As a general rule, administrative proceedings conducted under the EAA are generally excluded from the operation of the Administrative Procedure Act (''APA''), as amended and codified in 5 U.S.C. 551–559. *See* 50 U.S.C. App. sec. 2412(a); 15 CFR 766.1. However, in administrative enforcement actions seeking impositions of civil penalties and/or sanctions, there is an exception to the general exclusion if the case involves a violation of sections 2407 or 2410. *See* 50 U.S.C. App. sec. 2412(c). Since this case involves violations of sec. 2410, the administrative proceeding was conducted in accordance with the APA. This administrative proceeding was also conducted in accordance with 50 U.S.C. App. secs. 2410(c)(2)(B) and 2412(c), 5 U.S.C. 3344, 15 CFR part 766, 5 CFR 930.213. The conduct of this proceeding also complies with the provisions of a letter from the United States Office of Personnel Management (''OPM'') and an interagency reimbursable agreement between the Coast Guard and BIS dated December 30, 2002. The OPM letter and the reimbursable agreement authorize Coast Guard Administrative Law Judges (''ALJ'') to adjudicate cases involving violations of U.S. export laws and regulations.

After careful review of the facts and applicable laws in this case, I find that BIS has proved the allegations in the charging letter by substantial evidence of a reliable and probative nature.[7]

IV. Applicable Statutes and Regulations

The acts constituting violations of the export control laws and regulations occurred between October 1997 and March 1999. Thus, the export control laws and regulations in effect on October 1997 through March 1999 govern resolution of this matter. Those laws and regulations are substantially similar to the current export control laws and regulations.

A. Statutes

The relevant statutes read in pertinent part as follows:

50 U.S.C. App. 2404. National Security Controls

(a) *Authority.*

(1) In order to carry out the policy set forth in section 3(2)(A) of this Act [50 USCS App. 2402(2)(A)], the President may, in accordance with the provisions of this section, prohibit or curtail the export of any goods or technology subject to the jurisdiction of the United States or exported by any person subject to the jurisdiction of the United States. The authority contained in this subsection includes the authority to prohibit or curtail the transfer of goods or technology within the United States to embassies and affiliates of controlled countries. For purposes of the preceding sentence, the term ''affiliates'' includes both governmental entities and commercial entities that are controlled in fact by controlled countries. The authority contained in this subsection shall be exercised by the Secretary, in consultation with the Secretary of Defense, and such other departments and agencies as the Secretary considers appropriate, and shall be implemented by means of export

[5] On November 28, 2002, Mr. Mahdi was released into the custody of U.S. Immigration Officials and was subsequently deported after serving a 51-month sentence following a plea of guilty to one count of conspiracy to export oil field equipment from the United States to Iran and Iraq via Canada between March 1997 and March 1999 without authorization. Mr. Mahdi did not submit a copy of the parole application to the undersigned Judge or to BIS even though directed to do so. *See* Transcript of Pre-Hearing Conference dated January 8, 2003, at 19–20.

[6] On April 14, 2003, Ms. Lucinda Shinault, Paralegal to this Judge, served an Order memorializing a telephonic Pre-Hearing Conference by Federal Express to Respondent at the address provided by Mr. Mahdi. Respondent Mahdi received the Order, which was signed for by J. Khan. On April 15, 2003, Ms. Shinault sent an Order Denying Respondent's Request for Continuation of the May 13, 2003 hearing based on physical and mental incompetence by Federal Express. Federal Express attempted to deliver the April 15th Order on two occasions. The attempts proved unsuccessful. Federal Express also left telephone messages on an answering machine for Respondent Mahdi, who failed to return the telephone calls. On April 21, 2003, Ms. Shinault directed Federal Express to make a third attempt to deliver the April 15th Order. The Order was refused and an unidentified person sent a return to sender letter together with the Order. Thereafter, Ms. Shinault sent Mr. Mahdi the April 15th Order by regular first class mail. (Judge's Ex. 1, 2; Tr. 67–72). In view of Mr. Mahdi's brief participation in the hearing there is no doubt that he had actual notice of the hearing.

[7] While this case was pending, the United States Coast Guard transferred from the Department of Transportation to the Department of Homeland Security. Pursuant to the Savings Provision of HR 5005 § 1512 (Pub. L. 107–296), pending proceedings are continued notwithstanding the transfer of the Agency.

licenses described in section 4(a) of this Act [50 USCS App. 2403(a)].

* * * * *

(b) *Policy toward individual countries.*

(1) In administering export controls for national security purposes under this section, the President shall establish as a list of controlled countries those countries set forth in section 620(f) of the Foreign Assistance Act of 1961 [22 USCS § 2370(f)], except that the President may add any country to or remove any country from such list of controlled countries if he determines that the export of goods or technology to such country would or would not (as the case may be) make a significant contribution to the military potential of such country or a combination of countries which would prove detrimental to the national security of the United States. In determining whether a country is added to or removed from the list of controlled countries, the President shall take into account—

(A) The extent to which the country's policies are adverse to the national security interests of the United States;

(B) The country's Communist or non-Communist status:

(C) The present and potential relationship of the country with the United States;

(D) The present and potential relationships of the country with countries friendly or hostile to the United States;

(E) The country's nuclear weapons capability and the country's compliance record with respect to multilateral nuclear weapons agreements to which the United States is a party; and

(F) Such other factors as the President considers appropriate.

Nothing in the preceding sentence shall be interpreted to limit the authority of the President provided in this Act to prohibit or curtail the export of any goods or technology to any country to which exports are controlled for national security purposes other than countries on the list of controlled countries specified in this paragraph. The President shall review not less frequently than every three years in the case of controls maintained cooperatively with other nations, and annually in the case of all other controls, United States policy toward individual countries to determine whether such policy is appropriate in light of the factors set forth in this paragraph.

50 U.S.C. App. 2405. Foreign Policy Controls

(a) *Authority.*

(1) In order to carry out the policy set forth in paragraph (2)(B), (7), (8), or (13) of section 3 of this Act [50 USCS Appx. § 2402(2)(B), (7), (8), or (13)], the President may prohibit or curtail the exportation of any goods, technology, or other information subject to the jurisdiction of the United States or exported by any person subject to the jurisdiction of the United States, to the extent necessary to further significantly the foreign policy of the United States or to fulfill its declared international obligations. The authority granted by this subjection shall be exercised by the Secretary, in consultation with the Secretary of State, the Secretary of Defense, the Secretary of Agriculture, the Secretary of the Treasury, the United States Trade Representative, and such other departments and agencies as the Secretary considers appropriate, and shall be implemented by means of export licenses issued by the Secretary.

50 U.S.C. App. 2410. Violations

(a) *In general.* Except as provided in subsection (b) of this section, whoever knowingly violates or conspires to or attempts to violate any provision of this Act or any regulation, order, or license issued thereunder shall be fined not more than five times the value of the exports involved or $50,000, whichever is greater, or imprisoned not more than 5 years, or both.

(b) *Willful violations.*

(1) Whoever willfully violates or conspires to or attempts to violate any provision of this Act or any regulation, order, or license issued thereunder, with knowledge that the exports involved will be used for the benefit, or that the destination or intended destination of the goods or technology involved is, any controlled country or any country to which exports are controlled for national security or foreign policy purposes—

(A) except in the case of an individual, shall be fined not more than five times the value of the exports involved or $1,000,000, whichever is greater; and

(B) in the case of an individual, shall be fined not more than $250,000, or imprisoned not more than 10 years, or both.

* * * * *

(3) Any person who possesses any goods or technology—

(A) with the intent to export such goods or technology in violation of an export control imposed under section 5 or 6 of this Act [50 USCS Appx. §§ 2404, 2405] or any regulation, order, or license issued with respect to such control, or

(B) knowing or having reason to believe that the goods or technology would be so exported,

shall, in the case of a violation of an export control imposed under section 5 [50 USCS Appx. § 2402] (or any regulation, order, or license issued with respect to such control), be subject to the penalties set forth in paragraph (1) of this subsection and shall, in the case of a violation of an export control imposed under section 6 [50 USCS Appx. § 2405] (or any regulation, order, or license issued with respect to such control), be subject to the penalties set forth in subsection (a).

(c) *Civil penalties; administrative sanctions.*

* * * * *

(1)(A) The authority under this Act to suspend or revoke the authority of any United States person to export goods or technology may be used with respect to any violation of the regulations issued pursuant to section 8(a) of this Act [50 USCS Appx. § 2407(a)].

(B) Any administrative sanction (including any civil penalty or any suspension or revocation of authority to export) imposed under this Act for a violation of the regulations issued pursuant to section 8(a) of this Act [50 USCS Appx. § 2407(a)] may be imposed only after notice and opportunity for an agency hearing on the record in accordance with sections 554 through 557 of title 5, United States Code [5 USCS §§ 554–557].

(C) Any charging letter or other document initiating administrative proceedings for the imposition of sanctions for violations of the regulations issued pursuant to section 8(a) of this Act [50 USCS Appx. § 2407(a)] shall be made available for public inspection and copying.

* * * * *

(h) *Prior convictions.*

(1) No person convicted of a violation of this Act (or any regulation, license, or order issued under this Act), any regulation, license, or order issued under the International Emergency Economic Powers Act [50 USCS §§ 1701 et seq.], section 793, 794, or 798 of title 18, United States Code [18 USCS §§ 793, 794, 798], section 4(b) of the Internal Security Act of 1950 (50 U.S.C. 783(b)) [50 USCS § 783(b)], or section 38 of the Arms Export Control Act (22 U.S.C. 2778) [22 USCS § 2778] shall be eligible, at the discretion of the Secretary, to apply for or use any export license under this Act for a period of up to 10 years from the date of the conviction. The Secretary may revoke any export license under this Act in which such person has an interest at the time of the conviction.

(2) The Secretary may exercise the authority under paragraph (1) with respect to any person related, through affiliation, ownership, control, or position of responsibility, to any person convicted of any violation of law set forth in paragraph (1), upon showing of such relationship with the convicted party, and subject to the procedures set forth in section 13(c) of this Act.

50 U.S.C. App. 2415. Definitions

As used in this Act—

(1) the term ''person'' includes the singular and the plural and any individual, partnership, corporation, or other form of association, including any government or agency thereof;

* * * * *

(3) the term ''good'' means any article, natural or manmade substance, material, supply or manufactured product, including inspection and test equipment, and excluding technical data;

* * * * *

(5) The term ''export'' means—

(A) An actual shipment, transfer, or transmission of goods or technology out of the United States;

(B) A transfer of goods or technology in the United States to an embassy or affiliate of a controlled country; or

(C) A transfer to any person of goods or technology either within the United States or outside of the United States with the knowledge or intent that the goods or technology will be shipped, transferred, or transmitted to an unauthorized recipient;

(6) The term ''controlled country'' means a controlled country under section 5(b)(1) of this Act [50 USCS Appx. § 2404(b)(1)];

(7) The term ''United States'' means the States of the United States, the District of Columbia, and any commonwealth, territory, dependency, or possession of the United

States, and includes the outer Continental Shelf, as defined in section 2(a) of the Outer Continental Shelf Lands Act (43 U.S.C. 1331(a) [43 USCS § 1331(a)]);

B. Regulations

The applicable regulations read as follows:

15 CFR 746.7 Iran

The Treasury Department's Office of Foreign Assets Control (OFAC) administers a comprehensive trade and investment embargo against Iran under the authority of the International Emergency Economic Powers Act of 1977, as amended, section 505 of the International Security and Development Cooperation Act of 1985, and Executive Orders 12957 and 12959 of March 15, 1995 and May 6, 1995, respectively. This embargo includes prohibitions on export and certain reexport transactions involving Iran, including transactions dealing with items subject to the EAR. (*See* OFAC's Iranian Transactions Regulations, 31 CFR part 560.) BXA continues to maintain licensing requirements on exports and reexports to Iran under the EAR as described in paragraph (a)(2) of this section. No person may export or rexport items subject to both the EAR and OFAC's Iranian Transactions Regulations without prior OFAC authorization.

15 CFR 764.2 Violations

(a) Engaging in prohibited conduct. No person may engage in any conduct prohibited by or contrary to, or refrain from engaging in any conduct required by, the EAA, the EAR, or any order, license or authorization issued thereunder.

* * * * *

(c) Solicitation and attempt. No person may solicit or attempt a violation of the EAA, the EAR, or any order, license or authorization issued thereunder.

(d) Conspiracy. No person may conspire or act in concert with one or more persons in any manner or for any purpose to bring about or to do any act that constitutes a violation of the EAA, the EAR, or any order, license or authorization issued thereunder.

(e) Acting with knowledge of a violation. No person may order, buy, remove, conceal, store, use, sell, loan, dispose of, transfer, transport, finance, forward, or otherwise service, in whole or in part, any item exported or to be exported from the United States, or that is otherwise subject to the EAR, with knowledge that a violation of the EAA, the EAR, or any order, license or authorization issued thereunder, has occurred, is about to occur, or is intended to occur in connection with the item.

* * * * *

(g) Misrepresentation and concealment of facts. (1) No person may make any false or misleading representation, statement, or certification, or falsify or conceal any material fact, either directly to BXA, the United States Customs Service, or an official of any other United States agency, or indirectly through any other person:

(i) In the course of an investigation or other action subject to the EAR; or

(ii) In connection with the preparation, submission, issuance, use, or maintenance of any export control document or restrictive trade practice or boycott request report, as defined in § 760.6 of the EAR; or

(iii) For the purpose of or in connection with effecting an export, reexport or other activity subject to the EAR.

(2) All representations, statements, and certifications made by any person are deemed to be continuing in effect. Every person who has made any representation, statement, or certification must notify BIS and any other relevant agency, in writing, of any change of any material fact or intention from that previously represented, stated, or certified, immediately upon receipt of any information that would lead a reasonably prudent person to know that a change of material fact or intention has occurred or may occur in the future.

V. Findings of Fact

The Findings of Fact are based on the documentary evidence, the testimony of the Bureau's witness, and the entire record. The facts of this case are as follows:

A. Background

1. In the late 1940s through the 1950s, U.S. multinational corporations built the national oil extraction and processing infrastructures in Iran, Iraq, and Libya. These corporations manufactured oil field parts and equipment. Between 1995 through present, replacement parts and equipment were needed for repairs of malfunctioning oil field parts and equipment. Maintaining a repair inventory was also of interest to Iran, Iraq, and Libya. (Tr. 247–50).[8]

2. Between 1995 through present, the United States imposed an embargo that restricted the export of munitions and dual use items of U.S. origin to Iran absent consent from the Department of Treasury, OFAC. Canada's export controls for Canadian-origin commodities that are destined for Iran are minimal compared to those of the United States. Canada only requires export licenses for munitions exported to Iran. Therefore, oil-field equipment can be exported legally from Canada to Iran without a license if the equipment is of Canadian-origin. (Tr. at 266–69).

3. Because of the close historical, cultural, geographical, and other ties with Canada, the United States has relaxed export controls affecting commodities whose ultimate destination is Canada. (Tr. 262–64). If the commodities are merely transiting Canada or the Canadian company plans to transship the commodities to a third country, the relaxed export controls do not apply. (*Id.* at 263–65).

4. Mr. Mahdi knew of the United States' embargo against Iran, which restricted the export of U.S. origin commodities to Iran. (Gov't Ex. 3, at 26–27; Gov't PFF 27).

5. Mr. Mahdi is a naturalized Canadian citizen and resident of Ontario, Canada. (Gov't Ex. 2, at 16; Gov't Ex. 3, at 20–21; Gov't Ex. 6, at 1; Gov't PFF 1).

6. Mr. Mahdi was born in Iraq. He is formally known as Abdulamir Mahdi. However, he commonly uses two different names depending on whether he is transacting business with Iran or Iraq. When conducting business with Iraq, Mr. Mahdi uses an Iraqi name: Amir Mahdi. When transacting business in Iran, he goes by an Iranian name: Jasin Khafaf. Tr. 100–01; Gov't Ex. 6, at 1: Gov't PFF 2).

7. From October 1995 through March 17, 1999, Mr. Mahdi served as the sole owner and operator of OTS located in Markham, Ontario, Canada. (Gov't Ex. 2, at 16; Gov't Ex. 3, at 20–21; Gov't Ex. 6, at 2; Gov't PFF 3).

8. OTS was a Canadian corporation that served as a broker of spare parts for oil field and industrial equipment to Middle Eastern countries, including Iran and Iraq. (Gov't Ex. 1, at 6; Gov't Ex. 3, at 20; Gov't PFF 3). OTS had offices in France, and Dubai, United Arab Emirates (U.A.E.). OTS also conducted business in Saudi Arabia. (Gov't Ex. 6, at 2).

9. Mr. Tito DiMarco and Mr. Mahdi's only employee at OTS in Canada. (Tr. 188).

10. Approximately 90% of OTS's sales of equipment were to Iran and Iraq, and the remaining 10% of the sales were to Saudi Arabia. (Tr. 178, 236–238; Gov't Ex. 26; Gov't PFF 44).

11. Neither Mr. Mahdi nor OTS owns any property or liquid assets in the United States. (Entire Administrative Record).

12. At all relevant times, neither OTS nor Mr. Mahdi under his formal name or any of his aliases had an export license issued by the Department of Commerce or OFAC authorizing the export of oil field equipment from the United States to Iran. The Respondents also had not applied for such a license. (Tr. 215–17; Gov't Ex. 20; Gov't PFF 39).

13. Mr. Mahdi served a 51-month sentence in Federal prison after pleading guilty to one count of conspiracy to export oil field equipment from the United States to Iran and Iraq between March 1997 and March 1998 without required export license and

[8] The citations in this Recommended Decision are as follows: Government Exhibit followed by exhibit number, at page number (Gov't Ex. __, at __); Transcript followed by page number, (Tr. __); Government Proposed Findings of Fact and Conclusions of Law followed by number, (Gov't PFF __); and Government Proposed Ultimate Findings of Fact and Conclusions of Law, (Gov't PUFF).

authorization in violation of the Export Administration Act and the Export Administration Regulations. (Gov't Ex. 1–5; Tr. 110–125; Gov't PFF 6).

14. Mr. Mahdi's older brother, Mahdik Mahdi owned and oeprated Zawana Trading & Marketing Establishment (''Zawana Trading'') in Amman, Jordan. The company imports items into Jordan and exports the items to Iraq. (Tr. 143; Gov't Ex. 1, at 6; Gov't Ex. 2, at 1; Gov't Ex 7, at 1; Gov't PFF 4).

15. On February 28, 2003, Special Agent Gilfix of OEE performed a search for the name ''Mahdi'' on the Internet. The search revealed that on April 9, 2002, Respondent's brother Mahdik Mahdi in Amman, Jordan posted an advertisement soliciting bids for 140 tons of Alumina Based Catalyst to be delivered to Tartuse, Syria. (Tr. 260–62; Gov't Ex. 29).

B. Conspiracy To Export Oil Field Equipment From the United States to Iran via Canada

16. In late 1996 or early 1997, Mr. Abdulamir Mahdi telephoned Brevard International Technical Services (''BITS'') in Membourne, Florida. BITS was owned and operated by Dr. John Strome, a Canadian citizen, who resided in Florida and who was the co-conspirator. Mr. Mahdi advised Dr. Strome that he was an oil field and industrial equipment broker with clients in the Middle East and that he was seeking a U.S. company to serve as an exclusive supplier. (Tr. 136–38; Gov't Ex. 1, at 6; Gov't Ex. 2, at 18; Gov't Ex. 6, at 1; Gov't PFF 5, 9).

17. When Mahdi first initiated contact with BITS in late 1996 or early 1997, he was working on behalf of Tech-Link. Tech-Link was an oil field equipment broker but the company terminated operations in September 1997. After Tech-Link closed, Mr. Mahdi continued to transact business with BITS on behalf of OTS. (Gov't Ex. 3 at 21; Gov't Ex. 6, at 1; Gov't PFF 9–10).

18. In October 1997, Dr. Strome and Mr. Mahdi met in Toronto, Canada to discuss the prospects of BITS serving as OTS's exclusive supplier of U.S. origin commodities to the Middle East. Under the business proposal, BITS would export to OTS products under the BITS brand name, OTS would sell the commodities to offshore end users, and the end users would obtain replacement parts from BITS through OTS. (Tr. 138, 243–44; Gov't Ex. 6, at 1–2; Gov't PFF 10).

19. A draft ''Confidentiality and Non-Disclosure Exclusive Agreement'' (''Agreement'') dated November 1, 1997 between BITS and OTS was prepared. In the Agreement, BITS appointed OTS as its sole agent of its products in the Middle East, including Iran, Iraq, and Libya once the restrictions were lifted. However, the Agreement was never executed or otherwise signed by Mr. Mahdi or Dr. Strome of BITS. (Tr. 251–53; Gov't Ex. 28; Gov't PFF 11).

20. Mr. Mahdi sent a follow-up letter dated November 5, 1997 to Dr. Strome of BITS. The follow-up letter was on OTS stationary. The letter memorialized their agreement and listed nineteen countries that OTS was going to try to sell BITS products. The countries were mostly in the Middle East. Iran and Iraq were both included in the list of countries. (Tr. 241–242; Gov't Ex. 27; Gov't PFF 12).

21. Neither BITS nor Dr. Strome applied for or received authorization from OFAC to export from the United States to Iran or Iraq. (Tr. 215–17; Gov't Ex. 20; Gov't PFF 39).

22. Although OTS and BITS never finalized their agreement in writing, their business relationship proceeded on the basis of a handshake and the list of countries provided by Mahdi in the November 5, 1997 letter. (Tr. 253; Gov't PFF 13).

23. In late November or early December of 1997, OEE initiated an investigation of BITS involving illegal export activities relating to Libya. (Tr. 101–04). Special Agent Gilfix of OEE obtained a federal search warrant and seized 25 to 35 boxes of business records belonging to BITS. (Tr. 105–06; Gov't Ex. 6, at 2). The BITS investigation led OEE to later investigate Respondents OTS and Mahdi for export violations. (Tr. 103–04).

24. Dr. Strome contacted Mr. Mahdi and advised him that OEE had visited BITS and taken some business records. Mr. Mahdi did not appear to be concerned and continued to do business with BITS. (Tr. 106–07; Gov't Ex. 6, at 2).

25. In September 1998, Dr. Strome visited Mahdi and his older brother Mahdik Mahdi in Canada. Mr. Mahdik Mahdi advised Dr. Strome that the Mahdi family was very affluent and owned homes near Saddam Hussein's palace in Baghdad. Mr. Madhik Mahdi further stated that the family conducted business with Iraq's elite, including ministerial and higher level staff. According to Mr. Mahdik Mahdi, the business relationship between OTS and BITS would prove to be prosperous once the embargo on Iraq was lifted. In the presence of Mr. Strome, Mr. Mahdik and Respondent Mahdi reviewed files and drawings for projects in Iraq. The Mahdis also called Iraq to discuss projects. (Tr. 253; Gov't Ex. 6, at 2; Gov't PFF 14).

26. From March 1997 through March 1999, Mr. Mahdi doing business as OTS submitted 117 Request for Quotations (''RFQ'') to BITS. Of the 117 RFQs, a total of 42 requests were made on behalf of customers in Iran. Thirty-six requests were made on behalf of Zawana Trading, which OEE believes were transshipped by Mr. Mahdi's brother to Iraq. Mr. Mahdi requested quotations from numerous U.S. corporations and bought equipment from the lowest bidder. Since Dr. Strome was not always the lowest bidder, not all RFQs resulted in shipments from BITS through OTS to Iran. (Tr. 224–26, 244–47; Gov't Ex. 21, 21A, 25; Gov't PFF 40–41).

27. The RFQs submitted by OTS to BITS on behalf of customers in Iran included: a request for a quotation for parts for a Shaffer Agitator Shaft and Turbine submitted on December 8, 1997 under reference number 223–127–RSA by Mr. DiMarco of OTS on behalf of Razi Petrochemical; a request for quotation for parts for a Coppus Steam Turbine submitted on July 14, 1998 by Mr. DiMarco of OTS under reference number 463–078–ACT on behalf of Arak Petrochemical; and a request for quotation for a Coppus Steam Turbine submitted by Mr. DiMarco of OTS under reference number 529–088–ACO on behalf of Arak Petrochemical. (Tr. 228–32; Gov't Ex. 22–25; Gov't PFF 42).

C. The Export of Oil Field Equipment From the United States to Iran via Canada

28. The business relationship between OTS and BITS involved Mr. Mahdi placing RFQs with BITS on behalf of Middle Eastern customers. Mr. Mahdi assigned an alphanumeric reference consisting of ten digits to each RFQ. The first letter in the reference identified the end-user/prospective purchaser. (Tr. 141; Gov't Ex. 7; Gov't PFF 10, 17).

29. OTS's code for end-user/prospective purchaser was as follows: T = Kala Naft, Tehran, Iran (a subsidiary of National Iranian Oil Co.); K = Kala Naft, Canada; R = Razi Petrochemical, Iran (an affiliate of National Petrochemical Co.); A = Arak Petrochemical, Iran (an affiliate of National Petrochemical Co.); N = National Iranian Gas Company Iran; S = Saudi Arabia; M = Saudi Arabian medical end-users; and Z = Zawana Trading. (Tr. 142–43, 150, 234; Gov't Ex. 7, 9, 25; Gov't PFF 17, 43).

30. The last two letters represented the manufacturer or commodity. For example, GE represented General Electric and WP would represent water pumps. (Gov't Ex. 7).

1. The October 30, 1997 Export From the United States to Iran

31. On or about July 22, 1997, Mr. Mahdi submitted an irrevocable purchase order to Dr. Strome of BITS for $41,695.46 worth of oil field equipment for a Halliburton cementing unit on OTS stationery. The reference number was 701–1320–TSI. Using OTS's established code, the ''T'' indicates that the end-user was Kala Naft, Tehran, Iran. The ''SI'' represents Smith International, a U.S. manufacturer. (Tr. 148, 152; Gov't Ex. 8; Gov't PFF 19).

32. A BITS invoice dated July 23, 1997 memorialized the sale of $42,356.56 worth of oil field equipment to OTS under reference number 701–1320–TSI. The equipment was to be shipped on October 29, 1997 to Danzas Canada, Limited (''Danzas''), a freight forwarder located in Ontario, Canada. (Tr. 151; Gov't Ex. 10; Gov't PFF 21).

33. On October 30, 1997, Forward Logistics Group, Inc. (''Forward Logistics''), a freight forwarder acting on behalf of BITS, shipped the equipment purchased by OTS under reference number 701–1320–TSI. The equipment was shipped to OTS in care of Danzas. Forward Logistics prepared the Shipper's Export Declaration (''SED'') on behalf of BITS. Item 7 in the SED indicated that the country of ultimate destination was ''Toronto.'' The true country of ultimate destination was Iran. Forward Logistics did not know the product would end in Iran. (Tr. 156–60, 166–69; Gov't Ex. 11, 12; Gov't PFF 22–24).

34. When Danzas received the comodities that were shipped on October 30, 1997, pursuant to Mr. Mahdi's directions, the oil field equipment was consolidated with other equipment OTS had purchased from another company located in Texas. All of the equipment was then sent to Iran via Cypress. In an effort to apply Canadian export law, the country of origin for the equipment was falsely identified as Canada. (Tr. 153–55, 169–72, 177–78; Gov't Ex. 10; Gov't PFF 25–26).

2. The February 2, 1998 Export From the United States to Iran

35. On October 23, 1997, Mr. Mahdi submitted an irrevocable purchase order to Dr. Strome of BITS for $69,478.20 worth of oil field equipment. The purchase order was prepared on OTS stationary. The reference number was 702–1360–TSI. (Tr. 180; Gov't Ex. 6, at 4; Gov't Ex. 13; Gov't PFF 28).

36. In January 1998, BITS sold approximately 845 parts for a Halliburton cementing unit to OTS under reference number 702–1360–TSI. (Tr. 183–84; Gov't Ex. 6, at 4; Gov't Ex. 14).

37. Mr. Mahdi hired Pars Maritime Cargo, Inc. (''PCMI'') of Quebec, Canada to transport the parts via truck from BITS in Florida to Ontario, Canada. PCMI is the general sales agent for Iran Air. PCMI picked up the parts from BITS on February 2, 1998. (Tr. 185–187; Gov't Ex. 6, at 4; Gov't Ex. 14, 15; Gov't PFF 29–30).

D. The Attempt To Export Oil Field Equipment on March 17, 1999

38. On April 21, 1998, Mr. DiMarco of OTS submitted an irrevocable purchase order under reference number 013–077–BTB to Dr. Strome of BITS. The reference number contained a typographical error. The true reference number was 013–077–TBT. (Tr. 188, 191–93, 197–98; Gov't Ex. 6, at 4; Gov't Ex. 7, at 4; Gov't Ex. 16, 17; Gov't PFF 32).

39. OTS ordered $121,082.70 worth of extracting equipment used ot remove broken drill heads from oil wells under reference number 013–077–TBT. The extracting equipment was to be manufactured by Bowen Tools, a U.S. manufacturer. Based on Madhi's transaction code, the end-user was Kala Naft, Tehran, Iran. (Tr. 196–201, 206–208; Gov't Ex. 9, 16, 18A; Gov't PFF 32–33).

40. On May 26, 1998, Mr. Mahdi, acting on behalf of OTS, wired $16,082 in U.S. currency to BITS account. The money was a deposit for the equipment ordered under reference number 013–077–TBT. (Tr. 189–91; Gov't Ex. 16, at 3; Gov't Ex. 17; Gov't PPF 34).

41. In January 1999, Dr. Strome began cooperating with OEE investigators. (Tr. 105–107).

42. On or about March 4, 1999, Mr. Mahdi instructed Dr. Strome to export the equipment ordered by OTS under reference number 013–077–TBT to Industrial Engineering Inspection Company of Iran (''I.E.I.'') for inspection. (Tr. 201, 207, 210–15; Gov't Ex. 18A, at 3; Gov't Ex. 18, 19; Gov't PFF 35–36).

43. Dr. Strome advised Special Agent Gilfix of OEE that Respondent had telephoned him from Canada and ordered that $120,000 worth of oil field equipment be shipped and inspected by an Iranian inspection company. At Special Agent Gilfix's behest Dr. Strome advised Mr. Mahdi that he would not export the equipment since they were destined for Iran. Instead, Mr. Mahdi agreed to meet Dr. Strome in Melbourne, Florida where the equipment could be inspected for Iran. (Tr. 107–109).

44. In the interim, Special Agent Gilfix obtained an arrest warrant from a fedral magistrate judge in Orlando, Florida based on a criminal complaint alleging that Mr. Mahdi violated U.S. export laws and regulations. (Tr. 109).

45. In mid-March 1999, Mr. Mahdi flew to Florida to inspect the equipment for Iran. After inspecting and obtaining the oil field equipment ordered under reference number 013–077–TBT, Mr. Mahdi was arrested. (Tr. 109, 202; Gov't PFF 37–38).

VI. Ultimate Findings of Fact and Conclusions of Law

1. Mr. Mahdi, OTS, and the subject matter of this proceeding are properly within the jurisdiction of the BIS in accordance with the Export Administration Act of 1979 (50 U.S.C. App. Secs. 2401–2420) and the Export Administration Regulations (15 CFR parts 730–774).

2. On the basis of an Order dated September 6, 2002, granting summary decision against Mr. Mahdi, Charge 1 relating to the conspiracy to export oil field equipment between March 1997 and April 1998 from the United States to Iran via Canada is found proved under the doctrine of collateral estoppel. (Gov't PUFF 49–50, 56).

3. BIS has established by a preponderance of the evidence that the Respondents violated §§ 746.7 and 764.2(a) of the EAR by exporting oil field equipment from the United States through Canada to Iran on October 30, 1997 and February 2, 1998 without obtaining prior authorization from OFAC. (Gov't PUFF 51–53, 56).

4. BIS has established by a preponderance of the evidence that the Respondents violated §§ 746.7 and 764.2(c) of the EAR by attempting to export oil field equipment from the United States through Canada to Iran on March 17, 1999 without obtaining prior authorization from OFAC. (Gov't PUFF 54, 56).

5. BIS has established by a preponderance of the evidence that the Respondents violated § 764.2(g) of the EAR by making false and misleading statements of material fact on a Shipper's Export Declaration on October 30, 1997 that the country of ultimate destination of the oil field equipment was Canada, when, in fact, the true country of ultimate destination was Iran. (Gov't PUFF 55, 56).

6. BIS has established by a preponderance of the evidence that the Respondents violated § 764.2(e) transferring and forwarding goods, on or about October 30, 1997, to Iran knowing the goods had been exported from the

United States in violation of the EAR. (Gov't PUFF 57).

7. Under the theory of respondeat superior, OTS is liable for the actions of Mr. Mahdi and the sole employee, Mr. DiMarco, who were both acting on behalf of the corporation and whose actions resulted in violations of the EAA and EAR. (Gov't PUFF 49).

8. BIS has established that denial of export privileges for 20 years against Mr. Mahdi and OTS is justified and reasonable. (Gov't PUFF 58).

VII. Discussion

A. Applicability of the Export Administration Act and Regulations to Respondents

Throughout these proceedings, the Respondents have contended that BIS lacks jurisdiction. More specifically, Mr. Mahdi claimed that U.S. export laws do not apply to him as a Canadian citizen or OTS operating in Canada. This argument is rejected.

The authority delegated by Congress to the President of the United States under the EAA is extensive. The EAA gives the President authority to regulate or prohibit the export of goods, technology, and information ''to the extent necessary to further the foreign policy of the United States or fulfill its international obligation.'' *See* 50 U.S.C. App. Sec. 2405(a)(1). The EAA also authorizes the President to regulate or prohibit the export of goods or technology in the interest of national security. *See* 50 U.S.C. App. Secs. 2402(2)(A), 2404(a)(1). The statute makes clear that ''[a]ny export control imposed under (the EAA) shall apply to any transaction or activity undertaken with the intent to evade that export control, even if that export control would not otherwise apply to that transaction or activity.''

In 1987, the President invoked import sanctions against Iran to ''ensure that United States imports of Iranian goods and services will not contribute financial support to terrorism.'' Exec. Order. No. 12613, reprinted in 52 FR 41940 (Oct. 30, 1987). In 1995, the President declared a national emergency with respect to the actions and policies of the Iranian Government. *See* Exec. Order No. 12957, reprinted in 60 FR 14615 (Mar. 15, 1995). The President expanded the sanctions imposed against Iran to prohibit both import of Iranian-origin products and export of U.S. origin goods, technology, or services to Iran. *See* Exec. Order No. 12959, reprinted in 60 FR 24757 (May 6, 1995).

Exec. Order No. 12959 and its implementing regulations generally prohibit the exportation of any goods, technology or services from the United States to Iran without express authorization from OFAC. *See* 31 CFR 560.204, 560.501. This prohibition includes the exportation of any goods ''to any person in a third country undertaken with knowledge or reason to know that such goods * * * are intended specifically for supply, transshipment, or reexportation, directly or indirectly, to Iran or the Government of Iran.'' *See* 31 CFR 560.204(a).

Section 746.7 of the EAR incorporates the OFAC's Iran Transactions Regulations by reference. It provides: ''No person may export or reexport items subject to both the EAR and OFAC's Iranian Transactions Regulations without prior OFAC authorization.'' 15 CFR 7467.7. The term ''export'' means the ''actual shipment, transfer or transmission of goods or technology out of the United States; (the) transfer of goods or technology in the United States to an embassy or affiliate of a controlled country; or a transfer to any person of goods or technology either with the knowledge or intent that the goods or technology will be shipped, transferred or transmitted to an unauthorized recipient.'' 50 U.S.C. App. sec. 2415(5); *see also* 15 CFR 734.2(b)(1). The term ''reexport'' means ''an actual shipment or transmission of items subject to the EAR from one foreign country to another foreign county.'' 15 CFR 734.2(b)(4). BIS has authority to exercise regulatory jurisdiction over all items subject to the EAR. 15 CFR 734.2(a)(1). The regulations clearly provide that ''[a]ll U.S. origin items wherever located'' are subject to the EAR. 15 CFR 734.4(a)(2).

From the plain language of the export laws and regulations, it is clear that the EAA and EAR were intended to apply extraterritorially regardless of a person's nationality or locality so long as U.S. origin items are involved. Counsel for BIS accurately pointed out that the EAA and EAR have an *in rem* basis, applicable to ''goods * * * subject to the jurisdiction of the United States.'' Thus, it is immaterial that Mr. Mahdi is a naturalized Canadian citizen, OTS was a Canadian corporation, and some of the activities occurred in Canada. To hold otherwise would contravene exiting law and regulation, and would undermine the effectiveness of the EAA and the EAR.

B. Violations of the Export Administration Act and Regulations

While Mr. Mahdi refused to participate in much of the hearing and did not contest much of the evidence presented, the burden of proof remains on the Agency to prove the allegations in the charging letter by reliable, probative, and substantial evidence. *See* 5 U.S.C. 556(d). The Supreme Court has held that 5 U.S.C. 556(d) adopts the traditional preponderance of the evidence standard of proof. *Steam* v. *S.E.C.,* 450 U.S. 91, 102 (1981). To prevail, BIS must establish that it is more likely than not that the Respondents commented the violations alleged in the charging letter. *See Herman & Maclean* v. *Huddleston,* 529 U.S. 375, 390 (1983). In other words, the Agency must demonstrate ''that the existence of a fact is more probable than its nonexistence.'' *Concrete Pipe & Products* v. *Construction Laborers Pension Trust,* 508 U.S. 602, 622 (1993). To satisfy the burden of proof, BIS may rely on direct and/or circumstantial evidence. *See generally Monsanto Co.* v. *Spray-Rite Serv. Corp.,* 465 U.S. 752, 764–765 (1984).

Here, the Agency has produced quantum evidence, including witness testimony and documentary evidence, which establish that Respondents Mahdi and OTS violated the §§ 746.7 and 764.2 of the EAR. It is well settled that a corporation can be held liable for the actions of its officers and employees committed within the scope of employment and in furtherance of the employer's business. *See Untied States* v. *BI-Co Pavers, Inc.,* 741 F.2d 730, 737 (5th Cir. 1984); *United States* v. *Sherpix,* 512 F.2d 1361, 1367 n. 7 (D.C. Cir. 1975). The doctrine of respondent superior is applicable in export cases.

1. Conspiracy To Obtain Oil Field Equipment From the United States

Respondent Mahdi and the corporate respondent, OTS, have been charged in Count 1 with conspiracy to export goods to Iran in violation of § 746.7 of the EAR. The conspiracy regulations provide: ''No person may conspire or act in concert with one or more persons in any manner or for any purpose to bring about or to do any act that constitutes a violation of the EAA, the EAR, or any other order, license or authorization issued thereunder.'' 15 CFR 764.2(d). To succeed under § 764.2(d), the Agency must establish that: (1) Two or more persons formed an agreement to violate the EAA or EAR; (2) the respondent knowingly participated in the conspiracy; and (3) an overt act was committed in furtherance of a common scheme. *See generally* 50 U.S.C. App. 2410(a). The conspiracy charge with respect to Mr. Mahdi has already been found proved on the basis of collateral estoppel.

On September 6, 2002, summary decision was entered against Mr. Mahdi on Charge 1 on the basis of collateral

estoppel arising from the guilty plea in the criminal proceeding. The evidence shows that between March 1997 and April 1998, Mr. Mahdi was acting on behalf of OTS when he entered into business arrangements with Dr. Strome of BITS to provide U.S. origin oil field equipment to customers in Iran. (Tr. 138, 241–44, 251–53; Gov't Ex. 3, at 21; Gov't Ex. 6, at 1–2; Gov't Ex. 27–28; Gov't PFF 9–12, 14; Gov't PUFF 49). Mr. Mahdi and Mr. DiMarco took several actions in furtherance of the conspiracy by submitting approximately 117 RFQs to BITS on behalf of customers in Iran. (Tr. 224–26, 244–47; Gov't Ex. 21, 21A, 25; Gov't PFF 40–41; Gov't PUFF 49). The mere fact that RFQs submitted to BITS did not all result in shipments from BITS through OTS to Iran is not crucial. Conspiracy is an inchoate offense that can be committed regardless of whether object of the venture is achieved. *See United States* v. *Plummer,* 221 F.3d 1298, 1306 (11th Cir. 2000); *See also Iannelli* v. *United States,* 420 U.S. 770, 777 (1975). Since Mr. Mahdi and DiMarco's activities were performed within the scope of employment and in furtherance of OTS's business, the violations of section 764.2(d) are attributable to OTS.

2. Unauthorized Export From the United States to Iran

Charges 2 and 3 allege that the Respondents violated section 764.2(a) by unlawfully exporting oil field equipment from the United States to Iran through Canada without obtaining prior authorization from OFAC on October 30, 1997 and February 2, 1998. Both charges are found proved. The relevant regulation prohibits any person from engaging in ''any conduct prohibited by or contrary to * * * the EAA (or) the EAR.'' 15 CFR 764.2(a). As previously stated, § 746.7 prohibits any person from exporting or reexporting goods to Iran without prior OFAC authorization.

The administrative record clearly establishes that neither BITS, nor OTS, nor Mr. Mahdi under any of his names, had applied for or received OFAC authorization to export from the United States to Iran. (Tr. 215–17; Gov't Ex. 20; Gov't PFF 39). Absent OFAC authorization, the export of goods to Iran constitutes a violation of the EAA and its underlying regulations.

The facts show that, in response to an irrevocable purchase order containing reference number 701–1320–TSI submitted by Mr. Mahdi, Dr. Strome of BIST sold $42,356.56 worth of U.S. manufactured oil field equipment to OTS. The oil field equipment was exported to OTS's freight forwarder, Danzas, located in Ontario, Canada. (Tr. 148, 152, 156–60, 166–69; Gov't 8, 11, 12; Gov't PFF 19, 22–24). The ''T'' in the reference number indicates that the end-user was Kala Naft, Tehran, Iran. (Tr. 148, 152; Gov't 8; Gov't PFF 19). Pursuant to Mr. Mahdi's directions, the oil field equipment was consolidated with other OTS equipment and exported to Iran via Cypress. (Tr. 153–55, 169–172, 177–178; Gov't Ex. 10; Gov't PFF 25–26). Further, to evade detection and so that Canadian law would apply, the country of origin for the products was identified as Canada when the true country of origin was the United States. *Id.*

The law contemplates that transfer of U.S. origin goods from one foreign country to another foreign country falls within the purview of the EAA and its underlying regulations. *See* 50 U.S.C. App. sec. 2415(5); *see also* 15 CFR 734.2(b). Thus, Mr. Mahdi's actions constitute a violation of § 764.2(a) on October 30, 1997 as described in Charge 2. Since the export to Iran was performed in furtherance of OTS's business, the corporate respondent is equally liable for the violation of § 764.2(a).

The Respondents are also liable for violating § 764.2(a) on February 2, 1998 as described in Charge 3. The evidence shows that, in response to purchase 702–1360–TSI, Dr. Strome of BITS sold $69,478.20 worth of U.S. manufactured oil field equipment to OTS. (Tr. 180–184; Gov't Ex. 6, at 4; Gov't Ex. 13, 14; Gov't PFF 28). Mr. Mahdi hired Pars Maritime Cargo, Inc., a general sales agent for Iran Air, to pick up the equipment from BITS in Florida and export it on February 2, 1998. (Tr. 185–187; Gov't Ex. 6, at 4; Gov't Ex. 14, 15; Gov't PFF 29–30). Although no direct evidence was presented showing that the equipment was subsequently exported to Iran, there is sufficient circumstantial evidence that the equipment was exported to Iran.

3. Soliciting or Attempting an Unauthorized Export From the United States to Iran

Charge 4 is also proved. Section 764.2(c) prohibits any person from soliciting or attempting to violate the EAA or the EAR. Solicitation is defined as ''asking another person to commit an offense.'' *In the Matter of the Sound You Company, Ltd. and Yuzo Oshima,* 58 FR 60593, 60597 (Nov. 17, 1993). ''For the offense of solicitation to be completed, the (respondent) must entice, advise, incite, order or otherwise encourage another to commit an offense.'' *Id.* Like conspiracy, it is not necessary that the unlawful offense to actually be completed to order to find the charge of solicitation proved. *Id.*

Attempt is another inchoate crime, like conspiracy and solicitation, which ''can be committed regardless of whether the objective of the venture is achieved.'' *Plummer,* 221 F.3d at 1306. Attempt consists of: (1) An intent to engage in an unlawful activity; and (2) an overt act committed in furtherance of the unlawful activity. *See generally* 21 Am. Jur. 2d, Criminal Law § 175 (2003). Preparation alone or a mere statement of one's intent to commit an unlawful activity is not enough to constitute an attempt; rather the respondent must engage in some appreciable overt act. *Id.* at § 177.

Here, the activities of Mr. Mahdi and OTS go beyond mere preparation. By soliciting Dr. Strome of BITS, on March 4, 1999, to export $120,000 worth of oil filed equipment ordered by OTS under reference number 013–077–TBT to Industrial Engineering Inspection Company of Iran for inspection, Mr. Mahdi and OTS violated section 764.2(c). (Tr. 107–09, 201, 207, 210–15; Gov't Ex. 18A, at 3; Gov't Ex. 18, 19; Gov't PFF 35–36). Mr. Mahdi and OTS violated § 764.2(c) again in mid-March when Mahdi went to Florida to inspect and obtain the oil field equipment ordered under reference 013–077–TBT because Dr. Strome refused to export the equipment to Iran. (Tr. 107–09, 202; Gov't PFF 37–38). Although the Respondents committed two distinct counts of violations of § 764.2(c), BIS has charged them with a single count. That count is found proved.

4. Making a False Statement on a Shipper's Declaration

Charge 5 is also found proved. Section 764.2(g) prohibits any person from making a misrepresentation or false statement of any material fact on any export control document. *See* 15 CFR 764.2(1)(ii). A SED qualifies as an export control document. *See* 15 CFR 772.1.

The Agency charges Respondents Mahdi and OTS with making a false and misleading statement of material fact on an SED on October 30, 1997. The SED falsely stated that the country of ultimate destination of the oil field equipment ordered in reference number 701–1320–TSI was Toronto. However, the true country of ultimate destination was Iran. Neither OTS nor Mr. Mahdi prepared the SED on October 30, 1997. Forward Logistics prepared the SED as directed by Dr. Strome. (Tr. 156–60, 166–69; Gov't Ex. 11, 12; Gov't PFF 22–24). BIS relies on *Pinkerton* v. *United States,* 328 U.S. 640 (1946), to hold Mr. Mahdi and OTS liable for the violation of section 764.2(g).

The Agency's argument is well taken. In *Pinkerton,* the Supreme Court held that a participant in a conspiracy is liable for the substantive offenses committed by co-conspirators in furtherance of the common objective. 328 U.S. at 645–48. In this case, Forward Logistics prepared the SED containing false information of material fact regarding the country of ultimate destination. Forward Logistics prepared the SED as directed by Dr. Strome. The preparation of the false SED was within the scope of the conspiracy, and in a manner reasonably foreseeable by Respondents OTS and Mahdi as a natural consequence of the conspiracy. Accordingly, the violation of § 764.2(g) is attributable to OTS and Mr. Mahdi even though the Respondents did not actually prepare the SED.

5. Knowingly Violating the Export Administration Regulations

The final charge is also found proved. Charge 6 alleges that Mr. Mahdi and OTS violated § 764.2(e) by transferring and forwarding goods from Canada to Iran on or about October 30, 1997 knowing those goods had been exported from the United States in violation of the EAR. Section 764.2(e) prohibits any person from transferring, transporting, or forwarding ''any item exported or to be exported from the United States, or that is otherwise subject to the EAR, with knowledge that a violation of the EAR [or] the EAR * * * has occurred.'' 15 CFR 764.2(e).

The evidence shows that Mr. Mahdi knew of the United States' embargo against Iran, which restricted the export of U.S. commodities to Iran (Gov't Ex. 3, at 26–27; Gov't PFF 27). As a matter of fact, during the Change of Plea Proceedings before the United States District Court for the Middle District of Florida (Honorable Anne C. Conway) in Orlando, Florida on August 24, 1999, Mr. Mahdi testified that he knew that Dr. Strome could not lawfully export the goods to Iran without the assistance of Mahdi and OTS. (Gov't Ex. 3, at 27–28). This knowledge is imputed to OTS, on whose behalf Mr. Mahdi was acting. *See generally, In re: Hellenic, Inc.,* 252 F.3d 391, 395 (5th Cir. 2001) (''An agent's knowledge is imputed to the corporation where the agent is acting within the scope of his authority and where the knowledge relates to matters within the scope of that authority * * * (C)ourts generally agree that the knowledge of directors or key officers, such as the president and vice president, is imputed to the corporation).

The facts further show that Danzas shipped the oil field equipment ordered by OTS under reference number 701–1302–TSI to Iran via Cypress. (Tr. 153–55, 169–72, 177–78; Gov't Ex. 10; Gov't PFF 25–26). Moreover, so that Canadian export law would apply, the country of origin for the equipment was falsely identified as Canada. *Id.* the true country of origin was the United States. These activities constitute a violation of § 764.2(e) for which Mr. Mahdi and OTS are liable.

VIII. Reason for the Sanction

Based on the number and gravity of the offenses and the fact that it appears that Mr. Mahdi and OTS may resume efforts to make unauthorized exports from the United States, the Agency's proposed sanction of denial of U.S. export privileges for 20 years is deemed appropriate.

There is an on-going war against terrorism. The events of September 11, 2001 reveal that international terrorism is a real threat to the national security of the United States. To limit and curtail the financial support of terrorism the United States established an embargo against Iran. The Respondents circumvention of the embargo by exporting goods destined for Iran through Canada cannot be tolerated. The facts show that in order to achieve their objective Respondents made false statements, or caused false statements to be made, on various export documents in the United States and in Canada. The facts also show that BITS was not the only U.S. company that had business dealings with OTS. Mr. Mahdi and OTS solicited quotations on behalf of customers in Iran and other Middle Eastern countries from a number of U.S. companies and bought equipment from the lowest bidder. (Tr. 224–25, 244–47; Gov't Ex. 21, 21A, 25; Gov't PFF 40–41). As Agency counsel correctly points out, Respondents efforts were extensive and far-reaching.

The value of the goods actually exported and those that Respondents attempted to export exceeded $232,834. Dr. Strome, Mr. Mahdi, and Mahdik Mahdi all perceived that the business venture was lucrative and could prove to be prosperous. (Tr. 253; Gov't Ex. 6, at 2; Gov't PFF 14). As recent as April 2002, BIS learned that Mr. Mahdi's brother in Amman, Jordan posted an advertisement soliciting bids for a certain type of catalyst. (Tr. 260–62; Gov't Ex. 29). The record shows that Mr. Mahdi's brother, owner of Zawana Trading, had been instrumental in facilitating the unauthorized export of equipment to Middle Eastern countries such as Iraq. (Tr. 178, 224–26, 236–238, 244–47, 253; Gov't Ex. 6, at 6; Gov't Ex. 21, 21A, 25, 26; Gov't PFF 14, 40–41, 44). The Agency notes that Mr. Mahdi and OTS are well positioned in Canada where the export laws are less stringent with respect to Iran. By the same token U.S. export laws concerning Canada are minimal. Thus, Respondents have an opportunity to resume their efforts if they so choose.

In order to deter such actions and prevent Respondents from committing future violations of the EAA and EAR, a significant denial order is not only warranted. It is justifiable. Agency counsel has established that a 20-year order denying export privileges is not without precedent. *See In the Matter of Miguel Angel Fajardo,* 66 FR 30162 (Jun. 5, 2001); *In the Matter of Fawzi Mustapha Assi,* 64 FR 40816 (Jul. 28, 1999); *In the Matter of Ian Ace,* 62 FR 43505 (Aug. 14, 1997).

The Recommended Decision and Order is being referred to the Under Secretary for review and final action. As provided by § 766.17(b)(2) of the EAR, the recommended decision and order is being served by express mail. Because the Under Secretary must review the decision in a short time frame, all papers filed with the Under Secretary in response to the recommended decision and order must be sent by personal delivery, facsimile, express mail, or other overnight carrier as provided in § 766.22(a) of the EAR. Submissions by the parties must be filed with the Under Secretary for Export Administration, Bureau of Industry and Security, U.S. Department of Commerce, Room H–3898, 14th Street and Constitution Avenue, NW., Washington, DC 20230, within 12 days from the date of issuance of this Recommended Decision and Order. Thereafter, the parties have eight days from receipt of any response(s) in which to submit replies.

Within 30 days after receipt of this Recommended Decision and Order, the Under Secretary shall issue a written order, affirming, modifying or vacating the recommended decision and order. *See* 15 CFR 766.22(c).

Done and dated August 26, 2003, at Norfolk, Virginia.

Peter A. Fitzpatrick,

Administrative Law Judge, Norfolk, Virginia.

Attachment A—Exhibit List

A. Judge's Exhibit

Judge's Ex. 1—Memorandum to File dated 24 April 2003 from Lucinda Shinault, Paralegal to the Administrative Law Judge

Judge's Ex. 2—Return to Sender Letter dated April 21st, 2002[9]

[9] J. Khan signed for the Federal Express package on 4/17/2003. Thus, the unidentified correspondent

B. Government Exhibit

Gov. Ex. 1A—Canadian Department of Justice (''DOJ'') Facsimile Memorializing Shipment of Boxes of Exhibits and Receipt thereof by Mr. Mahdi—Ruling on admissibility reserved [10]

Gov. Ex. 1B—Copy of envelope from Mr. Mahdi d/b/a OTS Refining Equipment Corporation addressed to the Bureau of Industry & Security—Ruling on admissibility reserved

Gov. Ex. 1—Two Count Criminal Indictment Filed in the United States District Court, Middle District of Florida, Orlando Division on June 15, 1999

Gov. Ex. 2—Plea Agreement between U.S. Attorney and Mr. Mahdi Filed in the United States District Court, Middle District of Florida, Orlando Division on Aug 24, 1999

Gov. Ex. 3—Transcript of Change of Plea Proceedings Before the Honorable Anne C. Conway, United States District Judge in the United States District Court, Middle District of Florida, Orlando Division on August 24, 1999

Gov. Ex. 4—Transcript of Sentencing Proceedings Before the Honorable Anne C. Conway, United States District Judge in the United States District Court, Middle District of Florida, Orlando Division on November 19, 1999

Gov. Ex. 5— Judgment & Sentencing Order in *United States* v. *Abdulamir Mahdi*, 99–128–CR–ORL–22B (Filed Nov. 22, 1999)

Gov. Ex. 6—Statement of John Strome, President of Brevard International Technical Services, Inc. (BITS) dated 1/29/99

Gov. Ex. 7—Report of Investigative Activity and Miranda Warning/ Waiver signed by Abdulamir Mahdi dated 04–20–99

Gov. Ex. 8—OTS Irrevocable Purchase Order 701–1320–TSI from Mahdi to BITS

Gov. Ex. 9—Description of Kala Naft Company downloaded from Web site *http://www.kalanaft-tehran.com/ Introduction.htm* on 02/13/03

Gov. Ex. 10—BITS Invoice Document Number 004325

Gov. Ex. 11—Airway Bill MAWB# 014–81327750 dated 10/30/1997

Gov. Ex. 12—Shippers Export Declaration 10/30/1997

Gov. Ex. 13—OTS Irrevocable Purchase Order 702–1360–TSI from Mahdi to BITS

Gov. Ex. 14—Bill from PARS Maritime Cargo Inc. to OTS Invoice No. 5285 dated 02/02/98

Gov. Ex. 15—Information on PARS Maritime Cargo Inc. downloaded from Web site *http://www.openface.ca/ ~pars/main.html* on 1/19/99

Gov. Ex. 16—OTS Irrevocable Purchase Order 013–077–BTB to BITS[11]

Gov. Ex. 17—Royal Bank of Canada Funds Transfer dated 27 May 1998

Gov. Ex. 18A—Kala Naft Co. Tehran Purchase Order No. 08–70264575–D01 dated 19/04/98

Gov. Ex. 18—Notes of Telephone Conversations between Mr. Strome and Mr. Mahdi on 3/4/99 at 11:50 a.m. taken by Mr. Strome

Gov. Ex. 19—Website printout with Information about Industrial & Engineering Inspection Co. of Iran (''IEI'')

Gov. Ex. 20—Letter dated Aug 24, 2000 from Office of Foreign Assets Control (''OFAC'') to Bureau of Export Administration[12]

Gov. Ex. 21—Report of Investigative Activity dated August 25, 2000 Containing an Itemized List of Request for Quotations from Mahdi to BITS.

Gov. Ex. 21A—Information Extracted from Gov. Ex. 21 According to the Explanation Provided by Respondent Mahdi in Gov. Ex. 7

Gov. Ex. 22—OTS Request for Quotation 223–127–RSA to BITS

Gov. Ex. 23—OTS Request for Quotation 463–078–ACT to BITS

Gov. Ex. 24—OTS Request for Quotation 529–088–ACO to BITS

Gov. Ex. 25—Information on National Petrochemical Company downloaded from Web site *http://www.nipc.net/* on 2/13/03

Gov. Ex. 26—Report of Investigative Activity dated August 30, 2000 summarizing Request for Quotations

Gov. Ex. 27—OTS Letter to Dr. Strome of BITS dated No. 5, 1997 Identifying Countries Mahdi Sells To

Gov. Ex. 28—Draft Confidentiality and Non-Disclosure Exclusive Negotiations Agreement dated 11/1/ 97

Gov. Ex. 29—Request for Quotation on Alumina Based Catalyst Posted by M.K. Mahdi on 04/09/02 downloaded from Web site *http:// globallcatalyst.com/ forum.mv?command=showthread& forum+catalyst&post+000004*

Attachment B

Rulings on the Bureau's Proposed Findings of Fact and Conclusions of Law and Proposed Ultimate Findings of Fact and Conclusions of Law

On July 10, 2003 the Bureau of Industry and Security filed a Post-hearing Submission. That pleading included both Proposed Findings of Fact and Conclusions of Law (pp 11–26) and Proposed Ultimate Findings of Fact and Conclusion of Law (pp 26–33). The rulings on those proposals are set out below.

A. Proposed Findings of Fact and Conclusions of Law

1. Mr. Abdulamir Mahdi is a Canadian citizen and a resident of Ontario, Canada. Govt. Ex. 2 at 16; Govt. Ex. 3 at 20, lines 9–12.

Ruling: Accepted and Incorporated.

2. Mr. Abdulamir Mahdi is also known as, and conducts business using the names, Amir Mahdi and Jasin Khafaf. Govt. Ex. 2 at 1; May 13 Tr. at 100–01.

Ruling: Accepted and Incorporated.

3. From October 1995 through March 17, 1999, Mr. Mahdi was the sole owner and operator of OTS Refining Equipment Corporation (OTS) in Markham, Ontario, Canada, the business of which included exporting spare parts for oil field equipment to Middle Eastern countries. Respondent's Motion for Denial of Bureau of Industry and Security's Motion for Summary Decision (''Respondent's Motion for Denial'') at 4; Govt. Ex. 2 at 16; Govt. Ex. 3 at 20, lines 20–25.

Ruling: Accepted and Incorporated.

4. From at least March 1997 to at least April 2002, a brother, Mahdik Mahdi, owned and operated the Zawana Trading and Marketing Establishment (Zawana) in Amman, Jordan, which shipped items from Jordan to Iraq. Govt. Ex. 2 at 17; Govt. Ex. 7 at 1; Govt. Ex. 6 at 2–3; May 13 Tr. at 143, line 9 to 144, line 5.

Ruling: Accepted. Although the cited materials do not support the statement, the record as a whole does support the factual assertions.

5. From at least late 1996 to at least March 1999, Brevard International Technical Services (BITS), located in Melbourne, Florida, and operated by John R. Strome, was a supplier of parts for oil field equipment. Respondent's Motion for Denial at 8; Govt. Ex. 2 at 17.

Ruling: Accepted and Incorporated:

6. On or about August 24, 1999, Mr. Mahdi pled guilty in the United States

incorrectly dated the return to sender letter. The true date is April 21, 2003.

[10] Ruling of admissibility on Government's Exhibits 1A and 1B were reserved pending service of those documents on Respondent. Notice of Service of those exhibits was sent May 14, 2003 so those Exhibits are Admitted.

[11] The purchase order reference number contains a typographical error. The true purchase order reference number is 013–077–TBT.

[12] Now referred to as the Bureau of Industry & Security (''BIS'')

District Court, Middle Division of Florida, No. 6:99–CR–128–ORL–22DAB, to a criminal conspiracy to make unauthorized exports of U.S. origin oil field and industrial equipment from the United States to Iraq and Iran. Judgment was entered against Mr. Mahdi, who was sentenced to 51 months imprisonment. Govt. Exs. 1–5; May 13 Tr. at 110, line 1 to 120, line 11; *id.* at 124, line 14 to 125, line 9. [Charge 1]

Ruling: Accepted and Incorporated.

7. The record of the criminal proceeding against Mr. Mahdi, including his admissions therein, shows that OTS was involved in the conspiracy to which Mr. Mahdi pled guilty. Govt. Ex. 1 at 5, paragraph 12 (''It was the purpose of this conspiracy for defendant MAHDI, to enrich and benefit himself and others by offering to sell and selling United States origin oil field and industrial equipment through Tech-Link and OTS in Canada to Iran and Iraq''); *id.* at paragraph 13 (''It was further part of the manner and means of this conspiracy that defendant MAHDI arranged * * * for OTS to import United States origin oil field and industrial equipment'' into Canada); Govt. Ex. 2 at 13, paragraph 9, at 18, paragraphs 12 and 13 (in plea agreement, Mr. Mahdi certified that these facts were true); May 13 Tr. at 110, line 8 to 119, line 10. [Charge 1]

Ruling: Accepted and Incorporated.

8. The record of the criminal proceeding against Mr. Mahdi, including his admissions therein, shows that BITS and Mr. Strome were involved in the criminal conspiracy to which Mr. Mahdi pled guilty. In a separate proceeding, Mr. Strome also pled guilty to a charge of criminal conspiracy. Govt. Ex. 1 at 6–8, paragraphs 15a–1, 151–t, 15v (''overt acts'' of the conspiracy involving Mr. Strome or BITS); Govt. Ex. 2 at 13, paragraph 9, at 18–22 paragraphs 15–23, 26–34, 36 (in plea agreement, Mr. Mahdi certified that these facts were true); May 13 Tr. at 125, lines 11–25. [Charge 1]

Ruling: Accepted and Incorporated.

9. In late 1996 or early 1997, Mr. Mahdi contacted Mr. Strome to discuss whether BITS would supply parts for oil field equipment to Mr. Mahdi for him to provide to customers, some of whom were in the Middle East. At this time, Mr. Mahdi presented himself to Mr. Strome as doing business as Tech-Link Development Corporation (Tech-Link). Respondent's Motion for Denial at 8; Govt. Ex. 2 at 18, paragraph 15; Govt. Ex. 6 at 1; May 13, 2003 Tr. at 136, line 20 to 138, line 1. [Charge 1]

Ruling: Accepted and Incorporated.

10. Mr. Strome met with Mr. Mahdi in or about October 1997 in Toronto, Canada. By this time, Mr. Mahdi had stopped doing business as Tech-Link and was doing business with Mr. Strome as OTS. At this meeting, they discussed entering into an arrangement in which BITS would serve as OTS's exclusive supplier of United States origin commodities. Under the proposed agreement, BITS would ship products manufactured under BITS's name brand to OTS in Canada, BITS would sell the products to customers overseas, and the customers would be obligated to obtain replacement parts from BITS through OTS. In fact, the business arrangement that they were able to pursue involved OTS and Mr. Mahdi placing requests for quotation and orders with BITS on behalf of overseas customers, and BITS supplying products manufactured by other suppliers to Mr. Mahdi and OTS. Govt. Ex. 2 at 19, paragraph 18; Govt. Ex. 6 at 1–2; May 13 Tr. at 161, lines 6–16; *id.* at 138, lines 2–18; *id.* at 241, line 20 to 245, line 12. [Charge 1]

Ruling: Accepted and Incorporated.

11. On or about November 1, 1997, Mr. Mahdi and Mr. Strome exchange a draft agreement between BITS and OTS, describing the proposed arrangement. Govt. Ex. 28; May 13 Tr. at 250, line 24 to 253, line 7. [Charge 1]

Ruling: Accepted and Incorporated.

12. On or about November 5, 1997, Mr. Mahdi, on behalf of OTS, sent a memorandum to Mr. Strome at BITS, which stated: ''Further to our various discussions and meetings in Toronto regarding the agency agreement, name (sic) of countries are listed below.'' A list of 19 countries, mostly in the Middle East, followed. These countries included Iraq and Iran. Govt. Ex. 2 at 19, paragraph 21; Govt. Ex. 27; May 13 Tr. at 240, line 19 to 241, line 19. [Charge 1]

Ruling: Accepted and Incorporated.

13. Although Mr. Strome and Mr. Mahdi did not memorialize their agreement in a final document, they proceeded on the basis of a ''handshake'' agreement. May 13 Tr. at 253, lines 10–19. [Charge 1]

Ruling: Accepted and Incorporated.

14. Mr. Strome met with Mr. Mahdi in Canada again in or about September 1998. On this occasion, Mr. Strome met Mahdik Mahdi. Mr. Strome was told that Mahdik Mahdi was well-connected politically and commercially in Iraq. In Mr. Strome's presence, Mahdik Mahdi and Abdulamir Mahdi reviewed files and drawings for projects in Iraq and called Iraq to discuss such a project. Govt. Ex. 2 at 19, paragraph 20; Govt. Ex. 6 at 2–3; May 13 Tr. at 253, line 25 to 256, line 18. [Charge 1]

Ruling: Accepted and Incorporated.

15. Mr. Strome began to cooperate with the investigation of OTS and Mr. Mahdi in January of 1999. Throughout 1998, Mr. Strome, through counsel, was negotiating with the United States Attorney's Office in Orlando, Florida regarding the terms of a possible guilty plea and agreement to act as a cooperating witness. During this negotiating period in 1998, Mr. Strome continued to do business with Mr. Mahdi and OTS. May 13 Tr. at 105, line 25 through 107, line 1. [Charge 1]

Ruling: Accepted and Incorporated.

16. Mr. Mahdi has repeatedly admitted shipping United States origin items obtained from Mr. Strome and BITS to Iran via Canada. These admissions include:

a. Referring to paragraph 11 on page 17 of his plea agreement (Govt. Ex. 2), Mr. Mahdi testified under oath at his change of plea proceeding: ''So basically, what I'm trying to say is shipment to Iran, yes, we did ship, I did ship to Iran knowingly, that it is going to Iran. And I knew there was an embargo, United States embargo against Iran.'' Govt. Ex. 3 at 22, lines 22–24. ''Your Honor, we did ship goods to Iran. And I knew there was a U.S. embargo.'' *Id.* at 26, lines 14–15.

b. Referring to the same paragraph 11 at his sentencing proceeding, Mr. Mahdi testified under oath: ''I pled to item 11 and shipping to Iran, yes. We did ship to Iran, true. * * * I'm trying to, what I'm saying I did ship goods to Iran from Canada.'' Govt. Ex. 4 at 16, lines 6–7, 11–12. ''[Mr. Strome] was using me to sell to Iran.'' *Id.* at 61, lines 2–3.

Ruling: Accepted and Incorporated.

17. OTS and Mr. Mahdi used a system for assigning reference numbers to the requests for quotations they placed with BITS and other suppliers. This numbering system used the first letter in a reference number to identify the customer for whom the request for quotation was placed. Specifically, the initial letter T indicated the Kala Naft Company (Kala Naft) in Tehran, Iran; the initial letter R indicated the Razi Petrochemical Company in Iran; the initial letter A indicated the Arak Petrochemical Company in Iran; the initial letter N indicated the National Iranian Gas Company in Iran; and the initial letter Z indicated Zawana, the firm operated by Mahdik Mahdi in Amman, Jordan. The next two letters in the reference number could refer to a specific manufacturer or a type of commodity. Govt. Ex. 7; May 13 Tr. at 140, line 16 to 143, line 8.

Ruling: Accepted and Incorporated.

18. Mr. Mahdi has admitted that items he ordered for customers in Iran were intended to go to Iran from the earliest

stage of the transaction. Respondent's Motion for Denial at 15 (''Mr. Mahdi informed his suppliers of the fact that the requested goods were destined for Iran right from the inquiry stage'' and disclosed ''to John Strome of Brevard in the United States (supplier/manufacturer) that the equipment was destined for Iran.'').

Ruling: Accepted and Incorporated.

19. On or about July 22, 1997, Mr. Mahdi submitted to BITS and Mr. Strome, on behalf of OTS, an irrevocable purchase order for oil field equipment valued at approximately $41,695. The OTS reference number on this irrevocable purchase order was 701–1320–TSI. The ''T'' in this reference number indicates that Mr. Mahdi and OTS were seeking to obtain this equipment for Kala Naft in Tehran, Iran. Govt. Ex. 8; May 13 Tr. at 147, line 6 to 148, line 25. [Charge 2, 6]

Ruling: Accepted and Incorporated.

20. Kala Naft in Tehran, Iran, is a subsidiary of the National Iranian Oil Company. Govt. Ex. 9; May 13 Tr. at 149, line 9 to 150, line 6. [Charge 2, 6]

Ruling: Accepted and Incorporated.

21. On or about July 23, 1997, BITS issued a commercial invoice for the sale of oil field equipment for approximately $42,356 in response to the purchase order with OTS reference number 701–1320–TSI. According to this invoice, the equipment was sold to OTS and to be shipped on October 29, 1997, to Danzas Canada, Ltd., a freight forwarder in Ontario, Canada. Govt. Ex. 10; May 13 Tr. at 150, line 12, to 150, line 25. [Charge 2, 6]

Ruling: Accepted and Incorporated.

22. On or about October 30, 1997, Forward Logistics Group, Inc., a freight forwarder acting on behalf of BITS, issued an air waybill for the shipment of the oil field equipment purchased by OTS under by OTS reference number 701–1320–TSI. According to this air waybill, BITS shipped the oil field equipment from Melbourne, Florida, to OTS, care of Danzas Canada Ltd., in Ontario, Canada, via Air Canada. Govt. Ex. 11; May 13 Tr. at 155, line 23, to 157, line 6. [Charge 2, 6]

Ruling: Accepted and Incorporated.

23. On or about October 30, 1997, Forward Logistics Group, Inc., acting on behalf of BITS, prepared and submitted to the United States Customs Service a Shipper's Export Declaration (SED) for the shipment of oil field equipment purchased by OTS under OTS reference number 701–1320–TSI. This SED identified BITS as the exporter, OTS care of Danzas Canada Ltd. as the ultimate consignee, Air Canada as the exporting carrier, and October 30, 1997, as the date of exportation. This SED also identified ''Toronto'' as the country of ultimate destination. BITS instructed Forward Logistics Group, Inc. to put this information on the SED, including the statement that Toronto was the ultimate destination for the exported equipment. Govt. Ex. 12; May 13 Tr. at 165, line 17 to 169, line 16. [Charges 2, 5]

Ruling: Accepted and Incorporated.

24. Mr. Mahdi has admitted that Mr. Strome of BITS caused the submission of this SED, which contained the false statement that Toronto was the ultimate destination for the exported equipment. Respondent's Motion for Denial at 12 (''Mr. Mahdi did not complete the Shippers export Declaration (sic), Mr. Strome of 'Brevard' in Melbourne, Florida completed the form. It was Mr. Strome, not Mr. Mahdi, how (sic) indicated that the final destination of the equipment was Canada knowing that the final destination was indeed Iran.''). [Charge 5]

Ruling: Accepted and Incorporated.

25. As shown in records of Danzas Canada Ltd. that were reviewed by the Royal Canadian Mounted Police, Danzas Canada, Ltd., received the equipment obtained from BITS in the above-described transaction, consolidated it with other equipment obtained by OTS, and shipped the equipment from Canada to Iran via Cyprus in or about early November of 1997 on the instruction of Mr. Mahdi. May 13 Tr. at 153, line 12, to 155, line 18; *id.* at 169, line 17 to 170, line 15; *id.* at 176, line 12 to 178, line 18. [Charge 2, 5, 6]

Ruling: Accepted and Incorporated.

26. Mr. Mahdi has admitted that he shipped the oil field equipment obtained from BITS under OTS reference number 701–1320–TSI to Iran. Govt. Ex. 2 at 13, paragraph 9, at 20–21, paragraph 28 (in plea agreement, Mr. Mahdi certified that the following was true: ''In or about November, 1997 ABDULAMIR MAHDI, a/k/a Amir Mahdi transshipped from Canada to Iran United States origin oil field equipment purchased from BITS * * * under OTS 701–1320–TSI.'') [Charges 2, 5, 6]

Ruling: Accepted and Incorporated.

27. Mr. Mahdi has repeatedly admitted that he knew Mr. Strome violated United States law by exporting from the United States items destined for Iran, and that he helped Mr. Strome to make these exports to Iran:

a. At his change of plea proceedings, Mr. Mahdi testified under oath as follows:

''The Defendant: * * * [Mr. Strome] knew there's embargo on Iran. And he asked me if some other orders or shipments can be made through Canada to Iran, which we were intending to do.

''The Court: And you knew that he couldn't lawfully do it without your help?

''The Defendant: That's correct, ma'am.

''The Court: And knowing that he couldn't lawfully do it, you agreed to help him?

''The Defendant: That's correct, ma'am.''

Govt. Ex. 3 at 27, lines 17–25.

b. At this sentencing proceeding, Mr. Mahdi testified similarly: ''I knew [Strome] was not able to sell, to Iran. And he was using me to sell to Iran.'' Govt. Ex. 4 at 61, lines 2–3.

c. In this proceeding, Mr. Mahdi has stated that he ''knew that it was a violation of U.S. law for Mr. Strome, on behalf of a U.S. company and acting in the United States, to export the equipment to Iran from the United States'' (although Mr. Mahdi contends that he did not know ''that it was a violation of U.S. law for [Mr. Mahdi] as a Canadian citizen and a Canadian company to export the equipment to Iran''). Respondent's Motion for Denial at 18. [Charge 6]

Ruling: Accepted and Incorporated.

28. On or about October 23, 1997, Mr. Mahdi submitted to BITS and Mr. Strome, on behalf of OTS, an irrevocable purchase order for oil field equipment valued at approximately $69,478. The OTS reference number on this irrevocable purchase order was 702–1360–TSI. The ''T'' in this reference number indicates that Mr. Mahdi and OTS were seeking to obtain this equipment for Kala Naft in Tehran, Iran. Govt. Ex. 13; May 13 Tr. at 178, line 19 to 181, line 4. [Charge 3]

Ruling: Accepted and Incorporated.

29. Mr. Mahdi arranged for Pars Maritime Cargo Inc. (Pars) of Montreal, Canada, to transport the oil field equipment purchased by OTS under OTS reference number 702–1360–TSI in Melbourne, Florida, to Montreal, Canada. On or about February 9, 1998, Pars picked up the equipment at the BITS facility in Melbourne, Florida. The truck driver for Pars gave to Mr. Strome a copy of an invoice, printed on Pars letterhead, for this shipment. This invoice, which is dated February 2, 1998, identifies OTS as both the ''customer'' and the ''shipper.'' Documentation provided to BITS by OTS indicated that the equipment would be exported from Canada. Govt. Ex. 14; Govt. Ex. 6 at 4; May 13 Tr. at 181, line 9 to 185, line 1. [Charge 3]

Ruling: Accepted and Incorporated.

30. On or about January 19, 1999, Par's Web site identified Pars as the general sales agent for Iran Air. The

name ''Pars'' refers to Persia, *i.e.,* Iran. Govt. Ex. 15; May 13 Tr. at 185, line 20 to 187, line 14. [Charge 3]

Ruling: Accepted and Incorporated.

31. On or about April 19, 1998, Kala Naft sent a purchase order to OTS (referencing OTS employee Tito DiMarco) for specified parts for the ''Overshot Series 70, Short Catch * * * for overshot 4⅛ in.,'' manufactured by Bowen Tools, Inc. On the first page of this purchase order, Kala Naft stated that this purchase order was ''placed in accordance with * * * your [OTS's] quotation reference no. 013–077–TBT'' and specified ''delivery FOB Antwerp packed suitably for export shipment.'' On the second page of this purchase order, Kala Naft specified ''shipment from Antwerp to B.Emam (Iran) by our nominated transport agent.'' On the third page of this purchase order, Kala Naft specified: ''our nominated inspection agency for this order is I.E.I.'' Govt. Ex. 18A; May 13 Tr. at 200, line 3 to 201, line 13: 206, line 6 to 208, line 13. [Charge 4]

Ruling: Accepted and Incorporated.

32. On or about April 21, 1998, OTS submitted to BITS and Mr. Strome an irrevocable purchase order for ''parts for 'Bowen' Overshot Series 70, Short Catch * * * for Overshot 4⅛ in.'' The purchase order was signed by OTS employee Tito DiMarco. The specific parts ordered by OTS from BITS corresponded with the parts ordered from OTS by Kala Naft on or about April 19, 1998. The equipment was ordered for approximately $121,082. In its irrevocable purchase order to BITS, OTS stated payment terms of ''10% Deposit, Balance net 30 days'' and specified packing ''suitable for ocean freight.'' The OTS reference number on this irrevocable purchase order was ''013–077–BTB; '' however, since other documents related to this transaction bore OTS reference number 013–077–TBT, the suffix ''–BTB'' on this document appears to be a typographical error for ''–TBT.'' The suffix ''–TBT'' indicates that OTS and Mr. Mahdi were seeking to obtain this equipment, originally manufactured by Bowen Tools, Inc., for Kala Naft in Tehran, Iran. Govt. Ex. 16; May 13 Tr. at 187, line 19 to 188, line 23; *id.* at 194, line 2 to 198, line 1. [Charge 4]

Ruling: Accepted and Incorporated.

33. Mr. Strome described the equipment ordered under OTS reference number 013–077–TBT as extracting equipment used to remove broken drill heads from oil wells. Govt. Ex. 6; May 13 Tr. at 194, line 2 to 195, line 2. [Charge 4]

Ruling: Accepted and Incorporated.

34. On or about May 26, 1998, Mr. Mahdi, acting on behalf of OTS, caused the Royal Bank of Canada to make a funds transfer in the amount of approximately $16,062 to be made to a bank account held by BITS. The document memorializing this funds transfer identifies OTS as the ''ordering customer'' and BITS as the ''beneficiary customer.'' These funds were a partial payment of the purchase order described in paragraph 32 above, as reflected in the notation: ''PLS CREDIT BREVARD INTERNATIONAL TECHNICAL SERVICES, INC. FOR ORDER #013–077–TBT.'' Govt. Ex. 17; May 13 Tr. at 189, line 13 to 190, line 10. [Charge 4]

Ruling: Accepted and Incorporated.

35. On or about March 4, 1999, Mr. Mahdi telephoned Mr. Strome. In this conversation, Mr. Mahdi advised Mr. Strome that the customer purchasing the equipment ordered under OTS reference number 013–077–TBT desired to have the equipment inspected by a firm known as ''I.E.I.'' As noted above, Kala Naft's purchase order to OTS dated April 19, 1998, and referencing OTS number 013–077–TBT designated ''I.E.I.'' as Kala Naft's inspection agent for this order. Govt. Exs. 18, 18A; May Tr. at 209, line 6 to 211, line 5. [Charge 4]

Ruling: Accepted and Incorporated.

36. The ''I.E.I'' in this transaction refers to the Industrial Engineering and Inspection Company of Iran, which inspects cargo bound for Iran for conformance with documents such as letters of credit and invoices. Govt. Ex. 19; May 13 Tr. at 211, line 11 to 214, line 25. [Charge 4]

Ruling: Accepted and Incorporated.

37. In March of 1999, Mr. Mahdi traveled to Florida to arrange for the shipment of the equipment purchased under OTS reference number 013–077–TBT. Investigating agents observed Mr. Mahdi inspect this equipment, and then arrested him. May 13 Tr. at 107, line 2 to 109, line 14; *id.* at 201, line 20 to 202, line 15. [Charge 4]

Ruling: Accepted and Incorporated.

38. Mr. Mahdi has admitted that he obtained the oil field equipment purchased from BITS under OTS reference number 013–077–TBT ''for the National Iranian Oil Company, Tehran, Iran.'' Govt. Ex. 2 at 13, paragraph 9, at 21, paragraph 30.[13] [Charges 2, 5, 6]

Ruling: Accepted and Incorporated.

39. None of the following parties applied for or received an export license or other export authorization from the U.S. Department of Commerce or the Office of Foreign Assets Control (OFAC) of the U.S. Department of Treasury: OTS; Mr. Mahdi (including under the names ''Amir Mahdi'' and ''Jasin Khafaf''); BITS; and Tech-Link. Govt. Ex. 20; May 13 Tr. at 215, line 1 to 217, line 11. [Charges 1–4]

Ruling: Accepted and Incorporated.

40. From 1997 to March of 1999, OTS and Mr. Mahdi (sometimes doing business as Tech-Link) submitted approximately 117 requests for quotations to BITS. The reference numbers on these requests for quotations indicate that approximately 42 of these requests were made on behalf of customers in Iran, as follows:

33 on behalf of Kala Naft, Tehran, Iran (indicated by the initial letter ''T'')
5 on behalf of Razi Petrochemical, Iran (indicated by the initial letter ''R'')
2 on behalf of Arak Petrochemical, Arak, Iran (indicated by the initial letter ''A'')
2 on behalf of the National Iranian Gas Company, Iran (indicated by the initial letter ''N'')

Govt. Exs. 7, 21, 21A; May 13 Tr. at 220, line 14 to 225, line 13. [Charge 1, Penalty]

Ruling: Accepted and Incorporated.

41. In addition, approximately 36 of these requests for quotation were submitted to BITS on behalf of Zawana, the firm operated by Mahdik Mahdi in Jordan, which transshipped to Iraq. Govt. Exs. 7, 21, 21A; May 13 Tr. at 225, line 14 to 22, [Penalty]

Ruling: Accepted and Incorporated.

42. The requests for quotation submitted to BITS by OTS on behalf of customers in Iran included:

a. A request for quotation dated December 8, 1997, and signed by OTS employee Tito DiMarco, with OTS reference number 223–127–RSA for specified parts for an agitator shaft and turbine. The initial letter ''R'' indicates that this request for quotation was submitted on behalf of Razi Petrochemical in Iran. Govt. Ex. 22, May 13 Tr. at 227, line 11 to 228, line 12. [Charge 1, Penalty]

b. A request for quotation dated July 14, 1998, and signed by OTS employee Tito DiMarco, with OTS reference number 463–078–ACT for parts for a steam turbine. The initial letter ''A'' indicates that this request for quotation was submitted on behalf of Arak Petrochemical in Iran. Govt. Ex. 23, May 13 Tr. at 228, line 18 to 230, line 3. [Charge 1, Penalty]

c. A request for quotation dated August 31, 1998, with OTS reference number 529–088–ACO for parts for a steam turbine. Handwritten notations on this document indicates that OTS

[13] As noted in paragraph 20 above, Kala Naft is a subsidiary of the National Iranian Oil Company.

quoted prices in response to this request. The initial Letter ''A'' indicates that his request for quotation was submitted on behalf of Arak Petrochemical in Iran. Govt. Ex. 24; May 13 Tr. at 230, line 8 to 232, line 9. [Change 1, Penalty]

Ruling: Accepted and Incorporated.

43. The Arak Petrochemical Company and the Razi Petrochemical Company are affiliates of the National Petrochemical Company of Iran. Govt. Ex. 25; May 13 Tr. at 232, line 10 to 234, line 18. [Change 1, Penalty]

Ruling Accepted and Incorporated.

44. From March 1997 to March 1999, Mr. Mahdi, OTS, and Tech-Link received approximately 195 requests for quotation from customers in Iran, as follows:

72 from the Razi Petrochemical Company
65 from Kala Naft, Tehran
22 from the National Iranian Gas Company
17 from the Arak Petrochemical Company

In addition, during the same time period, Mr. Mahdi, OTS, and Tech-Link received six requests for quotation directly from customers in Iraq and 1117 requests for quotation from Zawana. Govt. Ex. 26; May 13 Tr. at 219, line 21 to 220, line 9; *id.* at 235, line 7 to 238, line 2. [Change 1, Penalty]

Ruling: Accepted and Incorporated.

45. On or about April 9, 2002 Mahdik Mahdi placed on behalf of Zawana a request for quotation for the delivery of 140 tons of an alumina based catalyst to Syria. Govt. Ex. 29; May 13 Tr. at 260, line 8 to 262, line 13. [Penalty]

Ruling: Accepted for Incorporated.

46. On or about March 10, 2003, Mr. Mahdi received thirteen boxed of business records from the Canadian Department of Justice. These records had been seized by the Royal Canadian Mounted Police during searches of Mr. Mahdi's residence and OTS's business permisses in March of 1999 and transferred to the Office of Export Enforcement, U.S. Department of Commerce, trough the Office of International Affairs of the Criminal Division of the U.S. Department of Justice, had shipped these records to the Canadian Department of Justice for return to Mr. Mahdi. Govt. Ex. 1A; May 13 Tr. at 73, line 11 to 76, line 11. [Penalty]

Ruling: Accepted and Incorporated.

47. Mr. Mahdi represented to this Court that he wished to receive the above-described business records in order to present a defense in this proceeding. May 13 Tr. at 24, line 9 to 25, line 4 (quoting Mr. Mahdi; request for continuance dated April 9, 2002). The Court postponed the hearing in this matter partly to accommodate Mr. Mahdi's stated interest in using these records in the hearing in this case. May 13 Tr. at 24, line 9 to 26, line 7; *id.* at 59, line 22 to 60, line 10. However, after receiving those records on or about March 10, 2003, Mr. Mahdi for the first time asserted that health problems prevented him from participating in the hearing. Respondent's Request for Continuance, April 14, 2003; May 13 Tr. at 51, line 16 to 5, line 5; *id.* at 60, line 14 to 62, line 4. [Penalty]

Ruling: Accepted and Incorporated.

48. Mr. Mahdi used an envelope with the pre-printed logo and address of OTS when he served a copy of a pleading in this matter on counsel for BIS. This pleading was received by counsel for BIS on or about May 5, 2003. Govt. Ex. 1B; May 13 Tr. at 76, line 12 to 78, line 1. [Penalty]

Ruling: Accepted and Incorporated.

B. Proposed Ultimate Findings of Fact and Conclusions of Law

49. By order dated September 6, 2002, this Court granted summary decision against Mr. Mahdi on Charge 1, which alleges a conspiracy to export oil field equipment to Iran trough Canada in violation of § 746.7 of the EAR. Mr. Mahdi acted on behalf of OTS when he entered into the agreement with BITS and Mr. Strome to make unauthorized exports from the United States to Iran. *See* paragraphs 3, 10–13 above. Moreover, OTS, through Mr. Mahdi and another employee, Tito DiMarco, took several actions in furtherance of the conspiracy. *See* paragraphs 7, 19, 28–29, 32, 34, 42, and 44 above. Accordingly, OTs is liable for the conspiracy described in Charge 1.[14] *See,* e.g., *United States* v. *Bi-Co Pavers, Inc.,* 741 F.2d 730, 737 (5th Cir. 1984) (''a corporation is criminally liable for the unlawful acts of its agents, provided that such conduct is within the scope of the agent's authority, actual or apparent''); *United States* v. *United States* v. *Sherpix,* 512 F.2d 1361, 1367 & n.7 (D.C. cir. 1975) (''a corporation is criminally responsible for acts of its officers and thus can be charged with their conspiracies,'' provided corporation is ''designated as a defendant and charged as a conspirator by appropriate factual allegations'').

Ruling: Accepted and Incorporated.

50. BITS and Mr. Strome were co-conspirators of OTS and Mr. Mahdi in the above-referenced conspiracy. *See* paragraphs 8–13, 40, 42–43 above; *see also* Govt. Ex. 3 at 27, lines 13–14 (Mr. Mahdi identified ''Mr. Strom'' (sic) as ''the co-conspirator in this case'' during sworn testimony at the change of plea proceeding).

Ruling: Accepted and Incorporated.

51. The tranctions described in Charges 2 and 3 were exports from the United States to Iran because Mr. Mahdi and OTs intended to transship the items in question to Iran via Canada from the time that they were exported from the United States. Similarly, the transaction described in Charge 4 was a solicited and attempted export from the United States to Iran because Mr. Mahdi and OTS intended that these items would be transhipped to Iran via Canada after they were exported from the United States. *See* 15 CFR 734.2(b)(6).

Ruling: Accepted and Incorporated.

52. By actions taken regarding the equipment purchased under OTS reference number 701–1230–TSI, Mr. Mahdi and OTS, on or about October 30, 1997,[15] exported oil field equipment, which was subject to both the EAR and to OFAC's Iranian Transaction Regulations, from the United States through Canada to Iran, without prior authorization from OFAC, in violation of § 746.7 of the EAR, thereby each committing one violation of § 764.2(a) of the EAR—engaging in conduct prohibited by the EAR. See paragraphs 19–23, 25–26 above. Mr. Mahdi and OTS are each accordingly liable for the violation described in Charge 2.

Ruling: Accepted and Incorporated.

53. By actions taken regarding the equipment purchased under OTS reference number 702–1360–TSI, Mr. Mahdi and OTS, on or about February 9, 1998,[16] exported oil field equipment,

[14] Charge 1 alleges that this conspiracy took place ''between in or about March 1997 and in about April 1998.'' According to testimony at the hearing, the conspiracy continued into March 1999. May 13, 2003 at Tr. at 113, lines 9–21; *id.* at 118, lines 2–24. Mr. Mahdi himself has admitted that the conspiracy continued until March 1999. Govt, Ex. 2 at 13, paragraph 9, at 17 paragraph 11 (in plea agreement, Mr. Mahdi certified to the truth of the allegation that conspiracy existed ''[b]etween in or about March, 1997, and in or about March, 1999'').

[15] Charge 2 states that the export occurred on or about October 30, 1997. The equipment in question was shipped from the United States to Canada on or about October 30, 1997, see paragraphs 22–23 above, and shipped from Canada to Iran in early November 1997. See paragraphs 25–26 above. Because this combination of shipments constituted an export from the United States to Iran, see paragraph 51 above, the date of export stated in Charge 2 is accurate.

[16] The equipment in question was picked up by truck in Florida on or about February 9, 1998, and transported to Montreal, Canada. See paragraph 29 above. Charge 3 describes the export as taking place ''on or about February 2, 1999'' (the date on the Pars invoice). This one-week variance between the date as alleged and the date as established at trial is immaterial to the validity of the charge. See *Tasty Baking Co.* v. *NLRB,* 254 F.3d 114, 122 D.C. Cir.

Continued

which was subject to both the EAR and to OFAC's Iranian Transaction Regulations, from the United States through Canada to Iran, without prior authorization from OFAC, in violation of § 746.7 of the EAR, thereby each committing one violation of Section 764.2(a) of the EAR engaging in conduct prohibited by the Ear. See paragraphs 28–30 above.[17] Mr. Mahdi and OTS are each accordingly liable for the violation described in Charge 3.

Ruling: Accepted and Incorporated.

54. By actions taken regarding the equipment ordered under OTS reference number 013–077–TBT, Mr. Mahdi and OTS, from on or about April 21, 1998, to on or about March 17, 1999, solicited or attempted the export of oil field equipment, which was subject to both the EAR and to OFAC's Iranian Transaction Regulations, from the United States through Canada to Iran, without prior authorization from OFAC, in violation of Section 746.7 of the EAR, thereby each committing one violation of Section 764.2(c) of the Regulations—soliciting or attempting a violation of the Regulations. See paragraphs 31–37 above. Mr. Mahdi and OTS are each accordingly liable for the violation described in Charge 4.

Ruling: Accepted and Incorporated.

55. On or about October 30, 1997, BITS and Mr. Strome, through Forward Logistics Group, Inc. caused a false material statement of the ultimate destination of the export described in Charge 2 as ''Toronto,'' when the export was in fact ultimately destined for Iran, on an SED submitted to the United States Customers Service regarding that export. See paragraph 23 above. In so doing, BITS and Mr. Strome, the co-conspirators of OTS and Mr. Mahdi, acted within the scope of the conspiracy, in furtherance of the conspiracy's objective of making unauthorized exports of oil field equipment from the United States to Iran via Canada, and in a manner reasonably foreseeable by OTS and Mr. Mahdi as a natural consequence of the conspiracy.[18] Accordingly, under the rule of *Pinkerton* v. *United States,* 328 U.S. 640, 645–46 (1946), OTS and Mr. Mahdi are liable for the violation of Section 764.2(g) of the EAR described in Charge 5: making the false statement that Toronto was the ultimate destination on the SED sumbitted on or about October 30, 1997.[19]

Ruling: Accepted and Incorporated.

56. Alternatively, Mr. Mahdi and OTS are each liable for the violations described in Charges 2, 3, and 4 because the actions taken by their co-conspirators Mr. Strome and OTS constituted the unauthorized exports and attempted export described in those charges. In taking such actions, Mr. Strome and OTS acted within the scope of the conspiracy, in furtherance of the conspiracy's objective of making unauthorized exports of oil field equipment from the United States to Iran via Canada, and in a manner reasonably foreseeable by OTS and Mr. Mahdi as a natural consequence of the conspiracy. Accordingly, Mr. Mahdi and OTS are liable for such actions of their co-conspirators under the Pinkerton rule. See BIS's Motion for Summary Decision, dated May 31, 2002, at 12 n.14, and in BIS's Pre-Hearing Memorandum, dated February 26, 2003, at 12 n.11.[20]

Ruling: Accepted and Incorporated.

57. Mr. Mahdi and OTS, acting through Danzas Canada, Ltd., transferred and forwarded from Canada to Iran the oil field equipment purchased under OTS reference number 701–1320–TSI. See paragraphs 25–26 above. Mr. Mahdi knew, at a minimum, that Mr. Strome and BITS had violated the EAR by exporting this equipment from the United States to an ultimate destination of Iran without the required license. See paragraph 27 above. Thus, Mr. Mahdi committed the violation described in Charge 6: transferring and forwarding this equipment from Canada to Iran, knowing that it had been exported from the United States in violation of the EAR.[21] Moreover, Mr. Mahdi's knowledge of Mr. Strome's violation of the EAR is attributable to OTS,[22] so that OTS committed the violation described in Charge 6 also.

Ruling: Accepted and Incorporated.

58. Based on the following factors, the Court recommends that Mr. Mahdi and OTS should be denied U.S. export privileges for twenty years, per the standard terms of a denial order set out at Supplemental No. 1 to part 764 of the EAR:

a. The scope of prior efforts to acquire U.S. origin equipment to export to customers in Iraq and Iran in violation of U.S. export controls. See paragraphs 40–44 above.

b. The importance of the foreign policy objectives furthered by controlling exports to embargoed countries, such as Iran, and of preventing exports that violated export controls on embargoed countries.

c. The significant nature of the transactions at issue in these charges, as indicated by the fact that the equipment involved in Charges 2, 3, and 4 had a collective value of over $230,000.

Certificate of Service

I hereby certify that I have served the foregoing Recommended Decision and Order by Federal Express to the following persons:

Undersecretary, Bureau of Industry and Security, U.S. Department of

2001, and cases cited therein (''minor variances in 'on or about' dates'' are permitted in both criminal and administrative enforcement proceedings).

[17] Although BIS did not supply direct evidence that this equipment was shipped from Canada to Iran, the following facts and circumstances support the finding that such a shipment occurred: (1) Mr. Madhi's repeated admissions that he shipped equipment obtained from BITS from Canada to Iran, see paragraph 16 above; (2) the fact that the letter ''T'' in this OTS reference number indicates that the customer ordering this equipment was Kala Naft in Tehran, Iran, see paragraphs 17 and 28 above; (3) the fact that Pars, the carrier that OTS and Mr. Mahdi arranged to transport the equipment from Florida to Montreal, Canada, served as the general sales agent for Iran Air, see paragraph 30 above; and (4) the fact that documentation provided to BITS by OTS indicated that the equipment would be exported form Canada, see paragraph 29 above.

[18] The conspiracy count to which Mr. Mahdi plead guilty in the criminal proceeding stated that the parties conspired to ship such equipment from the United States to Canada under SED's that falsely stated the equipment's ultimate destination, see Govt. Ex. 1 at 5, paragraph 13, and Mr. Mahdi admitted in his plea agreement that this allegation was true. See Govt. Ex. 2 at 13, paragraph 9 & 18, paragraph 13.

[19] The fact that Charge 5 states that OTS and Mr. Mahdi ''prepared'' the SED in question, rather than stating that OTS and Mr. Mahdi are liable for the actions of their co-conspirators, does not affect the application of the Pinkerton rule. Where a conspiracy is alleged, a charging document need not plead that the Government will rely on Pinkerton to establish liability for substantive offenses; the conspiracy charge itself is sufficient notice of the Pinkerton theory of liability. See *United States* v. *Washington,* 106 F.3d 983, 1010–12 (D.C. Cir. 1996), cert. denied, 522 U.S. 984 (1997); *United States* v. *Sax,* 39 F.3d 1380, 1389–90 (7th Cir. 1994). Moreover, OTS and Mr. Mahdi—even if they had participated in the hearing—could not claim prejudicial surprise, because BIS's Pre-Hearing Memorandum, dated February 26, 2003, at 13–14, made clear that BIS would rely on Pinkerton to establish liability for Charge 5.

[20] If the Court were to find insufficient evidence of completed exports to Iran, as described in Charges 2 and 3, OTS and Mr. Mahdi should be found liable under Section 764.2(c) of the EAR for attempting such exports. A defendant may be found guilty of attempt even if only the completed offense is charge, provided that the attempt is itself an offense, as it is here under Section 764.2(c). *See, e.g., United States* v. *Marin,* 513 F.2d 974, 976 (2d Cir. 1975); *Simpson* v. *United States,* 195 F.2d 721, 723 (9th Cir. 1952); *Clinton Cotton Mills* v. *United States,* 164 F.2d 173, 177 (4th Cir. 1947).

[21] Charge 6 describes the transferring and forwarding of this equipment from Canada to Iran as occurring ''[o]n or about October 30, 1997.'' The evidence shows that the equipment was shipped to Iran in early November 1997. As explained in footnote 18 above, this variance is immaterial to the validity of the charge.

[22] *See e.g., In re* Hellenic Inc., 252 F.3d 391, 395 (5th Cir. 2001) (''An agent's knowledge is imputed to the corporation where the agent is acting within the scope of his authority and where the knowledge relates to matters within the scope of that authority * * * [C]ourts generally agree that the knowledge of directors or key officers, such as the president and vice president, is imputed to the corporation. * * *'').

Commerce, Room H–3839, 14th & Constitution Avenue, NW., Washington, DC 20230, Phone: 202–482–5301.

Philip D. Golrick, Esq., Office of Chief Counsel for Industry and Security, U.S. Department of Commerce, Room H–3839, 14th & Constitution Avenue, NW., Washington, DC 20230, Phone: 202–482–5301.

Abdulamir Mahdi, 20 Huntingwood Drive, Scarborough, Ontario, Canada, M1W1A2, Phone: 905–946–9551.

ALJ Docketing Center, Baltimore, 40 S. Gay Street, Room 412, Baltimore, Maryland 21202–4022, Phone: 410–962–7434.

Done and dated August 26, 2003, at Norfolk, Virginia.

Lucinda H. Shinault, CP,

Certified Paralegal to the ALJ Norfolk.

[FR Doc. 03–25076 Filed 10–2–03; 8:45 am]

BILLING CODE 3510–BW–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-580–816]

Corrosion-Resistant Carbon Steel Flat Products from Korea: Initiation of New Shipper Antidumping Duty Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Initiation of New Shipper Antidumping Duty Review.

EFFECTIVE DATE: October 3, 2003.

FOR FURTHER INFORMATION CONTACT: Paul Walker or Alex Villanueva at (202) 482–0413 or (202) 482–3208 or, respectively; Antidumping and Countervailing Duty Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION:

Background

On August 29, 2003, the Department received a timely request from Hyundai Hysco (≥Hyundai'') in accordance with 19 CFR 351.214(c), for a new shipper review of the antidumping duty order on certain corrosion-resistant carbon steel flat products from Korea, which has an August anniversary date. We received a clarification to the public version of this request on September 24, 2003. *See Notice of Antidumping Duty Order: Certain Cold-Rolled Carbon Steel Flat Products from Korea*, 58 FR 44159 (August 19, 1993).

Scope

The merchandise under review is corrosion-resistant carbon steel flat products, which covers flat-rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTS under item numbers 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090. Included in this review are flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been ''worked after rolling'') for example, products which have been beveled or rounded at the edges. Excluded from this review are flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead (''terne plate''), or both chromium and chromium oxides (''tin-free steel''), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating. Also excluded from this review are clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness. Also excluded from this review are certain clad stainless flat-rolled products, which are three-layered corrosion-resistant carbon steel flat-rolled products less than 4.75 millimeters in composite thickness that consist of a carbon steel flat-rolled product clad on both sides with stainless steel in a 20%-60%-20% ratio.

These HTS item numbers are provided for convenience and U.S. Customs purposes. The written descriptions remain dispositive.

Initiation of Review

Hyundai has identified itself as a producer and exporter of corrosion-resistant carbon steel flat products. In its request of August 29, 2003, Hyundai, as required by 19 C.F.R. 351.214(b)(2)(i) and (iii)(A), certified that it did not export the subject merchandise to the United States during the period of investigation (≥POI''), January 1, 1992 through June 30, 1992, and, that since the investigation was initiated on July 20, 1992, (57 FR 33488, July 29, 1992), it has never been affiliated with any exporter or producer who exported subject merchandise to the United States during the POI. Pursuant to the Department's regulations at 19 CFR 351.214(b)(2)(iv), Hyundai submitted documentation establishing the date on which it first entered the subject merchandise to the United States, the volume of that first shipment, and the date of its first sale to an unaffiliated customer in the United States. *Memorandum from Paul Walker, Case Analyst through Edward C. Yang, Office Director, to the File regarding the Initiation of AD New Shipper Review: Corrosion-Resistant Carbon Steel Flat Products from Korea*, dated September 30, 2003

In accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214(d)(1), we are initiating a new shipper review of the antidumping order on corrosion-resistant carbon steel flat products from Korea produced by Hyundai.[1] In accordance with 19 CFR 351.214(h)(1), we intend to issue preliminary results of this review no later than 180 days after the date of initiation.

In accordance with section 351.214(g)(1)(i)(A) of the Department's regulations, the period of review (''POR'') for a new shipper review initiated in the month immediately following the annual anniversary month is the twelve-month period preceding the anniversary month. Therefore, the POR for this new shipper is August 1, 2002 through July 31, 2003.

Concurrent with publication of this notice and in accordance with 19 CFR 351.214(e), we will instruct the U.S.

[1] We note that the Petitioners separately requested an administrative review of Hyundai. If for any reason the Department rescinds the new shipper review of Hyundai, we will then include Hyundai in the normal administrative review.

Customs Service to allow, at the option of the importer, the posting of a bond or security in lieu of a cash deposit for each entry of the subject merchandise exported by the above listed company, until the completion of this review. Hyundai has certified that it both produced and exported the subject merchandise on which it based the request for a new shipper review. Therefore, we will instruct customs to limit the bonding option only to subject merchandise for which Hyundai is the producer and exporter.

The interested parties must submit applications for disclosure under administrative protective order in accordance with 19 CFR 351.305, 351.306 and 19 CFR 351.221(c)(1)(i).

This initiation and notice are in accordance with section 751(a) of the Act (19 U.S.C. 1675(a)) and 19 CFR 351.214.

Dated: September 26, 2003.

Joseph A. Spetrini,

Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 03–25160 Filed 10–2–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-533–813, A-570–851]

Certain Preserved Mushrooms from India and the People's Republic of China: Notice of Extension of Time Limit for Preliminary Results in Antidumping Duty Administrative Reviews and New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: October 3, 2003.

FOR FURTHER INFORMATION CONTACT: Kate Johnson at (202) 482–4929, or David J. Goldberger at (202) 482–4136 (India), or Brian Smith at (202) 482–1766 (PRC), Office 2, AD/CVD Enforcement Group I, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C., 20230.

SUMMARY: The Department of Commerce is extending the time limit for the preliminary results of the fourth administrative review of the antidumping duty order on certain preserved mushrooms from India and the fourth administrative review and sixth new shipper review of the antidumping duty order on certain preserved mushrooms from the People's Republic of China, which cover the period February 1, 2002, through January 31, 2003.

SUPPLEMENTARY INFORMATION: Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), the Department shall make a preliminary determination in an administrative review of an antidumping duty order within 245 days after the last day of the anniversary month of the date of publication of the order. The Act further provides, however, that the Department may extend that 245-day period to 365 days if it determines it is not practicable to complete the review within the foregoing time period.

Pursuant to 751(a)(2)(B)(iv) of the Act, the Department shall make a preliminary determination in a new shipper review within 180 days after the date on which the review is initiated. However, if the case is extraordinarily complicated, it may extend the 180 day period for the preliminary results to 300 days.

The Department finds that it is not practicable to complete the preliminary results in the administrative review of certain preserved mushrooms from India as well as the administrative review of certain preserved mushrooms from the People's Republic of China within this time limit because we are unable to conduct verifications until after the date of the currently scheduled preliminary results. In addition, we determine that it would be extraordinarily complicated to complete the preliminary results in the new shipper review of certain preserved mushrooms from the People's Republic of China under the current schedule as we need additional time to conduct verifications and to analyze issues raised in that review.

Therefore, in accordance with sections 751(a)(3)(A) and 751(a)(2)(B)(iv) of the Act, the Department is extending the time for completion of the preliminary results of these reviews until February 28, 2004.

Dated: September 26, 2003.

Jeffrey May,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 03–25158 Filed 10–2–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-428–825]

Stainless Steel Sheet and Strip in Coils from Germany; Antidumping Duty Administrative Review; Extension of Time Limits

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Extension of Time Limits.

SUMMARY: The Department of Commerce (the Department) is extending the time limits for the final results of the 2001–2002 administrative review of the antidumping duty order on stainless steel sheet and strip in coils from Germany. This review covers one manufacturer/exporter of the subject merchandise to the United States and the period July 1, 2001 through June 30, 2002.

EFFECTIVE DATE: October 3, 2003

FOR FURTHER INFORMATION CONTACT: Patricia Tran at (202) 482–1121 or Robert James at (202) 482–0649, Antidumping and Countervailing Duty Enforcement Group III, Office Eight, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION: On August 7, 2003, we published the preliminary results of this administrative review. *See Stainless Steel Sheet and Strip in Coils from Germany; Notice of Preliminary Results of Antidumping Duty Administrative Review* 68 FR 47039 (August 7, 2003). Currently, the final results in this administrative review are due on December 5, 2003. Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Tariff Act), the Department may extend the deadline for completion of an administrative review if it determines that it is not practicable to complete the final results of the review within the normal statutory time limit. The Department issued a supplemental questionnaire on September 5, 2003 to respondents requesting all information on downstream sales made by Thyssen Schulte (TS). Due to the request for additional information, the Department must allot the appropriate time to review and analyze the new information. In addition, the Department must allow parties to submit briefs and rebuttal briefs. The Department determines it is not

practicable to complete this review within the normal statutory time limit. Therefore, the Department is extending the time limits for completion of the final results until February 3, 2004, in accordance with section 751(a)(3)(A) of the Tariff Act.

Dated: September 25, 2003.

Joseph A. Spetrini,

Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 03–25159 Filed 10–2–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 092903D]

Proposed Information Collection; Comment Request; Licensing of Private Land Remote-Sensing Space Systems

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before December 2, 2003.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Timothy Stryker at (301) 713–2024, ext 205, or e-mail *Timothy.Stryker@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

NOAA has established requirements for the licensing of private operators of remote-sensing space systems. The information in applications and subsequent reports is needed to ensure compliance with the Land Remote-Sensing Policy Act of 1992 and with the national security and international obligations of the United States. The requirements are contained in 15 CFR Part 960.

II. Method of Collection

Applicants are asked to provide electronic copies of submissions.

III. Data

OMB Number: 0648–0174.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 13.

Estimated Time Per Response: 40 hours for a license application; 10 hours for a license amendment; 2 hours for a notification of a foreign agreement; 1 hour for an executive summary; 2 hours for a notification of the demise of a system or the decision to discontinue system operations; 2 hours for a notification of any operational deviation; 5 hours for submission of a data collection restriction plan; 3 hours for submission of an operation plan for restricting collection or dissemination of dat concerning Israeli territory; 3 hours for a data flow diagram; 1 hour for a drawing of satellite sub-systems; 2 hours for submission of spacecraft operational information when a satellite becomes operational; 2 hours for a notification of a disposition/orbital change or of planned purges of information; 3 hours for an operational quarterly report; 8 hours for an annual compliance audit; and 10 hours for an annual operational audit.

Estimated Total Annual Burden Hours: 314.

Estimated Total Annual Cost to Public: $1,000.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: September 26, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–25143 Filed 10–2–03; 8:45 am]

BILLING CODE 3510–HR–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 092903E]

Proposed Information Collection; Comment Request; Fisheries Certificate of Origin

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before December 2, 2003.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Patricia Donley at 562–980–4033, or e-mail *Pat.Donley@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The information required by the International Dolphin Conservation Program Act (IDCPA), amendments to the Marine Mammal Protection Act (MMPA), is needed: to document the dolphin-safe status of tuna import shipments and domestic deliveries of tuna by U.S.-flag purse seine fishing vessels; to verify that import shipments of fish were not harvested by large-scale, high seas driftnets; and to verify that tuna was not harvested by an embargoed

nation or one that is otherwise prohibited from exporting tuna to the United States. Forms are submitted by importers, processors, and/or purse seine vessel operators.

II. Method of Collection

Forms may be submitted by fax, mail, or electronically.

III. Data

OMB Number: 0648–0335.

Form Number: NOAA Form 370.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 350.

Estimated Time Per Response: 20 minutes for a processor response; and 5 minutes for a Captain's statement.

Estimated Total Annual Burden Hours: 1,033.

Estimated Total Annual Cost to Public: $100.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: September 26, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–25144 Filed 10–2–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 092903F]

Proposed Information Collection; Comment Request; Commercial Operator's Annual Report (COAR)

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before December 2, 2003.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Patsy Bearden, 907–586–7008, or e-mail *Patsy.Bearden@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

Owners of catcher/processor vessels and motherships in the groundfish fisheries of the Exclusive Economic Zone off Alaska (Bering Sea and Aleutian Islands, Gulf of Alaska) are required to complete the State of Alaska, Department of Fish and Game Commercial Operator's Annual Report (COAR). The COAR provides information on ex-vessel and first wholesale values for statewide fish and shellfish products. This information enhances the socio-economic database that is used to analyze and measure the impact of proposed or enacted management measures.

II. Method of Collection

A paper form is submitted.

III. Data

OMB Number: 0648–0428.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations, individuals or households.

Estimated Number of Respondents: 134.

Estimated Time Per Response: 8 hours.

Estimated Total Annual Burden Hours: 1,072.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: September 26, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–25145 Filed 10–2–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Federal Consistency Appeal by Islander East Pipeline Company From an Objection by the Connecticut Department of Environmental Protection

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (Commerce).

ACTION: Supplemental notice of public hearing.

SUMMARY: This notice provides scheduling information concerning a public hearing to be held by the National Oceanic and Atmospheric Administration in New Haven, Connecticut. The hearing involves an administrative appeal filed with the

Department of Commerce by the Islander East Pipeline Company (Consistency Appeal of Islander East Pipeline Company, L.L.C.).

DATES: The hearing is scheduled to begin at 9:30 a.m. on November 5, 2003. Speaker registration begins at 8:30 a.m. on the day of the hearing. Public comments on the appeal must be received by November 20, 2003.

ADDRESSES: The public hearing and speaker registration will be held at the Omni New Haven Hotel, 155 Temple Street, New Haven, Connecticut. Written comments may be submitted at the hearing. All e-mail comments on issues relevant to the Secretary's decision of this appeal may be submitted to *IslanderEast.comments@noaa.gov.* Apart from the hearing, comments may also be sent by mail to the Office of the General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1305 East-West Highway, Silver Spring, MD 20910. Materials from the appeal record are available at the Internet site *http://www.ogc.doc.gov/czma.htm* and at the Office of the General Counsel for Ocean Services. Also, public filings made by the parties to the appeal are to be available for review at the Connecticut Department of Environmental Protection, 79 Elm Street, Hartford, Connecticut.

FOR FURTHER INFORMATION CONTACT: Branden Blum, Senior Counselor, via email at *gcos.inquiries@noaa.gov,* or at 301–713–2967, extension 186.

SUPPLEMENTARY INFORMATION: The Islander East Pipeline Company filed an administrative appeal with the Department of Commerce, pursuant to the Coastal Zone Management Act of 1972 (CZMA), as amended, asking that the Secretary of Commerce (Secretary) override the State of Connecticut's (State) objection to Islander East's proposed natural gas pipeline. The pipeline would extend from near North Haven, Connecticut, across the Long Island Sound to a terminus in Suffolk County (Long Island), New York. Connecticut's objection is based on the project's potential effects on the natural resources or land and water uses of Connecticut's coastal zone.

On February 4, 2003, NOAA published a notice in the **Federal Register** announcing that it would hold a public hearing concerning the Islander East appeal at a location to be determined in the State of Connecticut. *See* 68 FR 5620. The notice also indicated the hearing was expected to be held in the Spring of 2003. Subsequently, proceedings in the appeal were temporarily halted at the request of one or both parties in order to accommodate settlement negotiations and then to allow the State of Connecticut to reconsider its objection to the pipeline project. On August 19, 2003, a **Federal Register** notice advised that processing of the appeal had resumed and that details concerning the previously announced public hearing would be forthcoming. *See* 68 FR 49760. This notice provides scheduling information for the hearing.

The hearing, to be held on November 5, 2003, will begin at 9:30 a.m. at the Omni New Haven Hotel, and continue throughout the day with afternoon and evening sessions. Intermissions are expected near noon and in the late afternoon (approximately 4:30 p.m.). In addition, a temporary recess may be scheduled for periods when all registered speakers have had an opportunity to testify. Typically the evening session is crowded, and it is suggested that, if possible, speakers attend the morning or afternoon sessions. Speakers must register on the day of the hearing, on site, at the hotel. Registration of speakers will begin at 8:30 a.m. Each organization that registers should expect to receive a total of five minutes for its representatives to present oral comments. Individuals from the general public who register will receive approximately three minutes to speak. Speakers will be recognized in the order in which they register (a first-come-first-serve basis), alternating between individuals from the general public and those representing organizations. A specific period is also expected to be designated during the morning and afternoon sessions for remarks by elected officials.

Written comments may be submitted to NOAA at the hearing by any person in attendance. For submissions at the hearing, we request, but do not require, that you provide three copies for inclusion into the administrative record. Apart from the hearing, written comments may be submitted by e-mail to *IslanderEast.comments@noaa.gov* or forwarded via mail to NOAA's Office of the General Counsel for Ocean Services. Comments must be submitted by November 20, 2003, the close of the public comment period. Comments will be made available to the parties; they are also expected to be posted on the Department of Commerce's CZMA appeals Web site at *http://www.ogc.doc.gov/czma.htm.*

This hearing is being held to obtain information on issues the Secretary will likely consider in deciding Islander East's appeal. A summary of relevant issues as well as additional background on the appeal appears in a January 24, 2003 **Federal Register** notice announcing the filing of the appeal (*see* 68 FR 3513), a copy of which can be found on the Internet at *http://www.ogc.doc.gov/czma.htm.*

Questions concerning the hearing may be sent via e-mail to *gcos.inquiries@noaa.gov* or made by telephone to 301 713–2967, extension 186.

Dated: September 26, 2003.

James R. Walpole,

General Counsel.

[FR Doc. 03–24832 Filed 10–2–03; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 032603B]

Small Takes of Marine Mammals Incidental to Specified Activities; Taking of California Sea Lions, Pacific Harbor Seals and Northern Elephant Seals Incidental to Research Surveys at San Nicolas Island, Ventura County, CA

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

ACTION: Notice of issuance of an incidental harassment authorization.

SUMMARY: In accordance with provisions of the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that an Incidental Harassment Authorization (IHA) to take small numbers of marine mammals, by harassment, incidental to the assessment of black abalone populations at San Nicolas Island (SNI), CA, has been issued to Dr. Glenn R. VanBlaricom, Ph.D.

DATES: Effective from September 18, 2003, through September 17, 2004.

ADDRESSES: A copy of the IHA and/or the application is available by writing to Chief, Marine Mammal Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225, or by telephoning one of the contacts listed here.

FOR FURTHER INFORMATION CONTACT: Sarah Hagedorn, Office of Protected Resources, NMFS, (301) 713–2322, ext 117; or Christina Fahy, Southwest Regional Office, NMFS, (562) 980–4023.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Permission may be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses and that the permissible methods of taking and requirements pertaining to the monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Subsection 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Under Section 3(18)(A), the MMPA defines ''harassment'' as:

> ...any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.

The term ''Level A harassment'' means harassment described in subparagraph (A)(i). The term ''Level B harassment'' means harassment described in subparagraph (A)(ii).

Subsection 101(a)(5)(D) establishes a 45–day time limit for NMFS review of an application followed by a 30–day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

Summary of Request

On January 9, 2003, NMFS received a letter from Glenn R. VanBlaricom, Ph.D., Washington Cooperative Fish and Wildlife Research Unit, requesting an IHA for the possible harassment of small numbers of California sea lions (*Zalophus californianus*), Pacific harbor seals (*Phoca vitulina*), and northern elephant seals (*Mirounga angustirostris*) incidental to research surveys performed for the purpose of assessing trends over time in black abalone populations at permanent study sites. Population trend data for black abalone populations are important and needed for several reasons. First, the reintroduction of sea otters to SNI since 1987 raises the possibility of conflict between sea otter conservation and abalone populations because abalones are often significant prey for sea otters. Second, the appearance of a novel exotic disease, abalone withering syndrome, at SNI in 1992, has resulted in dramatically increased rates of abalone mortality at the island. Third, California populations of black abalones have been recently designated as a candidate species for listing pursuant to the Endangered Species Act of 1973 (ESA) (as amended). The concern is that the combined effects of sea otter predation and abalone withering syndrome, following several decades during which black abalones may have been over-harvested in commercial and recreational fisheries, may cause reduction of black abalone populations to the point where risk of extinction increases. Long-term abalone population trend data from SNI is needed to determine if drastic population declines continue, and if extinction risk becomes high.

Specified Activities

Additional information of the work proposed is contained in the application, which is available upon request (see **ADDRESSES**).

Comments and Responses

On June 25, 2003 (68 FR 37799) NMFS published a notice of receipt of application, with a 30–day comment period. That notice described the activity and anticipated effects on marine mammals. That information is not repeated here. During the 30–day comment period, comments were received from the Marine Mammal Commission (Commission).

Comment 1: The Commission concurs with NMFS' preliminary determination that, given the mitigation measures proposed by the applicant, the short-term impact of the subject research will result in no more than the temporary modification of behavior by California sea lions, Pacific harbor seals, and northern elephant seals. It is not clear, however, based on the information in NMFS' **Federal Register** notice and the application, whether sea otters could be disturbed by the proposed research, and, if so, whether a separate authorization is being sought from the Fish and Wildlife Service to cover such taking.

Response: Sea otters are not expected ashore during the time periods when the research activities would be conducted. If sea otters are sighted ashore during the abalone research, then the IHA holder (Dr. VanBlaricom) would follow similar procedures in place for other listed marine mammals. As a result of this requirement in the IHA, NMFS determines that the activity will not affect California sea otters.

Comment 2: The Commission believes that NMFS' preliminary determinations are reasonable, provided NMFS is satisfied that the proposed monitoring program is sufficient to detect the effects of the proposed research activities, including any mortality and/or serious injury that results from startle responses, or stampedes. NMFS' **Federal Register** notice states that no takings by injury and/or death are anticipated as a result of the proposed activities. The Commission notes, however, that while the proposed mitigation measures are expected to reduce the possibility of injury or death of animals, the potential for such taking remains. Consequently, the Commission recommends that any authorization issued to the applicant specify that, if a mortality or serious injury of a marine mammal occurs which appears to be related to the abalone research, further research activities be suspended while NMFS determines whether steps can be taken to avoid further injuries or mortalities or until such taking can be authorized by regulations promulgated under section 101(a)(5)(A) of the MMPA.

*Response:*In almost all cases, shoreline habitats near the abalone study sites are gently sloping sandy beaches or horizontal sandstone platforms with unimpeded and non-hazardous access to the water. If disturbed, hauled animals may move toward the water without risk of encountering significant hazards. In these circumstances, the risk of serious injury or death to hauled animals is very low.

One exception to the low risk of marine mammal injury or mortality associated with abalone research would be if disturbances occur during breeding season, as it is possible that mothers and dependent pups may become separated. If separated pairs don't reunite fairly quickly, risks of mortality to pups may

increase. Also, adult northern elephant seals may trample elephant seal pups if disturbed. Trampling increases the risk of injury or death to the pups.

NMFS concurs that all research activities be suspended, and that NMFS immediately be notified, in the case that mortality or serious injury to a marine mammal occurs which appears to be related to the abalone research. The following required mitigation measures will both reduce the possibility of incidental harassment takes and lower the possibility of serious injury or mortality.

Mitigation

Researchers will be judicious in the route of approach to abalone study sites, avoiding close contact with pinnipeds hauled out on shore. In no case will marine mammals be deliberately approached by abalone researchers, and in all cases every possible measure will be taken to select a pathway of approach to study sites that minimizes the number of marine mammals harassed. Each visit to a given study site will last for a maximum of 4 hours, after which the site is vacated and can be reoccupied by any hauled marine mammals that were disturbed by the presence of abalone researchers. NMFS will be notified immediately and all research activities will be suspended in the case that mortality or serious injury to a marine mammal occurs which appears to be related to the abalone research.

Researchers will avoid visiting those black abalone study sites with resident pinnipeds during periods of breeding and lactation from February through October. During these periods of time, abalone research activities will be confined to black abalone sites where pinniped breeding and post-partum nursing does not occur.

Researchers will limit visits to site 8 to the period from November through January, and suspend research activities and immediately vacate any areas upon which Guadalupe fur seals are hauled out or that California sea otters are occupying.

Monitoring

Dr. Glenn VanBlaricom and associates will conduct marine mammal monitoring during abalone surveys in order to verify that the taking of marine mammals, by harassment, incidental to abalone research surveys, will have a negligible impact on marine mammal stocks and to ensure that these harassment takings are at the lowest level practicable.

Currently, all biological research activities at SNI are subject to approval and regulation by the Environmental Planning and Management Department (EPMD), US Navy. The US Navy owns SNI and closely regulates all civilian access to and activity on the island, including biological research. Therefore, monitoring activities will be closely coordinated with Navy marine mammal biologists located on SNI.

In addition, status and trends of pinniped aggregations at SNI are monitored by the NMFS Southwest Fisheries Science Center. Also, ongoing long-term studies of pinniped population dynamics, migratory and foraging behavior, and foraging ecology at SNI are conducted by staff at Hubbs-Sea World Research Institute (HSWRI).

Monitoring requirements in relation to Dr. VanBlaricom's abalone research surveys will include observations made by the applicant and his associates. Observations of unusual behaviors, numbers, or distributions of pinnipeds on SNI will be reported to EPMD, NMFS, and HSWRI so that any potential follow-up observations can be conducted by the appropriate personnel. In addition, observations of tag-bearing pinniped carcasses as well as any rare or unusual species of marine mammals will be reported to EPMD, allowing transmittal of this information to appropriate agencies and personnel.

Reporting

A draft final report must be submitted to the Regional Administrator, and the Director, Office of Protected Resources, NMFS, within 60 days after the conclusion of the year-long field season. A final report must be submitted to the Regional Administrator and the Director, Office of Protected Resources, NMFS, within 30 days after receiving comments from NMFS on the draft final report. If no comments are received from NMFS, the draft final report will be considered to be the final report.

Endangered Species Act (ESA)

NMFS has determined that the abalone research activities and the accompanying IHA will not have an effect on species listed under the ESA. Therefore, consultation under Section 7 was not required.

National Environmental Policy Act

In accordance with the NOAA Administrative Order 216–6 (Environmental Review Procedures for Implementing the National Environmental Policy Act, May 20, 1999), NMFS has determined, based on a programmatic NEPA assessment conducted on the impact of NMFS' rulemaking for the issuance of IHAs (61 FR 15884; April 10, 1996) and the content and analysis of Dr. VanBlaricom's request for an IHA, that the proposed issuance of this IHA to Dr. VanBlaricom by NMFS will not individually or cumulatively result in a significant impact on the quality of the human environment as defined in 40 CFR 1508.27. Therefore, the action of issuing an IHA for these activities meets the definition of a ''Categorical Exclusion'' and is exempted from further environmental review.

Determinations

NMFS has determined that the impact of abalone research, as described in this document, in the earlier **Federal Register** notice published on June 25, 2003 (68 FR 37799), and in the application for an IHA, should result, at worst, in the temporary modification in behavior by California sea lions, Pacific harbor seals and northern elephant seals. The effects of abalone research surveys on SNI are expected to be limited to short term and localized changes in behavior involving relatively small numbers of pinnipeds. While behavioral modifications, including temporarily vacating onshore haulouts, may be made by these species to avoid the presence and nearness of abalone researchers, this action is expected to have a negligible impact on the animals. In addition, no take by injury and/or death is anticipated, and harassment takes will be at the lowest level practicable due to incorporation of mitigation measures.

Authorization

NMFS has issued an IHA to Dr. Glenn R. VanBlaricom to take small numbers of Pacific harbor seals, California sea lions and Northern elephant seals for a 1–year period incidental to abalone population trend research, provided the previously mentioned mitigation, monitoring, and reporting requirements described in this document are undertaken.

Dated: September 23, 2003.

Laurie K. Allen,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–25142 Filed 10–2–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 092403A]

Small Takes of Marine Mammals Incidental to Specified Activities; Seismic Retrofit of the Richmond-San Rafael Bridge, San Francisco Bay, CA

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

ACTION: Notice of receipt of application and proposed authorization for a small take exemption; request for comments.

SUMMARY: NMFS has received a request from the California Department of Transportation (CALTRANS) for a renewal of its Incidental Harassment Authorization (IHA) to take small numbers of marine mammals, by harassment, incidental to seismic retrofit construction of the Richmond-San Rafael Bridge (the Bridge), San Francisco Bay (SFB), CA. Under the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to renew a small take authorization to CALTRANS to incidentally take, by harassment, small numbers of Pacific harbor seals and possibly California sea lions for 1 year.

DATES: Comments and information must be received no later than November 3, 2003.

ADDRESSES: Comments on the application should be addressed to the Acting Chief, Marine Mammal Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3225. Comments cannot be accepted if submitted via e-mail or the Internet. A copy of the application, Environmental Assessment (EA) and/or monitoring reports may be obtained by writing to this address or by telephoning the contact listed here. Publications referenced in this document are available for viewing, by appointment during regular business hours, at this address.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, Office of Protected Resources, NMFS, (301) 713–2055, ext 128.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, notice of a proposed authorization is provided to the public for review.

Permission may be granted if NMFS finds that the taking will have no more than a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses and that the permissible methods of taking and requirements pertaining to the monitoring and reporting of such taking are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Under section 18(A), the MMPA defines ''harassment'' as:

> any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Section 101(a)(5)(D) establishes a 45–day time limit for NMFS review of an application followed by a 30–day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

Summary of Request

On September 22, 2003, NMFS received a letter from CALTRANS, requesting reauthorization of an IHA that was first issued to it on December 16, 1997 (62 FR 67045, December 23, 1997), was renewed on January 8, 2000 (65 FR 2375, January 14, 2000), September 19, 2001 (66 FR 49165, September 26, 2001) and September 23, 2002 (67 FR 61323, September 30, 2002).

The renewed authorization request is for the possible harassment of small numbers of Pacific harbor seals (*Phoca vitulina*) and possibly some California sea lions (*Zalophus californianus*), incidental to seismic retrofit construction of the Bridge.

The Bridge is being seismically retrofitted to withstand a future severe earthquake. Construction is scheduled to extend until the year 2005. A detailed description of the work planned is contained in the Final Natural Environmental Study/Biological Assessment for the Richmond-San Rafael Bridge Seismic Retrofit Project (CALTRANS, 1996). Among other things, seismic retrofit work will include excavation around pier bases, hydro-jet cleaning, installation of steel casings around the piers with a crane, installation of micro-piles, and installation of precast concrete jackets. Foundation construction will require approximately 2 months per pier, with construction occurring on more than one pier at a time. In addition to pier retrofit, superstructure construction and tower retrofit work will also be carried out. Because seismic retrofit construction between piers 52 and 57 has the potential to disturb harbor seals hauled out on Castro Rocks, an IHA is warranted. The duration for the seismic retrofit of foundation and towers on piers 52 through 57, which began this year, will take approximately 7 to 8 months to complete.

Description of Habitat and Marine Mammals Affected by the Activity

A description of SFB ecosystem and its associated marine mammals can be found in the CALTRANS application (CALTRANS 1997) and in CALTRANS (1996). Castro Rocks are a small chain of rocky islands located next to the Bridge and approximately 1500 ft (460 m) north of the Chevron Long Wharf. They extend in a southwesterly direction for approximately 800 ft (240 m) from pier 55. The rocks start at about 55 ft (17 m) from pier 55 (A rock) and end at approximately 250 ft (76 m) from pier 53 (F rock). The chain of rocks is exposed during low tides and inundated during high tide.

Marine Mammals

General information on harbor seals and other marine mammal species found in Central California waters can be found in Forney et al. (2000, 2001), which are available at the following URL: *http://www.nmfs.noaa.gov/prot_res/PR2/Stock_Assessment_Program/sars.html.* Please refer to these documents for information on these species. The marine mammals likely to be affected by work in the Bridge area

are limited to harbor seals and California sea lions.

The harbor seal is the only marine mammal species expected to be found regularly in the Bridge area. A detailed description of harbor seals was provided in the 1997 notification of proposed authorization (62 FR 46480, September 3, 1997) with corrections and clarifications provided in the notice of IHA issuance (62 FR 67045, December 23, 1997). This information is not repeated here, but may be found in the **Federal Register** notices mentioned previously in this document.

It should be noted that pups are born in mid- to late-March, peak numbers of pups are observed in early May, and, by the first week in June, all pups are weaned (Kopec and Harvey, 1995). Estimated pup counts at Castro Rocks were 35 in 1999, 40 in 2000 and 40 in 2001 (A. Bohorquez pers. comm in Green et al., 2001). This represents approximately 22–24 percent of the pups born in SFB.

The California sea lion primarily uses the Central SFB area to feed. California sea lions are periodically observed at Castro Rocks. No pupping or regular haulouts occur in the project area.

Potential Effects on Marine Mammals

The impact to the harbor seals and California sea lions is expected to be disturbance by the presence of workers, construction noise, and construction vessel traffic. Disturbance from these activities is expected to have only a short-term negligible impact to a small number of harbor seals and sea lions. These disturbances will be reduced to the lowest level practicable by implementation of the proposed work restrictions and mitigation measures (see Mitigation).

Marine mammal monitoring under previous IHAs has been conducted at Castro Rocks and at two ''control'' haul-out locations in SFB, Mowry Slough and Yerba Buena Island (Green *et al.*, 2001, 2002) since 1998. To date, over 10,000 hours of observations have been conducted at these sites with two-thirds of those hours at Castro Rocks. While disturbances can consist of head alerts, approaches to the water, and flushes into the water, only the latter behavior is considered by NMFS to be Level B harassment. At Castro Rocks, of all flush disturbances monitored during the day, the major harassment sources were watercraft (e.g. motorboats, sailboats, tankers, kayaks and jet skis) with 0.128 disturbances/hr field time (d/hr); wildlife (seals and birds) with 0.075 d/hr; anthropogenic (debris, workmen on bridge with 0.040 d/hr; and ''research'' with 0.021 d/hr. Construction activities resulted in 0.0165 d/hr. There were fewer flushes observed at night. More detailed information on the extent of take by harassment at Castro Rocks by activities other than the requested authorization, please refer to Green *et al.* (2002).

During the work period (August 1 through February 14), the incidental harassment of harbor seals and, on rare occasions, California sea lions is expected to occur on a daily basis upon initiation of the retrofit work. In addition, the number of seals disturbed will vary daily depending upon tidal elevations. Monitoring by Green et al. (2002) indicates that although overall seal numbers each month of the year are not significantly different across years, there are differences in subsite use by seals at Castro Rocks during both the daytime and nighttime. For example, the average number of seals hauled out on Castro Rocks (rocks A and C) during the fall of 2001 (when construction activity was taking place within the area of the haul-out site) was significantly different than the average number of seals hauled out on Castro Rocks during 1998–2000, prior to the construction period. It was noted that fewer seals were using rock A, located closest to the Bridge and more seals were hauling out on rock C which was located farther from the Bridge than rock A. The number of seals hauled out on rocks B and E was not significantly different between years while the number hauled out on rocks D and F was greater during the fall of 2000 and 2001 than 1998 and 1999. For a more detailed discussion on the distribution of harbor seals during the work and non-work periods and levels of impact by various natural and anthropogenic disturbance sources, please see Green et al. (2002) which is available upon request (see **ADDRESSES**).

Although California sea lions have been shown to react to pile driving noise by porpoising quickly away from the site (SRS Technologies, 2001), it is not known whether they will react to general construction noise and move away from the rocks during construction activities. However, sea lions are generally thought to be more tolerant of human activities than harbor seals and are, therefore, less likely to be affected.

Potential Effects on Habitat

Short-term impacts of the activities are expected to result in a temporary reduction in utilization of the Castro Rocks haulout site while work is in progress or until seals acclimate to the disturbance. This will not likely result in any permanent reduction in the number of seals at Castro Rocks. The abandonment of Castro Rocks as a harbor seal haulout and rookery is not anticipated since existing traffic noise from the Bridge, commercial activities at the Chevron Long Wharf used for off-loading crude oil, and considerable recreational boating and commercial shipping that currently occur within the area have not caused long-term abandonment. In addition, mitigation measures and work restrictions are designed to preclude abandonment.

Therefore, as described in detail in CALTRANS (1996), other than the potential short-term abandonment by harbor seals of part or all of Castro Rocks during retrofit construction, no impact on the habitat or food sources of marine mammals are likely from this construction project.

Mitigation

Several mitigation measures to reduce the potential for general noise have been implemented by CALTRANS as part of their activity. General restrictions include: with the exception of the Concrete Trestle Section, no piles will be driven (i.e., no repetitive pounding of piles) on the Bridge between 9 p.m. and 7 a.m.; an imposition of a construction noise limit of 86 dBA at 50 ft (15 m) between 9 p.m. and 7 a.m.; and, a limitation on construction noise levels for 24 hrs/day in the vicinity of Castro Rocks during the pupping/molting restriction period.

To minimize potential harassment of marine mammals, previous authorizations (1997–2001) required CALTRANS to comply with the following mitigation measures: (1) A February 15 through July 31 restriction on work in the water south of the Bridge center line and retrofit work on the Bridge substructure, towers, superstructure, piers, and pilings from piers 52 through 57; (2) no watercraft will be deployed by CALTRANS employees or contractors, during the year within the exclusion zone located between piers 52 and 57, except for when construction equipment is required for seismic retrofitting of piers 52 through 57; and (3) minimize vessel traffic to the greatest extent practicable in the exclusion zone when conducting construction activities between piers 52 and 57. From 1997 through September 2002, the boundary of the exclusion zone was rectangular in shape (1700 ft (518 m) by 800 ft (244 m)), completely enclosing Castro Rocks and piers 52 through 57, inclusive. The northern boundary of the exclusion zone was located 300 ft (91 m) from the most northern tip of Castro Rocks, and the southern boundary was located 300 ft (91 m) from the most southern tip of Castro Rocks. The eastern boundary was

located 300 ft (91 m) from the most eastern tip of Castro Rocks, and the western boundary was located 300 ft (91 m) from the most western tip of Castro Rocks. The exclusion zone is restricted as a controlled access area and is marked off with buoys and warning signs for the entire year.

In 2002 (see 67 FR 61323, September 30, 2002), NMFS modified the Work/Boat Exclusion Zone (W/BEZ) so that the eastern boundary was shifted from 100 ft (30.5 m) east of Pier 57 to 100 ft (30.5 m) west of Pier 57. This maintains a 400–ft (122–m) ''buffer'' as opposed to the previous 600–ft (183–m) buffer, between the work at Pier 57 and ''A'' rock. This modification is reasonable based on observed seal behavior during the construction within the W/BEZ that harbor seals adjusted their location preference on Castro Rocks by moving westerly to rocks further from the construction (see discussion previously in this document). However, CALTRANS notes that there has not been a statistically significant change in the total numbers of animals that utilize the Castro Rocks haulout.

In addition to shifting the W/BEZ, in 2002, NMFS modified the period in which work was allowed in the vicinity of Castro Rocks from February 15th to March 1st. CALTRANS requested this modification due to unforseen circumstances affecting the ability of the contractor to the seismic retrofit work on Pier 57. This modification allows the contractor to complete the work this coming season and to stay under budget. The previous Work Closure Period (February 15–July 31) was designed to encompass the entire harbor seals pupping and breeding seasons and nearly the entire molting season at Castro Rocks. Thus, the Work Closure Period included the entire pupping season at Castro Rocks and a substantial pre-pupping period when females are moving into pupping areas (see 62 FR 67045, December 23, 1997). Because moving the Work Closure Period from February 15th to March 1st still provides a 2–week window prior to the onset of successful pupping (March 15th), and because NMFS did not find scientific evidence indicating that female harbor seals need a ''quiet period'' from general noise in order to pup successfully, NMFS determined that shifting the Work Closure Period from February 15th to March 1st would not have a significant impact on harbor seal pupping.

In 2002, NMFS also modified the period in which work is allowed to start in the vicinity of Castro Rocks from August 1st to a new date of July 16th. As mentioned in previous documents, newborn harbor seal pups are able to swim immediately after birth (Zeiner *et al.*, 1990) and pups are weaned by the first week of June. Therefore, terminating the Closure Period on July 16th is not expected to affect pup survival. Under authorizations issued prior to the current IHA, the July 31st ending date for the Work Closure Period was established to protect harbor seals during the molting season. However, those documents also noted that NMFS believed that it is likely that harbor seals evolved adaptive mechanisms to deal with exposure to the water during the molt. For example, on some harbor seal haul-outs (such as Castro Rocks) during the molting season seals must enter the water once or even twice a day due to tidal fluctuations limiting access to the haul-out. Also, since harbor seals lose hair in patches during the molt, they are never completely hairless and would not be as vulnerable to heat loss in the water during this period compared to other seals (e.g., elephant seals) that lose their all their hair at one time. Finally, NMFS notes that if the levels of harbor seal disturbance during the molt are relatively high, seals are likely to utilize other local haul-out sites during the molt (DeLong, R., pers. commun. 1997; Hanan, D., pers. commun. 1997; Harvey, J., pers. commun. 1997). Hanan (1996) found that although harbor seals tagged at an isolated southern California haul-out tended to exhibit site-fidelity during the molt, some seals were observed molting at other nearby haul-outs. Based on these reasons therefore, NMFS determined that terminating the Closure Period on July 16th would not significantly affect harbor seals in general or molting seals at Castro Rocks in particular.

Monitoring

NMFS will require CALTRANS to continue to monitor the impact of seismic retrofit construction activities on harbor seals at Castro Rocks. Monitoring will be conducted by one or more NMFS-approved monitors. CALTRANS is to monitor at least one additional harbor seal haulout within San Francisco Bay to evaluate whether harbor seals use alternative haulout areas as a result of seismic retrofit disturbance at Castro Rocks.

The monitoring protocol will be divided into the Work Period Phase (July 16 through February 28) and the Closure Period Phase (March 1 through July 15). During the Work Period Phase and Closure Period Phase, the monitor(s) will conduct observations of seal behavior at least 3 days/week for approximately one tidal cycle each day at Castro Rocks. The following data will be recorded: (1) Number of seals and sea lions on site; (2) date; (3) time; (4) tidal height; (5) number of adults, subadults, and pups; (6) number of individuals with red pelage; (7) number of females and males; (8) number of molting seals; and (9) details of any observed disturbances. Concurrently, the monitor(s) will record general construction activity, location, duration, and noise levels. At least 2 nights/week, the monitor will conduct a harbor seal census after midnight at Castro Rocks. In addition, during the Work Period Phase and prior to any construction between piers 52 and 57, inclusive, the monitor(s) will conduct baseline observations of seal behavior at Castro Rocks and at the alternative site(s) once a day for a period of 5 consecutive days immediately before the initiation of construction in the area to establish pre-construction behavioral patterns. During the Work Period and Closure Period Phases, the monitor(s) will conduct observations of seal behavior, and collect appropriate data, at the alternative Bay harbor seal haulout at least 3 days/week (Work Period) and 2 days/week (Closure Period), during a low tide.

In addition, NMFS will require that, immediately following the completion of the seismic retrofit construction of the Bridge, the monitor(s) will conduct observations of seal behavior, at Castro Rocks, at least 5 days/week for approximately 1 tidal cycle (high tide to high tide) each day, for one week/month during the months of April, July, October, and January. At least 2 nights/week during this same period, the monitor will conduct an additional harbor seal census after midnight.

Reporting

Under previous IHAs, CALTRANS has provided monitoring reports (Green *et al.* (2001, 2002). The findings from these reports have been summarized previously in this document.

CALTRANS will provide weekly reports to the Southwest Regional Administrator (Regional Administrator), NMFS, including a summary of the previous week's monitoring activities and an estimate of the number of harbor seals that may have been disturbed as a result of seismic retrofit construction activities. These reports will provide dates, time, tidal height, maximum number of harbor seals ashore, number of adults, sub-adults and pups, number of females/males, number of harbor seals with a red pelage, and any observed disturbances. A description of retrofit activities at the time of observation and any sound pressure levels measurements made at the

haulout will also be provided. A draft interim report must be submitted to NMFS by April 30, 2004.

Because seismic retrofit activities may continue beyond the date of expiration of this IHA (presumably under a new IHA), a draft final report must be submitted to the Regional Administrator within 90 days after the expiration of this IHA. A final report must be submitted to the Regional Administrator within 30 days after receiving comments from the Regional Administrator on the draft final report. If no comments are received from NMFS, the draft final report will be considered to be the final report.

CALTRANS will provide NMFS with a follow-up report on the post-construction monitoring activities within 18 months of project completion in order to evaluate whether haulout patterns are similar to the pre-retrofit haul-out patterns at Castro Rocks.

National Environmental Policy Act

NMFS prepared an EA in 1997 that concluded that the impacts of CALTRANS' seismic retrofit construction of the Richmond-San Rafael Bridge will not have a significant impact on the human environment. A copy of that EA, which includes the Finding of No Significant Impact (FONSI) is available upon request (see **ADDRESSES**). This action has not changed significantly from the action analyzed in the 1997 EA. Therefore, this proposed action is not expected to change the analysis or conclusion of the 1997 EA.

Endangered Species Act (ESA)

Under section 7 of the ESA, NMFS has begun consultation on the proposed issuance of an IHA under section 101(a)(5)(D) of the MMPA for this activity. Consultation will be concluded upon completion of the comment period for this proposed action and consideration of those comments prior to a determination on issuance of an IHA.

Preliminary Conclusions

NMFS has preliminarily determined that the short-term impact of the seismic retrofit construction of the Bridge, as described in this document, should result, at worst, in the temporary modification in behavior by small numbers of harbor seals and, possibly, by small numbers of California sea lions. While behavioral modifications, including temporarily vacating the haulout, may be made by these species to avoid the resultant visual and acoustic disturbance, this action is expected to have a negligible impact on the animals. In addition, no take by injury and/or death is anticipated, and harassment takes will be at the lowest level practicable due to incorporation of the mitigation measures mentioned previously in this document.

Proposed Authorization

NMFS proposes to renew an IHA to CALTRANS for the potential harassment of small numbers of harbor seals and California sea lions incidental to seismic retrofit construction of the Bridge, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. NMFS has preliminarily determined that the proposed activity would result in the harassment of only small numbers of harbor seals and possibly California sea lions and will have no more than a negligible impact on these marine mammal stocks.

Information Solicited

NMFS requests interested persons to submit comments, information, and suggestions concerning this request (see **ADDRESSES**). Prior to submitting comments, NMFS recommends reviewers of this document read the responses to comments made previously (see 62 FR 67045, December 23, 1997; 65 FR 2375, January 14, 2000; 66 FR 49165, September 26, 2001; and 67 FR 61323, September 30, 2002) for this action, as NMFS does not intend to address these issues further without the submission of additional scientific information.

Dated: September 29, 2003.

Laurie K. Allen,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–25150 Filed 10–02–03; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Federative Republic of Brazil

September 29, 2003.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection establishing limits.

EFFECTIVE DATE: January 1, 2004.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the Bureau of Customs and Border Protection website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Brazil and exported during the period January 1, 2004 through December 31, 2004 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner, Bureau of Customs and Border Protection to establish the 2004 limits.

These limits are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body. However, as the ATC and all restrictions thereunder will terminate on January 1, 2005, no adjustment for carryforward (borrowing from next year's limits for use in the current year) will be available.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 68 FR 1599, published on January 13, 2003. Information regarding the 2004 CORRELATION will be published in the **Federal Register** at a later date.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 29, 2003.

Commissioner,
Bureau of Customs and Border Protection, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2004, entry into the

United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Brazil and exported during the twelve-month period beginning on January 1, 2004 and extending through December 31, 2004, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
Aggregate Limit	
200–221, 224–227, 237, 239pt. [1], 300–326, 331pt. [2], 332–348, 351, 352, 359pt. [3], 360–363, 369pt. [4], 400–430, 433–438, 440–448, 459pt. [5], 469pt. [6], 601–605, 608-620, 623-629, 631pt. [7], 633–648, 651-652, 659pt. [8], 666pt. [9], as a group	821,590,228 square meters equivalent.
Sublevels within the aggregate	
218	10,942,191 square meters.
219	39,948,720 square meters.
225	19,148,836 square meters.
300/301	14,840,130 kilograms.
313	91,894,979 square meters.
314	15,045,517 square meters.
315	45,136,549 square meters.
317/326	41,033,222 square meters.
334/335	294,451 dozen.
336	163,587 dozen.
338/339/638/639	2,944,521 dozen.
342/642	866,995 dozen.
347/348	2,126,598 dozen.
361	2,224,748 numbers.
363	47,481,490 numbers.
410/624	21,884,386 square meters of which not more than 2,973,933 square meters shall be in Category 410.
433	20,644 dozen.
445/446	80,872 dozen.
604	1,038,809 kilograms of which not more than 793,948 kilograms shall be in Category 604–A [10].
647/648	981,509 dozen.

[1] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[2] Category 331pt.: all HTS numbers except 6116.10.1720, 6116.10.4810, 6116.10.5510, 6116.10.7510, 6116.92.6410, 6116.92.6420, 6116.92.6430, 6116.92.6440, 6116.92.7450, 6116.92.7460, 6116.92.7470, 6116.92.8800, 6116.92.9400 and 6116.99.9510.

[3] Category 359pt.: all HTS numbers except 6115.19.8010, 6117.10.6010, 6117.20.9010, 6203.22.1000, 6204.22.1000, 6212.90.0010, 6214.90.0010, 6406.99.1550, 6505.90.1525, 6505.90.1540, 6505.90.2060 and 6505.90.2545.

[4] Category 369pt.: all HTS numbers except 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.22.4020, 4202.22.4500, 4202.22.8030, 4202.32.4000, 4202.32.9530, 4202.92.0505, 4202.92.1500, 4202.92.3016, 4202.92.6091, 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020, 5805.00.3000, 5807.10.0510, 5807.90.0510, 6301.30.0010, 6301.30.0020, 6302,51.1000, 6302.51.2000, 6302.51.3000, 6302.51.4000, 6302.60.0010, 6302.60.0030, 6302.91.0005, 6302.91.0025, 6302.91.0045, 6302.91.0050, 6302.91.0060, 6303.11.0000, 6303.91.0010, 6303.91.0020, 6304.91.0020, 6304.92.0000, 6305.20.0000, 6306.11.0000, 6307.10.1020, 6307.10.1090, 6307.90.3010, 6307.90.4010, 6307.90.5010, 6307.90.8910, 6307.90.8945, 6307.90.9882, 6406.10.7700, 9404.90.1000, 9404.90.8040 and 9404.90.9505.

[5] Category 459pt.: all HTS numbers except 6115.19.8020, 6117.10.1000, 6117.10.2010, 6117.20.9020, 6212.90.0020, 6214.20.0000, 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505, 6406.99.1560.

[6] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010, 6304.19.3040, 6304.91.0050, 6304.99.1500, 6304.99.6010, 6308.00.0010 and 6406.10.9020.

[7] Category 631pt.: all HTS numbers except 6116.10.1730, 6116.10.4820, 6116.10.5520, 6116.10.7520, 6116.93.8800, 6116.93.9400, 6116.99.4800, 6116.99.5400 and 6116.99.9530.

[8] Category 659pt.: all HTS numbers except 6115.11.0010, 6115.12.2000, 6117.10.2030, 6117.20.9030, 6212.90.0030, 6214.30.0000, 6214.40.0000. 6406.99.1510 and 6406.99.1540.

[9] Category 666pt.: all HTS numbers except 5805.00.4010, 6301.10.0000, 6301.40.0010, 6301.40.0020, 6301.90.0010, 6302.53.0010, 6302.53.0020, 6302.53.0030, 6302.93.1000, 6302.93.2000, 6303.12.0000, 6303.19.0010, 6303.92.1000, 6303.92.2010, 6303.92.2020, 6303.99.0010, 6304.11.2000, 6304.19.1500, 6304.19.2000, 6304.91.0040, 6304.93.0000, 6304.99.6020, 6307.90.9884, 9404.90.8522 and 9404.90.9522.

[10] Category 604–A: only HTS number 5509.32.0000.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2003 shall be charged to the applicable category limits for that year (see directive dated September 3, 2002) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

The conversion factor for merged Categories 338/339/638/639 is 10 (square meters equivalent/category unit).

In carrying out the above directions, the Commissioner, Bureau of Customs and Border Protection should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 03–25104 Filed 10–2–03; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comment on Commercial Availability Request under the North American Free Trade Agreement (NAFTA)

September 29, 2003.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Request for Public Comments concerning a petition for modification of the NAFTA rules of origin for gimped yarn made from certain filament yarn of nylon.

FOR FURTHER INFORMATION CONTACT: Martin Walsh, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–2818.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 USC 1854); Section 202(q) of the North American Free Trade Agreement Implementation Act (19 USC 3332(q)); Executive Order 11651 of March 3, 1972, as amended.

SUMMARY:

On September 15, 2003 the Chairman of CITA received a petition from Unifi, Inc. (Unifi). alleging that certain untextured (flat) yarns of nylon classified under subheading 5402.41.90 of the Harmonized Tariff Schedule of the United States (HTSUS), cannot be supplied by the domestic industry in commercial quantities in a timely manner and requesting that the President proclaim a modification of the NAFTA rules of origin. The yarns are described as (1) of nylon, 7 denier/5 filament nylon 66 untextured (flat) semi-dull yarn; multifilament, untwisted or with a twist not exceeding 50 turns/m. (2) of nylon, 10 denier/7 filament nylon 66 untextured (flat) semi-dull yarn; multifilament, untwisted or with a twist not exceeding 50 turns/m. (3) of nylon, 12 denier/5 filament nylon 66 untextured (flat) semi-dull yarn; multifilament, untwisted or with a twist not exceeding 50 turns/m.

Unifi requests the NAFTA rules of origin for gimped yarns classified under subheading 5606.00 of the HTSUS be modified to allow the use of non-North American yarns of the type described above.

Such a proclamation may be made only after reaching agreement with the other NAFTA countries on the modification. CITA hereby solicits public comments on this petition, in particular with regard to whether the nylon yarns described above can be supplied by the domestic industry in commercial quantities in a timely manner. Comments must be submitted by **November 3, 2003** to the Chairman, Committee for the Implementation of Textile Agreements, Room 3001, United States Department of Commerce, Washington, D.C. 20230.

BACKGROUND: Under the North American Free Trade Agreement (NAFTA), NAFTA countries are required to eliminate customs duties on textile and apparel goods that qualify as originating goods under the NAFTA rules of origin, which are set out in Annex 401 to the NAFTA. The NAFTA provides that the rules of origin for textile and apparel products may be amended through a subsequent agreement by the NAFTA countries. In consultations regarding such a change, the NAFTA countries are to consider issues of availability of supply of fibers, yarns, or fabrics in the free trade area and whether domestic producers are capable of supplying commercial quantities of the good in a timely manner. The Statement of Administrative Action (SAA) that accompanied the NAFTA Implementation Act stated that any interested person may submit to CITA a request for a modification to a particular rule of origin based on a change in the availability in North America of a particular fiber, yarn or fabric and that the requesting party would bear the burden of demonstrating that a change is warranted. The SAA provides that CITA may make a recommendation to the President regarding a change to a rule of origin for a textile or apparel good. The NAFTA Implementation Act provides the President with the authority to proclaim modifications to the NAFTA rules of origin as are necessary to implement an agreement with one or more NAFTA country on such a modification.

On September 15, 2003 the Chairman of CITA received a petition from Unifi, Inc. (Unifi). alleging that certain untextured (flat) yarns of nylon classified under subheading 5402.41.90 of the Harmonized Tariff Schedule of the United States (HTSUS), cannot be supplied by the domestic industry in commercial quantities in a timely manner and requesting that the President proclaim a modification of the NAFTA rules of origin. The yarns are described as (1) of nylon 7 denier/5 filament nylon 66 untextured (flat) semi-dull yarn; multifilament, untwisted or with a twist not exceeding 50 turns/m/10 denier/ (2) of nylon, 7 filament nylon 66 untextured (flat) semi-dull yarn; multifilament, untwisted or with a twist not exceeding 50/turns/m. (3) of nylon, 12 denier/5 filament nylon 66 untextured (flat) semi-dull yarn; multifilament, etc. Unifi uses these yarns in producing their gimped yarn, classified under 5606.00 of the HTSUS.

CITA is soliciting public comments regarding this request, particularly with respect to whether the filament yarn of nylon, classified in HTSUS heading 5402.41.90, can be supplied by the domestic industry in commercial quantities in a timely manner. The petition states that Unifi has contacted known North American suppliers of these yarns and was unable to locate a supplier who produced the yarns in commercial quantities in a timely manner. Comments must be received no later than **November 3, 2003**. Interested persons are invited to submit six copies of such comments or information to the Chairman, Committee for the Implementation of Textile Agreements, room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, DC 20230.

If a comment alleges that the filament yarn of nylon can be supplied by the domestic industry in commercial quantities in a timely manner, CITA will closely review any supporting documentation, such as a signed statement by a manufacturer of the yarn stating that it produces the yarn that is in the subject of the request, including the quantities that can be supplied and the time necessary to fill an order, as well as any relevant information regarding past production.

CITA will protect any business confidential information that is marked business confidential from disclosure to the full extent permitted by law. CITA will make available to the public non-confidential versions of the request and non-confidential versions of any public comments received with respect to a request in room 3100 in the Herbert Hoover Building, 14th and Constitution Avenue, N.W., Washington, DC 20230. Persons submitting comments on a request are encouraged to include a non-confidential version and a non-confidential summary.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.03–25103 Filed 10–2–03; 8:45 am]

BILLING CODE 3510–DR–S

DEPARTMENT OF DEFENSE

Department of the Air Force

HQ USAF Scientific Advisory Board

AGENCY: Department of the Air Force, DoD.

ACTION: Notice of meeting.

SUMMARY: Pursuant to 10 U.S.C., Section 9355, notice is hereby given of the forthcoming meeting of the Air Force Academy Board of Visitors. The purpose of the meeting is to consider morale and discipline, the curriculum, instruction, physical equipment, fiscal affairs, academic methods, and other matters relating to the Academy. A portion of the meeting will be open to the public while other portions will be closed to the public to discuss matters listed in 5 U.S.C. subsections (2), (6), and (9)(B), section 552b(c). Open sessions will include panel discussion on the sexual assault problems at the Academy, to include actions taken in response to the Agenda for Change, The Report of the Working Group Concerning Deterrence of and Response to Incidents of Sexual Assault at the U.S. Air Force Academy, and the Report of the Panel to Review Sexual Misconduct Allegations at the U.S. Air Force Academy, as well as a discussion of the Board of Visitors charter. Closed sessions will include panel discussions with Academy cadets. The determination to close certain sessions is based on the consideration that portions of the briefings and discussion will relate solely to the internal personnel rules and practices of the Board of Visitors or the Academy; involve information of a personal nature, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; or involve discussions of information the premature disclosure of which would be likely to frustrate implementation of future agency action. Meeting sessions will be held in various facilities throughout the cadet area.

DATES: October 10–11, 2003.

ADDRESSES: U.S. Air Force Academy, CO.

FOR FURTHER INFORMATION CONTACT: Major Steve Sandridge, Development and Alumni Programs Division, HQ

USAFA/XPA, 2304 Cadet Drive, Suite 301, USAF Academy, CO 80840–5002, (719) 333–3668.

Pamela D. Fitzgerald,

Air Force Federal Register Liaison Officer.

[FR Doc. 03–25058 Filed 10–2–03; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Army

Armed Forces Institute of Pathology Scientific Advisory Board

AGENCY: Department of the Army, DoD.

ACTION: Notice of partially-closed meeting.

SUMMARY: In accordance with 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463) announcement is made of the following open meeting:

Name of Committee: Scientific Advisory Board (SAB).

Dates of Meeting: November 13–14, 2003.

Place: The Armed Forces Institute of Pathology (AFIP), Building 54, 14th St. & Alaska Ave., NW, Washington, DC 20306–6000 and Dover Air Force Base (AFB), DE.

Time: 8 a.m.–5 p.m. (November 13, 2003). 8:30 a.m.–12 p.m. (November 14, 2003).

FOR FURTHER INFORMATION CONTACT: Mr. Ridgely Rabold, Office of the Principal Deputy Director (PDD), AFIP, Building 54, Washington, D.C. 20306–6000, phone (202) 782–2553.

SUPPLEMENTARY INFORMATION:

General function of the board: The SAB provides scientific and professional advice and guidance on programs, policies and procedures of the AFIP.

Agenda: The Board will hear status reports from the AFIP Director, Principal Deputy Director, and each of the pathology sub-specialty departments, which the Board members will visit during the meeting. The Board will also visit the Dover AFB Mortuary Facility in Delaware during the first day of the meeting.

Open board discussions: Reports will be presented on all visited departments. The reports will consist of findings, recommended areas of further research, improvement, and suggested solutions. New trends and/or technologies will be discussed and goals established. The meeting is open to the public on Friday (Nov. 14) however, due to the security aspects of the Mortuary Facility and the transportation requirements, no visitors will be allowed to accompany the Board for Thursday's (Nov. 13) trip.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 03–25183 Filed 10–2–03; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Availability of Surplus Land and Buildings in Accordance With Public Law 103–421 Located at Fort Ritchie Military Reservation, Cascade, MD

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Public notice of availability.

SUMMARY: This notice identifies the surplus real property located at the Fort Ritchie Military Reservation, Cascade, MD. The property is located in Washington County, Northeast of Hagerstown in the community of Cascade, MD at the intersection of routes 550 and 491.

ADDRESSES: Notices of interest should be forwarded to Mr. Richard Rook, Executive Director, PenMar Development Corporation, P.O. Box 699, Cascade, MD 21719, telephone (301) 241–4050, fax (301) 241–4141. A copy of notices of interest should be sent to Mr. Gerry Bresee at the address below.

FOR FURTHER INFORMATION CONTACT: For information regarding the particular property identified in this notice (*i.e.,* acreage, floor plans, existing sanitary facilities, exact location), contact Mr. Gerry Bresee, Real Estate Division, Army Corps of Engineers, P.O. Box 1715, Baltimore, MD 21203 (telephone 410–962–5173, fax 410–962–0866).

SUPPLEMENTARY INFORMATION: Surplus is available under the provisions of the Federal Property and Administrative Services Act of 1949 and the Base Closure Community Redevelopment and Homeless Assistance Act of 1994. Notice is posted to comply with property screening requirements mandated in the February 4, 2003 decision by the U.S. Court of Appeals (*Role Models America, Inc.* v. *Thomas E. White, Secretary of the Army et al.*). This notice supercedes the **Federal Register** notice of March 25, 2003 (68 FR 14412). The property available for surplus is not being screened for potential homeless use as determined by the U.S. Department of Housing and Urban Development. Parties wishing to participate in a federal Public Benefit Conveyance program are invited to visit the web sites of the General Services Administration listed below for information on the types of land uses which qualify for the program and how to apply.

1. *http://propertydisposal.gsa.gov/ResourceCenter/Laws_Regs_All/main1.htm.*

2. *http://propertydisposal.gsa.gov/Property/library/law/law_main1.asp#sales.*

Listed below are five Public Benefit Conveyance land uses which local communities often ask about. Parties are invited to contact the following offices to find out more about each agency's Public Benefit Conveyance Program and to discuss with the Agency the Party's potential for qualifying for a conveyance of property:

For Park and Recreation Uses—Mr. Bill Huie, Recreation Grants Division Southeast Regional Office, National Park Service, 100 Alabama Street, SW., Atlanta, GA 30303, Telephone: (404) 562–3175.

For Educational Uses—Mr. Peter Wieczorek, Director, Eastern Zone, Federal Real Property Assistance Program, U.S. Department of Education, J.W. McCormack PO & Courthouse (Room 536), Boston, MA 02109, Telephone (617) 223–9321.

For Health Conveyances—Chief, Real Property Branch, Division of Health Facilities Planning (Room 5B17), Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, Telephone: (301) 443–2265.

For Prison Uses—Chief, Site Selection and Environmental Review, Bureau of Prisons, 320 First Street, NW., Washington, DC 20534, Telephone: 202–514–6470.

For Self-Help Housing—Ms. Janet Golrick, U.S. Department of Housing and Urban Development, Office of Multifamily Housing Programs, 451 7th Street, SW. (Room 6112), Washington, DC 20410, Telephone (202) 708–2495.

The surplus real property totals approximately 591 acres and contains 252 buildings totaling 1,384,000 square feet of space. Current range of uses include: Administrative; residential; open recreation; and special purpose space. Future uses may include generally the same types of uses.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 03–25182 Filed 10–2–03; 8:45 am]

BILLING CODE 3710–92–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Inventions; Available for Licensing

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The inventions listed below are assigned to the United States Government as represented by the Secretary of the Navy and are available for licensing by the Department of the Navy.

U.S. Patent Number 5,978,141 entitled ''Optical Mirror Particularly Suited for a Quantum Well Mirror'', Navy Case No. 78155, Inventor Karwacki, Issue Date November 2, 1999.//U.S. Patent Number 5,822,047 entitled ''Modulator LIDAR system'', Navy Case No. 77098, Inventors Contarino et al., Issue Date October 8, 1998.//U.S. Patent Number 6,486,799 entitled ''Computer based human-centered display system'', Inventors Still et al., Issue Date November 26, 2002.//Navy Case Number 84053 entitled ''Deployable Tandem/Multiple Leading Edge Flap'', Inventors Ghee et al.,//Navy Case Number 85054 entitled ''Deployable Serrated Flap-Single Flap, Tandem and Multiple Flap, and Tandem Flap In-Opposition'', Inventor Ghee et al.

ADDRESSES: Request for data and inventor interviews should be directed to Mr. Paul Fritz, Naval Air Warfare Center Aircraft Div., Business Development Office, Office of Research and Technology Applications, Bldg 304; Room 107, 22541 Millstone Road, Patuxent River, MD 20670, (301) 342–5586 or E-Mail: *Fritzpm@navair.navy.mil.*

FOR FURTHER INFORMATION CONTACT: Mr. Paul Fritz, Naval Air Warfare Center Aircraft Div, Business Development Office, Office of Research and Technology Applications, Bldg 304; Room 107, 22541 Millstone Rd, Patuxent River, MD 20670, (301) 342–5586 or E-Mail: *Fritzpm@navair.navy.mil.*

SUPPLEMENTARY INFORMATION: The U.S. Navy intends to move expeditiously to license these patents. All licensing application packages and commercialization plans must be returned to Naval Air Warfare Center Aircraft Div, Business Development Office, Office of Research and Technology Applications, Bldg 304; Room 107, 22541 Millstone Road, Patuxent River, MD 20670.

The Navy, in its decision concerning the granting of licenses, will give special consideration to small business firms and consortia involving small business firms. The Navy intends to insure that its licensed inventions are broadly commercialized throughout the United States.

Any license of Navy technology will require, that material which embody the inventions licensed that are to be sold in the United States of America will be manufactured substantially in the United States.

(Authority: 35 U.S.C. 207, 37 CFR part 404.)

Dated: September 17, 2003.

E. F. McDonnell,

Major, U.S. Marine Corps, Federal Register Liaison Officer.

[FR Doc. 03–25059 Filed 10–2–03; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Inventions; Available for Licensing

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The inventions listed below are assigned to the United States Government as represented by the Secretary of the Navy and are available for licensing by the Department of the Navy:

Laterally Disposed Nanostructures of Silicon on an Insulating Substrate

ADDRESSES: Requests for copies of the Patent and Patent Application cited should be directed to the Office of Patent Counsel, Space and Naval Warfare Systems Center, San Diego, Code 20012, 53510 Silvergate Ave., Room 103, San Diego, CA 92152–5765.

FOR FURTHER INFORMATION CONTACT: Mr. Peter A. Lipovsky, Space and Naval Warfare Systems Center, San Diego, Code 20012, 53510 Silvergate Ave., Room 103, San Diego, CA 92152–5765, telephone (619) 553–3824.

(Authority: 35 U.S.C. 207, 37 CFR part 404)

Dated: September 17, 2003.

E.F. McDonnell,

Major, U.S. Marine Corps, Federal Register Liaison Officer.

[FR Doc. 03–25060 Filed 10–2–03; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Invention; Available for Licensing

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The invention listed below is assigned to the United States government as represented by the Secretary of the Navy and is available for licensing by the Department of the Navy. Navy Case No. 84,830, entitled ''Process to Make Low Loss Arsenic Sulfide Glass and Infrared Optical Fibers Using Arsenic Monosulfide (AS_4S_4) Compound''.

ADDRESSES: Requests for information about the invention cited should be directed to the Naval Research Laboratory, Code 1004, 4555 Overlook Avenue, SW, Washington, DC 20375–5320, and must include the Navy Case number.

FOR FURTHER INFORMATION CONTACT: Paul Regeon, Acting Head, Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue, SW, Washington, DC 20375–5320, telephone (202) 767–7230. Due to temporary U.S. Postal Service delays, please fax (202) 404–7920, e-mail: *regeon@nrl.navy.mil* or use courier delivery to expedite response.

Dated: September 26, 2003.

E.F. McDonnell,

Major, U.S. Marine Corps, Federal Register Liaison Officer.

[FR Doc. 03–25081 Filed 10–2–03; 8:45 am]

BILLING CODE 3810–FF–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Exclusive or Partially Exclusive Patent License; InnovaLight, Inc.

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to InnovaLight Inc., a revocable, nonassignable, exclusive or partially exclusive license in the United States to practice the Government-Owned inventions described in U.S. Patent No. 5,962,863, issued October 5, 1999 and U.S. Patent No. 6,103,540, issued August 15, 2000, and both entitled ''Laterally Disposed Nanostructures of Silicon on an Insulating Substrate.''

DATES: Anyone wishing to object to the granting of this license has (15) days from the date of this notice to file written objections along with supporting evidence, if any.

ADDRESSES: Written objections are to be filed with the Office of Patent Counsel, Space and Naval Warfare Systems Center, San Diego, Code 20012, 53510 Silvergate Ave., Room 103, San Diego, CA 92152–5765.

FOR FURTHER INFORMATION CONTACT: Mr. Peter A. Lipovsky, Space and Naval Warfare Systems Center, San Diego, Code 20012, 53510 Silvergate Ave., Room 103, San Diego, CA 92152–5765, telephone (619) 553–3824.

(Authority: 35 U.S.C. 207, 37 CFR part 404.)

Dated: September 17, 2003.

E.F. McDonnell,

Major, U.S. Marine Corps, Federal Register Liaison Officer.

[FR Doc. 03–25061 Filed 10–2–03; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2545–081 and Project No. 2552–058]

FPL Energy Maine Hydro, LLC; Notice of Intent To Conduct PubliC Meeting for the Fort Halifax Project

September 26, 2003.

On October 16, 2003, Commission staff will be hosting a technical meeting to discuss alternative means of fish passage at the Fort Halifax Project pursuant to the Commission's July 28, 2003 Order Staying License Requirement (104 FERC ¶ 61,135).

The meeting will allow Commission staff to discuss: (1) FPL Energy's August 1, 2003 status report in response to the July 28 Order; (2) information filed with the Commission by the various parties concerning the viability of fish passage alternatives; (3) the advantages and disadvantages of using fish pump technology for fish passage; (4) goals for number of adult fish returning to Sebasticook River; and (5) current estimates for returning fish to the Sebasticook River and the Kennebec River.

The meeting will specifically focus on the above topics to clarify information currently in the project file. Commission staff will review the record on file and be prepared to lead a discussion using information that has been filed by the various parties concerning fish pump technology. Commission staff ask all parties that plan to participate to be prepared to support statements with documented information.

The meeting will be held on October 16, 2003, at the Best Western/Governor's Inn, 356 Main Street, Waterville, Maine, from 1 p.m. to 4 p.m. Intervenors and other parties interested in this issue are invited to participate if they so desire. The meeting will be recorded by a stenographer and become part of the formal record of the Commission proceeding on the project.

Any questions about this notice should be directed to Bob Fletcher at the Federal Energy Regulatory Commission, (202) 502–8901.

Magalie R. Salas,

Secretary.

[FR Doc. 03–25019 Filed 10–2–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC03–138–000, et al.]

SOWEGA Power LLC, et al.; Electric Rate and Corporate Filings

September 25, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. SOWEGA Power LLC

[Docket Nos. EC03–138–000 and ER99–3427–003]

Take notice that on September 17, 2003, SOWEGA Power LLC (SOWEGA), filed an application pursuant to Section 203 of the Federal Power Act, part 33 of the Commission's regulations. SOWEGA requests authorization for the disposition of all of its jurisdictional assets to a new entity, Three Rivers Energy LLC, which will take assignment of, and transact under, SOWEGA's existing rate schedules. SOWEGA also informs the Commission of a change in the facts relied upon in granting it market-based rate authority as a result of the disposition of its assets, rate schedules, and tariffs to Three Rivers Energy LLC.

Comment Date: October 2, 2003.

2. Blue Spruce Energy Center, LLC

[Docket No. EG03–93–000]

On September 17, 2003, Blue Spruce Energy Center, LLC (Blue Spruce), filed with the Federal Energy Regulatory Commission (Commission) an amendment to its application for determination of exempt wholesale generator status filed on August 14, 2003. Blue Spruce states that copies of the amendment were served upon the United States Securities and Exchange Commission and Colorado Public Utilities Commission.

Comment Date: October 8, 2003.

3. Three Rivers Energy LLC

[Docket No. EG03–105–000]

Take notice that on September 17, 2003, Three Rivers Energy LLC (Three Rivers), filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations. Three Rivers states that it owns two 50 MW (nominal summer rating) dual fuel, simple cycle, combustion turbines located in northeast Mitchell County, South of Albany, Georgia on a 34 acre site approximately one mile northeast of Georgia State Highway 93.

Comment Date: October 15, 2003.

4. MidAmerican Energy Company v. Mid-Continent Area Power Pool; Mid-Continent Area Power Pool

[Docket Nos. EL03–130–001 and ER03–972–001]

Take notice that on September 17, 2003, the Mid-Continent Area Power Pool (MAPP), filed its revised business practice on firm redirects of point-to-point transmission service under MAPP's regional transmission tariff, Schedule F. MAPP states that the filing was made in accordance with the Commission's Order in MidAmerican Energy Company v. Mid-Continent Area Power Pool, 104 FERC ¶ 61,212.

MAPP states that a copy of this filing has been served on all MAPP members and the state commissions in the MAPP region as well as all parties listed in Docket Nos. EL03–130–000 and ER03–972–000. MAPP further states that this filing is posted on their Web site at *http://www.mapp.org.*

Comment Date: October 17, 2003.

5. Entergy Services, Inc., Complainant v. Wrightsville Power Facility, LLC, Respondent

[Docket Nos. EL03–232–000 ER03–1378–000]

Take notice that on September 23, 2003, Entergy Services, Inc., (Entergy) on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc., (collectively, the Entergy Operating Companies) filed a Complaint against Wrightsville Power Facility, LLC (Wrightsville) wherein Entergy requests the Commission to order Wrightsville to forego $3,115,331.59 (plus interest)

worth of transmission credits to which Wrightsville is otherwise entitled because of its financing of certain Optional System Upgrades pursuant to its Interconnection and Operating Agreement with Entergy in order to compensate Entergy for Wrightsville's default on its Generator Imbalance Agreement (GIA) liabilities. Alternatively, Entergy requests the Commission to approve Entergy's suspension of Wrightsville's GIA service.

Entergy states that copies of this Complaint have been served upon Wrightsville.

Comment Date: October 14, 2003.

6. Northeast Utilities Service Company

[Docket No. ER01–1261–002]

Take notice that on September 17, 2003 the Northeast Utilities Service Company (NUSCO), on behalf of The Connecticut Light and Power Company (CL&P), supplemented its July 21, 2003 filing Docket No. ER01–1261–001 by submitting a revised Licensing, Engineering and Construction Agreement (Construction Agreement) between CL&P and Milford Power Company LLC (Milford). NUSCO requests a July 21, 2003 effective date for the revised Construction Agreement and Associated Interconnection Agreement is requested.

NUSCO states that a copy of this filing has been mailed to Milford and those parties identified on the official service list in this proceeding.

Comment Date: October 8, 2003.

7. Energy Cooperative of New York, Inc.

[Docket No. ER03–1294–000]

Take notice that on September 4, 2003, Energy Cooperative of New York, Inc., (ECNY) submitted for filing a Notification of a Change of name of Energy Cooperative of Western New York, Inc., to Energy Cooperative of New York, Inc.

Comment Date: October 8, 2003.

8. Empire Connection LLC

[Docket No. ER03–1353–000]

Take notice that on September 11, 2003, Empire Connection LLC (EC) submitted for filing its FERC Electric Tariff, Original Volume No. 1 pursuant to the authorization to sell transmission rights at negotiated rates granted in Conjunction LLC, 103 FERC ¶ 61,198, and EC's Procedures for Implementation of Standards of Conduct and the Standards of Conduct required under Order No. 889.

Comment Date: October 2, 2003.

9. Northeast Utilities Service Company

[Docket No. ER03–1355–000]

Take notice that on September 26, 2003, Northeast Utilities Service Company (NUSCO) on behalf of The Connecticut Light and Power Company, Western Massachusetts Electric Company, Holyoke Water Power Company, Public Service Company of New Hampshire, (together the NU Operating Companies) and Select Energy, Inc. (Select), submitted pursuant to Section 205 of the Federal Power Act and part 35 of the Commission's regulations rate schedule modifications for sales of electricity to the Middleton Municipal Electric Department of Middleton, Massachusetts (Middleton). In addition, NUSCO submitted a Notice of Termination of the rate schedules for sales of electricity to Middleton which terminate by their own terms on October 31, 2003.

NUSCO states that a copy of this filing has been mailed to Middleton and Select. NUSCO requests that the rate schedule modifications become effective on March 1, 2003.

Comment Date: October 8, 2003.

10. Enermetrix.com

[Docket No. ER03–1356–000]

Take notice that on September 17, 2003, Enermetrix.com tendered for filing a Notice of Cancellation of it Market-based Rate Authority under Docket No. ER00–1973–000. Enermetrix.com is requesting an effective date of January 2002.

Enermetrix.com states that it underwent a stock purchase by CES International, Inc., in May 2002. Enermetrix .com further states that the company has ceased operations and no transactions to buy or sell energy ever occurred.

Comment Date: October 8, 2003.

11. California Independent System Operator Corporation

[Docket No. ER03–1357–000]

Take notice that, on September 17, 2003, the California Independent System Operator Corporation (ISO) submitted an informational filing as to the ISO's updated Transmission Access Charge rates effective as of August 13, 2003.

The ISO states that this filing has been served upon the Public Utilities Commission of the State of California, the California Energy Commission, the California Electricity Oversight Board, the Participating Transmission Owners, and upon all parties with effective Scheduling Coordinator Service Agreements under the ISO Tariff. In addition, the ISO is posting the filing on the ISO Home Page.

Comment Date: October 8, 2003.

12. Three Rivers Energy LLC

[Docket No. ER03–1358–000]

Take notice that on September 17, 2003, Three Rivers Energy LLC tendered for filing an Assignment Agreement relating to assignment to it of the rights and responsibilities of SOWEGA Power LLC under the Second Amended and Restated Common Bus Ownership Agreement with Baconton Power LLC. Three Rivers Energy LLC states that this rate schedule is designated as Three Rivers Energy LLC FERC Rate Schedule No. 1.

Comment Date: October 8, 2003.

13. Central Hudson Gas & Electric Corporation

[Docket No. ER03–1359–000]

Take notice that on September 17, 2003, Central Hudson Gas & Electric Corporation (Central Hudson) tendered for filing a Notice of Cancellation of Rate Schedule FERC No. 69.

Central Hudson requests waiver on the notice requirements set forth in 18 CFR 35.15 of the regulations to permit the cancellation to be effective October 31, 2003. Central Hudson states that a copy of its filing was served on the New York Power Authority and the New York Public Service Commission.

Comment Date: October 8, 2003.

14. California Independent System Operator Corporation

[Docket No. ER03–1360–000]

Take notice that on September 17, 2003, the California Independent System Operator Corporation (ISO) submitted for filing and acceptance a Utility Distribution Company Operating Agreement (UDC Operating Agreement) between the ISO and the Westside Power Authority (WPA) as a non-conforming agreement The ISO requested waiver of the Commission's 60-day prior notice requirement to allow the UDC Operating Agreement to be made effective contingent on and no sooner than the asset purchase closing date as specified in the UDC Operating Agreement. WPA has requested this flexible effective date arrangement to facilitate the commencement of operations as a UDC under the UDC Operating Agreement.

Comment Date: October 8, 2003.

15. Guardian Pipeline, L.L.C.

[Docket No. MG03–6–000]

On September 5, 2003, Guardian Pipeline, L.L.C. (Guardian) filed standards of conduct under part 161 of

the Commission's regulations, 18 CFR part 161 (2003).

Guardian Pipeline, L.L.C. states that it served copies of the filing on all customers and interested state commissions.

Comment Date: October 10, 2003.

16. Hershey Foods Corporation

[Docket Nos. QF85–250–001 and ER03–1159–000]

Take notice that on September 22, 2003, Hershey Foods Corporation (Hershey) tendered for filing that its Oakdale, California cogeneration facility, previously certified as a qualifying cogeneration facility under the Public Utility Regulatory Policies Act, is not currently being operated in a manner that satisfies the Qualifying Facility operating and efficiency standards specified in the Commission regulations, 18 CFR 292.205. Hershey requests that the Commission accept this withdrawal of certification.

Comment Date: October 22, 2003.

17. Three Rivers Energy LLC

[Docket No. RT03–2–000]

Take notice that on September 17, 2003, Three Rivers Energy LLC filed an abbreviated alternate filing pursuant to Sections 35.34 (c) (2) and 35.34(g) of the Commission's regulations.

Comment Date: October 8, 2003.

Standard Paragraph

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 ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (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.

Magalie R. Salas,

Secretary.

[FR Doc. 03–25018 Filed 10–2–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12464–000]

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

September 26, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No:* 12464–000.

c. *Date Filed:* August 6, 2003.

d. *Applicant:* Erie Boulevard Power, L.P.

e. *Name of Project:* Stuyvesant Falls Project.

f. *Location:* The proposed project would be located on Kinderhook Creek in Columbia County, New York.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C.791(a)–825(r).

h. *Applicant Contacts:* Jerry Sebattis, Erie Boulevard Power, L.P., 225 Greenfield Parkway, Suite 201, Liverpool, NY 13088, (315) 413–2787.

i. *FERC Contact:* Mr. Robert W. Bell, (202) 502–6062.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

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–12464–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents 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. *Competing Application:* Project No. 12438–000 and 12439–000, *Date Filed:* February 3, 2003, Date Issued: June 9, 2003, Due Date: August 9, 2003.

l. *Description of Project:* The proposed project would consist of: (1) An existing 240-foot-long, 13-foot-high, Masonry gravity dam, (2) an existing impoundment, with a surface area of 46 acres and negligible storage at normal water surface elevation 174.3 feet USGS, (3) a proposed 3,250-foot-long, 10-foot-diameter steel pipe, (4) an existing 25-foot-diameter surge tank, (5) an existing powerhouse containing 2 new and 1 upgraded generating units having a total installed capacity of 11,100 KW, and (6) appurtenant facilities. The project would have an average annual generation of 14.86 gigawatt hours.

m. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street NE., Room 2A, Washington DC 20426, or by calling (202) 502–8371. This filing may also 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 address in item h. above.

n. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

o. Competing Applications—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit applications or notices of intent. Any competing preliminary permit or development application or notice of intent to file a competing preliminary permit or development application must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice. A competing license application must conform with 18 CFR 4.30 (b) and 4.36.

p. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. 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.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Compliance and Administration, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. *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. 03–25020 Filed 10–2–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ORD–2003–0010, FRL–7567–9]

Agency Information Collection Activities: Proposed Collection; Comment Request; Detroit Exposure and Aerosol Research Study (DEARS), EPA ICR Number 1887.01, OMB Control Number 20XX–XXXX

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a proposed Information Collection Request (ICR) to the Office of Management and Budget (OMB). This is a request for a new collection. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before December 2, 2003.

ADDRESSES: Submit your comments, referencing docket ID number ORD–2003–0010, to EPA online using EDOCKET (our preferred method), by email to *oei.docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Office of Environmental Information Docket, Mail Code 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Barbara Blackwell, Environmental Protection Agency, MD E205–01, RTP, NC 27711; telephone number: (919) 541–2886; fax number: (919) 541–0905; email address: *blackwell.barbara@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has established a public docket for this ICR under Docket ID number ORD–2003–0010, which is available for public viewing at the Office of Environmental Information Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Office of Environmental Information Docket is (202) 566–1752. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA within 60 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, *see* EPA's **Federal Register** notice describing the electronic docket at 67 *FR* 38102 (May 31, 2002), or go to *http://www.epa.gov./edocket.*

Affected entities: Entities potentially affected by this action are persons living in Wayne County, MI.

Title: Detroit Exposure and Aerosol Research Study (DEARS)

Abstract: EPA's Office of Research and Development proposes to conduct a residential and personal exposure field monitoring study in the city of Detroit, MI over a three-year period from 2004 to 2006. The primary goal of the study is to evaluate and describe the relationship between air toxics and PM constituents measured at a central site monitor and measurements of residential and personal concentrations. An emphasis is placed on understanding the impact of local sources (point and mobile) on outdoor residential concentrations and the impact of housing type and house operation on indoor concentrations.

Personal monitoring will be conducted to determine the impact of time spent in nonresidential locations and personal activities on exposure. Approximately 120 persons will voluntarily agree to wear certain personal air monitors and to allow their homes to be equipped with other monitors to measure indoor air quality. Each home will be monitored for five consecutive days in the summer and five consecutive days in the winter. The study is a continuation and expansion of previous OMB-approved studies of human exposure to particles, undertaken in response to recommendations of the National Academy of Sciences (EPA ICR 1887.01 and 1887.02; OMB Approval # 2080; 1997–2003). The study also extends the approach developed in the Atlanta ARIES study as recommended by Dr. John Graham of OMB.

Further details on the study design and the complete set of questionnaires are available for public viewing in the on-line EDOCKET at *http://www.epa.gov/edocket.* An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Burden Statement: Respondents will be asked to fill out a Time-Activity Diary which aids them in maintaining a log of activities over the course of each day. The following morning, a technician will go over their previous day's activity log with them and correct any omissions or mistakes. The time-activity diaries will take approximately 30 minutes to complete each day. In addition, a technician will administer a Follow-up questionnaire each day and will ask the participant questions about cooking and cleaning activities in the home over the previous 24 hours. This will take approximately 10 minutes a day. Over the course of five days in each of two seasons, the total time burden is estimated to be 450 minutes per respondent. There are projected to be 120 respondents.

The cost to each respondent will be the electrical power consumed in operating the indoor monitors. This has been estimated to amount to $5/day. Respondents will be reimbursed for this cost. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: September 24, 2003.

Jewel F. Morris,

Acting Director, National Exposure Research Laboratory.

[FR Doc. 03–25131 Filed 10–2–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ORD–2003–0011, FRL–7568–1]

Agency Information Collection Activities: Proposed Collection; Comment Request; Longitudinal Field Measurement Study of Infant and Toddler's Aggregate Exposure to Pesticides and Persistent Pollutants, EPA ICR Number 2126.01, OMB Control Number 20XX–XXXX

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a proposed Information Collection Request (ICR) to the Office of Management and Budget (OMB). This is a request for a new collection. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before December 2, 2003.

ADDRESSES: Submit your comments, referencing docket ID number ORD–2003–0011, to EPA online using EDOCKET (our preferred method), by email to *oei.docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Office of Environmental Information Docket, Mail Code 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Interested persons may obtain a copy of this ICR without charge by contacting Barbara Blackwell, National Exposure Research Laboratory, MD–E–205–01, Environmental Protection Agency, 109 TW Alexander Dr., Research Triangle Park, NC 27709; telephone number: (919) 541–2886; fax number: (919) 541–0239; email address: *blackwell.barbara@epa.gov.* For technical information on the proposed study, contact the Co-Principal investigators: Nicolle S. Tulve, National Exposure Research Laboratory, MD–E–205–04, Environmental Protection Agency, 109 TW Alexander Dr., Research Triangle Park, NC 27709; (919) 541–1077; (919) 541–0905 (fax); *tulve.nicolle@epa.gov* or Roy Fortmann, National Exposure Research Laboratory, MD–E–205–04, Environmental Protection Agency, 109 TW Alexander Dr., Research Triangle Park, NC 27709; (919) 541–1021; (919) 541–0905 (fax); *fortmann.roy@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has established a public docket for this ICR under Docket ID number ORD–2003–0011, which is available for public viewing at the Office of Environmental Information Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Office of Environmental Information Docket is (202) 566–1752. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public

docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA within 60 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *www.epa.gov./edocket.*

Affected entities: Entities potentially affected by this action are persons living in Duval County, Florida.

Title: Longitudinal Field Measurement Study of Infant and Toddler's Aggregate Exposure to Pesticides and Persistent Pollutants.

Abstract: The U.S. EPA's Office of Research and Development's National Exposure Research Laboratory proposes to conduct a 2-year longitudinal field measurement study of young children's (aged 0 to 3 years) potential exposures to current-use pesticides and selected phthalates, polybrominated diphenyl ethers, and perfluorinated compounds that may be found in residential environments. The study will be conducted in Duval County, Jacksonville, Florida over a two-year period from 2004 to 2006. Sixty young children will be recruited into this study in two cohorts: (1) Infants recruited into the study soon after birth, and, (2) children recruited into the study at approximately 12 months of age. The study involves up to six monitoring events to each home during the 2-year study period during which environmental, personal, biological, and activity pattern data will be collected. Each monitoring event consists of 4 visits to each participant's home. Aggregate exposure estimates will be conducted for the current-use pesticides and selected phthalates in the study. The data collected on the polybrominated diphenyl ethers and the perfluorinated compounds will provide valuable information on concentrations of these compounds in residential environments, the potential magnitude for exposure, and the temporal and spatial variability of these chemicals in residences.

The data collected in this study is very important to the EPA's Program Offices. The reasons for collecting this data are to better identify the exposure factors, routes, and pathways of exposure for these chemicals, thus improving the Agency's ability to regulate these chemicals, conduct meaningful risk assessments, and develop future studies. Responses to the survey are completely voluntary. Further details on the peer-reviewed study design and the complete set of questionnaires are available for public viewing in the on-line EDOCKET at *http://www.epa.gov/edocket.*

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Burden Statement: The questionnaires for this study are listed in Table 1 with their associated hour burdens.

TABLE 1.—LISTING OF QUESTIONNAIRES WITH THEIR ASSOCIATED HOUR BURDENS

[The total time burden is based on 60 people participating for the entire two-year study]

Questionnaire	Time burden (minutes)	Number of respondents	Number of times questionnaire asked during study to each participant	Total time burden (minutes)
Eligibility screening questionnaire	10	120	1	1200
Home pesticide inventory and use screening questionnaire	10	60	1	600
Participant and housing characteristics questionnaire	35	60	1	2100
Monitoring visit questionnaire	10	60	6	3600
Activity time line	15	60	18	16200
Indirect ingestion assessment questionnaire	13	60	6	4680
Food diary and supplemental questionnaire	10	60	6	3600
Monthly pesticide purchase and use log	5	60	24	3600
Child care center pesticide use questionnaire	10	6	5	300
Antimicrobial inventory log	10	60	1	600
Antimicrobial use log	1	60	24	1440
Vineland Adaptive Behavioral Scales	20	60	6	7200

Potential participants will be screened and recruited into the study using the Eligibility screening questionnaire and the Home pesticide inventory and use screening questionnaire. These survey instruments will be administered

electronically by the field technicians. The remaining questionnaires listed in Table 1 are administered after each participant is enrolled into the study during the monitoring events. The Participant and housing characteristics questionnaire will require a one-time period of 35 minutes to complete. The Monitoring visit questionnaire will be completed at the conclusion of each monitoring event and takes 10 minutes to complete. The Activity time line will be completed by the participant for three days during the monitoring event (15 minutes to complete multiplied by 3 days of completion equals 45 minutes for the monitoring event per participant). The Indirect ingestion assessment questionnaire will be completed at the conclusion of each monitoring event. It will take 13 minutes to complete. The Food diary and supplemental questionnaire will be completed by the participant. The participant uses this questionnaire to record the foods that are collected for the duplicate diet. The Food diary and supplemental questionnaire will require 10 minutes to complete. The Monthly pesticide purchase and use log will be completed by the participant on a monthly basis. This log is used to record pesticide application and use events in the residence. It will take 5 minutes to complete this log during the month. The Child care center pesticide use questionnaire will be administered to child care center directors for those children who attend child care during the monitoring event. It is anticipated that less than 10% of the participants will attend day care, so this questionnaire will be used infrequently. However, if used, it is administered directly to the center director and takes 10 minutes to complete. The Antimicrobial inventory log is administered once during the study. It is completed by the field technician with the help of the participant and takes 10 minutes to complete. The Antimicrobial use log is completed each month by the participant. This log requires a check mark if the product was used that day. This log will require approximately 1 minute to complete. The Vineland Adaptive Behavioral Scales will be administered during each monitoring event. It will take 20 minutes to complete. Over the course of each four-day monitoring event, the total time burden will be 149 minutes per participant. There are projected to be 60 participants enrolled into the study. The total participant time burden for each monitoring event will be 8940 minutes.

There are no direct participant costs for this data collection. Participants will be reimbursed for the costs of electricity used and food collected. Compensation will be offered to defray the burden associated with participating in this study.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: September 24, 2003.

Jewel F. Morris,

Acting Director, National Exposure Research Laboratory.

[FR Doc. 03–25132 Filed 10–2–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6644–3]

Environmental Impact Statements; Notice of Availability

RESPONSIBLE AGENCY: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements

Filed September 22, 2003 Through September 26, 2003

Pursuant to 40 CFR 1506.9.

EIS No. 030429, Draft EIS, FHW, TN, Appalachian Development Highway System Corridor K (Relocated Highway U. S. 64), Improvements from West of the Ocoee River to TN–68 near Ducktown, Funding, U.S. Army Corps Section 10 and 404 Permits, Polk County, TN, Comment Period Ends: January 15, 2004, Contact: Bobby W. Blackmon (615) 781–5770.

EIS No. 030430, Final EIS, COE, TX, Gulf Intracoastal Waterway in the Laguna Madre, Maintenance Dredging from the JFK Causeway to the Old Queen Isabella Causeway, Nueces, Kleberg, Kenedy, Willacy and Cameron County, TX, Wait Period Ends: November 3, 2003, Contact: Dr. Terry Roberts (409) 766–3035. This document is available on the Internet at: *http://www.swg.usace.army.mil/.*

EIS No. 030431, Final EIS, AFS, NM, Bluewater Ecosystem Management Project, Proposes to Initiate Vegetation Treatments to Restore Ponderosa Pine and Pinon-Juniper Stands to a Desired Condition, Cibola National Forest, Mt. Taylor Ranger District, McKinley and Cibola Counties, NM, Wait Period Ends: November 3, 2003, Contact: Chuck Hagerdon (505) 287–8833.

EIS No. 030432, Draft EIS, AFS, OR, Toolbox Fire Recovery Project, Promote the Recovery of the Toolbox Complex Fires of July 2002, Fremont-Winema National Forest, Silver Lake Ranger District, Lake County, OR, Comment Period Ends: November 17, 2003, Contact: Rick Elston (541) 576–7569. This document is available on the Internet at: *http://www.fs.fed.us/r6/winema/management/analyses/toolbox/index.shtm1.*

EIS No. 030433, Final EIS, BLM, WY, Snake River Resource Management Plan, BLM-Administrated Public Land and Resources Allocation and Management, Snake River, Jackson Hole, Teton County, WY, Wait Period Ends: November 3, 2003, Contact: Walt George (307) 775–6116.

EIS No. 030434, Final EIS, AFS, ID, North End Sheep Allotment Management Plan (AMP) Revision, Proposal to Authorize Continued Livestock Use, Caribou-Targhee National Forest, Soda Springs Ranger District, Caribou and Bonneville Counties, ID, Wait Period Ends: November 3, 2003, Contact: Derek Hinckley (208) 547–4356.

EIS No. 030435, Draft EIS, BLM, OR, Andrews Management Unit/Steens Mountain Cooperative Management and Protection Area Resource Management Plan, Implementation, Harney and Malheur Counties, OR, Comment Period Ends: December 31, 2003, Contact: Gary Foulkes (541) 573–4541.

EIS No. 030436, Final EIS, FRC, NY, St. Lawrence-FDR Hydroelectric Project, Application for New License (Relicense), (FERC No. 200–036), Located on the St. Lawrence River, Messina, NY, Wait Period Ends: November 3, 2003, Contact: Ed Lee (202) 502–6082. This document is available on the Internet at: *http://www.ferc.gov.*

EIS No. 030437, Draft EIS, IBR, CA, Pajaro Valley Water Management Agency (PVWMA) Revised Basin Management Plan Project, Connection

of PVWMA Pipeline to the Santa Clara Conduit of the Central Valley Project (CVP), Santa Cruz, Monterey and San Berito Counties, CA, Comment Period Ends: December 2, 2003, Contact: Lynne Silva (559) 487–5807.

EIS No. 030438, Final EIS, FHW, WA, Cross-Base Highway Project (WA–704), New Roadway Construction between I–5 at the Thorne Lane Interchange and WA–7 at 176th Street South Major Investment Study (MIS) and US Army COE Section 404 Permit Issuance, Pierce County, WA, Wait Period Ends: November 14, 2003, Contact: Steve Saxton (360) 753–9411.

EIS No. 030439, Draft EIS, AFS, WY, Blackhall-McAnulty Analysis Area, Proposal to Reduce the Spread of Dwarf Mistletoe and Mountain Pine Beetle in Lodgepole Pine Stands, Brush Creek/ Hayden Ranger District, Medicine Bow-Routt National Forests and Thunder Basin National Grassland, Carbon County, WY, Comment Period Ends: November 17, 2003, Contact: Terry Delay (307) 326–2518. This document is available on the Internet at: *http://www.fs.fed.us/mrnf.*

EIS No. 030440, Draft EIS, GSA, DC, Southeast Federal Center Development, Land Transfer for Mixed-Use Development of Residences, Offices, Shops, a Waterfront Park and Cultural Amenities, Implementation, DC, Comment Period Ends: November 19, 2003, Contact: Arthur Turowski (202) 708–5891.

EIS No. 030441, Final EIS, AFS, ID, Salmon-Challis National Forest Noxious Weed Management Program, Integrated Series of Weed Treatment and Non-Treatment Practices Implementation, Custer, Lemhi, Butte and Blaine Counties, ID, Wait Period Ends: November 3, 2003, Contact: William Diage (208) 756–5567.

EIS No. 030442, Draft EIS, USA, HI, Transformation of the 2nd Brigade, 25th Infantry Division (Light) to a Stryker Brigade Combat Team in Hawai'i, Implementation, Honolulu and Hawai'i Counties, HI, Comment Period Ends: November 17, 2003, Contact: Cindy Barger (808) 438–4812. This document is available on the Internet at: *http://www.sbcteis.com.*

EIS No. 030443, Draft EIS, FHW, OH, IN, US–24 Transportation Improvements Project, from Interstate 469 in New Haven, Indiana to Ohio Route 15 in Defiance, Funding, NPDES Permit and US Army COE Section 404 Permit, Westernmost and Allen Counties, IN and Paulding and Defiance Counties, OH, Comment Period Ends: November 21, 2003, Contact: Mark L. Vonder Embse (614) 280–6854.

EIS No. 030444, Final EIS, NRS, OK, Cavalry Creek Watershed Supplemental Plan for Floodwater Retarding Structure No. 6, Washita River Basin, Washita County, OK, Wait Period Ends: November 3, 2003, Contact: M. Darrel Dominick (405) 742–1206.

EIS No. 030445, Final EIS, NPS, MN, Grand Portage National Monument General Management Plan, Implementation, Cook County, MN, Wait Period Ends: November 3, 2003, Contact: Tim Cochrane (218) 387–2788.

EIS No. 030446, Draft Supplement, FTA, NC, South Corridor Downtown Amendment Project, Evaluate a Downtown Portland Mall Light Rail Transit (LRT) Alignment to the I–205 Light Rail Transit Alternative, Funding, Clackamas and Multnomah Counties, OR, Comment Period Ends: November 17, 2003, Contact: Sharon Kelly (503) 797–1756.

EIS No. 030447, Final EIS, SFW, CA, Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP), Implementation, Incidental Take Permits Issuance, Riverside and Orange County, CA, Comment Period Ends: November 3, 2003, Contact: Jim Bartel (760) 431–9440.

EIS No. 030448, Draft EIS, FHW, FL, Indian Street Bridge PD&E Study, New Bridge Crossing of the South Fork of the St. Lucie River County Road 714 (Martin Highway)/SW 36th Street/ Indian Street from Florida's Turnpike to East of Willoughby Boulevard, Martin County, FL, Comment Period Ends: December 1, 2003, Contact: James Mathews (850) 942–9650.

Amended Notices

EIS No. 030333, Draft EIS, IBR, CA, Battle Creek Salmon and Steelhead Restoration Project, Restoring Habitat in Battle Creek and Tributaries, License Amendment Issuance, Implementation, Tehama and Shasta Counties, CA, Comment Period Ends: October 16, 2003, Contact: Mary Marshall (916) 978–5248. Revision of FR Notice Published on 7/25/2003: CEQ Comment Period Ending 9/22/2003 has been Extended to 10/16/2003.

Dated: September 22, 2003.

Ken Mittelholtz,

Environmental Protection Specialist, Office of Federal Activities.

[FR Doc. 03–25139 Filed 10–2–03; 8:45 am]

BILLING CODE 6560–60–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7568–2]

National Advisory Council for Environmental Policy and Technology (NACEPT) Superfund Subcommittee Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification of public advisory NACEPT subcommittee on Superfund; open meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Superfund Subcommittee, a subcommittee of the National Advisory Council for Environmental Policy and Technology (NACEPT), will meet on the dates and times described below. The meeting is open to the public. Seating will be on a first-come basis, and limited time will be provided for public comment on each day.

DATES: The meeting will be held from 8:30 a.m. to 6 p.m. on November 5, 2003; from 8 a.m. to 6 p.m. on November 6, 2003; and 8 a.m. to 1 p.m. on November 7, 2003.

ADDRESSES: The meeting will take place at the Four Points Sheraton Hotel, 1201 K Street, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Angelo Carasea, Designated Federal Officer for the NACEPT Superfund Subcommittee, Office of Superfund Remediation and Technology Innovation, Office of Solid Waste and Emergency Response, MC 5204G, 1200 Pennsylvania Ave., NW., Washington, DC, (703) 603–8828.

SUPPLEMENTARY INFORMATION:

Agenda

This seventh meeting of the NACEPT Superfund Subcommittee will involve discussion of the latest version of the Subcommittee's draft report. The agenda for the meeting will be available one week prior to the meeting's occurrence.

Public Attendance

The public is welcome to attend all portions of the meeting. Members of the public who plan to file written statements and/or make brief (suggested 5-minute limit) oral statements at the public sessions are encouraged to contact the Designated Federal Official. Each day will have one public comment period.

Dated: September 29, 2003.

Angelo Carasea,

Designated Federal Officer, NACEPT Superfund Subcommittee.

[FR Doc. 03–25135 Filed 10–2–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2003–0034; FRL–7328–9]

Draft Instructions for Reporting for the 2006 Partial Updating of the TSCA Chemical Inventory Database; Request for Comment and Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is convening a public meeting to receive comments from persons reporting data required by the Inventory Update Rule on the draft instructions for reporting in 2006. The instructions have been revised in response to amendments to 40 CFR part 710 promulgated on January 7, 2003, which substantially modify the information which must be reported for the partial updating of the TSCA Chemical Inventory Database beginning in 2006. The meeting is open to the public.

DATES: The public meeting will commence at 10:30 a.m. on Wednesday, October 15, 2003, and end at approximately 3 p.m. on the same day.

ADDRESSES: The public meeting will be held at the Le Meridien Chicago, 521 North Rush Street, at Michigan Avenue, Chicago, IL 60611. This meeting is being held in conjunction with the 2003 TSCA Fundamentals Workshop sponsored by the Synthetic Organic Chemicals Manufacturing Association. Information on this workshop is available at *www.socma.com/Conferences/TSCAWorkshop.htm.*

FOR FURTHER INFORMATION CONTACT: *For general information contact:* Barbara Cunningham, Acting Director, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov.*

For technical information contact: Fredric C. Arnold, Economics, Exposure, and Technology Division (7406M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8521; e-mail address:*arnold.fred@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you manufacture chemical substances currently subject to reporting under the Inventory Update Rule (IUR) as amended on January 7, 2003, and codified as 40 CFR part 710. Persons who process chemical substances but who do not manufacture or import chemical substances are not required to comply with the requirements of 40 CFR part 710. Potentially affected entities may include, but are not limited to:

Chemical manufacturers and importers currently subject to IUR reporting, including manufacturers and importers of inorganic chemical substances (NAICS codes 325, 32411).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions at 40 CFR 710.48. If you have any questions regarding the applicability of this action to a particular entity, consult the technical contact person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket ID number OPPT–2003–0034. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although, a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at: *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

II. Background

EPA is convening a public meeting to receive comments on the Instructions for Reporting for the 2006 Partial Updating of the TSCA Chemical Substance Inventory. EPA is required by section 8(b) of the Toxic Substances Control Act (TSCA) to compile and update an inventory of chemical substances manufactured or imported in the United States. Every 4 years, manufacturers (including importers) of certain chemical substances on the Chemical Substances Inventory have been required to report data specified in the TSCA section 8(a) Inventory Update Rule (IUR), 40 CFR part 710. Past updates included information on the chemical's production volume, site-limited status, and plant site information. Amendments to the IUR promulgated on January 7, 2003 (68 FR 848) (FRL–6767–4) expanded the data reported on certain chemicals to assist EPA and others in screening potential exposures and risks resulting from manufacturing, processing, and use of TSCA chemical substances. At the same time, EPA amended the IUR regulations to increase the production volume threshold which triggers reporting requirements from 10,000 pounds per year to 25,000 pounds per year and established a new higher threshold of 300,000 pounds per year above which manufacturers must report additional information on down-stream processing and use of their chemical substances. The 2003 amendments to the IUR also revoked the exemption from reporting for inorganic chemical substances,

provided a partial exemption from reporting of processing and use information for chemical substances of low current interest, and continued the current exemption from reporting for polymers, microorganisms, and naturally occurring chemical substances. These changes modify requirements for information collected in calendar year 2005 and submitted in 2006 and thereafter. The public meeting may be of interest to persons currently reporting under the IUR and to manufacturers of inorganic chemical substances.

The public meeting will include a series of presentations by representatives of EPA on the instructions for reporting for the 2006 partial updating of the TSCA chemical inventory database. Presentation topics will include reporting requirements, instructions for completing the reporting form, how to assert confidentiality claims, and how to submit completed reports to EPA. After each presentation, persons attending the public meeting will be invited to comment on the clarity, completeness, and usefulness of the instructions. Comments may also be submitted in writing following the public meeting; comments should be submitted within 30 days after the meeting to receive timely attention. The purpose of the public meeting is to receive input for improving the instructions; subsequent meetings are planned for 2004 to provide training to persons who must report in 2006 under the IUR.

Persons planning to attend the public meeting are encouraged to register with the technical contact person identified under **FOR FURTHER INFORMATION CONTACT.** Persons registering for the meeting will receive by e-mail a copy of the draft instructions prior to the meeting. Prior registration is not required to attend the focus group meeting. There is no charge for attending this public meeting.

List of Subjects

Environmental protection, chemicals, reporting and recordkeeping requirements.

Dated: September 25, 2003.

Margaret Schneider,

Acting Director, Office of Pollution Prevention and Toxics.

[FR Doc. 03–25275 Filed 10–2–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7565–1]

Agency Policy and Guidance: Draft Small Local Governments Compliance Assistance Policy

AGENCY: Environmental Protection Agency.

ACTION: Request for public comment.

SUMMARY: The U.S. Environmental Protection Agency (EPA) today seeks public comment on proposed revisions to its 1995 *Policy on Flexible State Enforcement Responses to Small Community Violations* (the *Small Communities Policy*). The *Small Communities Policy* encourages states to enhance protection of public health and the environment by providing comprehensive environmental compliance assistance to the 72% of American communities that are home to 2,500 or fewer permanent residents. If the actions of the state to provide compliance assistance and the actions of the small community to achieve compliance stay within the parameters of the *Small Communities Policy,* EPA will generally defer to the state's decision to reduce or waive the noncompliance penalty that EPA guidance would normally require the state to assess for the small community's violations. During the course of the compliance assistance, the small community must work in good faith with the state to: (1) Evaluate the small community's compliance status and identify all of its environmental violations; (2) develop a priority-based schedule for the small community to achieve compliance with all applicable environmental requirements as soon as practicable; and (3) build the technical, managerial, and financial capacity the small community needs to achieve and sustain comprehensive environmental compliance. The central tenets of the *Small Communities Policy* are:

1. Good faith efforts; 2. enforceable commitments; and 3. comprehensive compliance with all environmental requirements.

The 1995 *Small Communities Policy* can be downloaded from the Internet at *http://www.epa.gov/compliance/resources/policies/incentives/smallcommunity/scpolicy.pdf.*

EPA now proposes a number of revisions intended to extend the scope of the *Small Communities Policy.* The policy will be retitled the *Small Local Governments Compliance Assistance Policy* to clarify EPA's intent that the policy benefit units of local government.

To make the benefits of the *Small Local Governments Compliance Assistance Policy* available to a greater number of small local governments, EPA proposes to:

1. Defer to states' decisions to reduce or waive the normal noncompliance penalties of local governments with 3,300 or fewer permanent residents—if the actions of the state to provide compliance assistance and the actions of the local government to achieve compliance are consistent with the parameters established by the *Small Local Governments Compliance Assistance Policy.*

2. Defer to states' decisions to reduce or waive the normal noncompliance penalties of local governments with between 3,301 and 10,000 permanent residents—if a state has followed guidelines in the *Small Local Governments Compliance Assistance Policy* to determine that the technical, managerial, and financial capacity of the local government is so limited that the local government is unlikely to achieve and sustain comprehensive environmental compliance without the state's assistance; and if the actions of the state to provide compliance assistance and the actions of the local government to achieve compliance are consistent with the parameters established by the policy.

To make the benefits of the *Small Local Governments Compliance Assistance Policy* available in a wider range of circumstances, EPA proposes to defer to states' decisions to reduce or waive the normal noncompliance penalties for eligible local governments that enter into an enforceable agreement to: 1. correct known violations; and 2. develop and implement Environmental Management Systems for their governmental operations. EPA also proposes to defer to states' decisions to reduce or waive the normal noncompliance penalties for eligible local governments with between 3,301 and 10,000 permanent residents that enter into enforceable agreements either to achieve comprehensive environmental compliance or to develop and implement environmental management systems within the ''fenceline'' of a subset of their government operations.

EPA also seeks public comment on whether and how the Agency could implement a policy similar to the *Small Local Governments Compliance Assistance Policy* for its compliance assistance and enforcement activities where EPA directly implements a program, where EPA retains primary enforcement authority, or where EPA takes action after consulting with a State

that has primacy or has been authorized to implement a Federal program.

DATES: The Agency requests comments on today's proposal. Comments must be received or post-marked by midnight January 2, 2004. Comments received after this date may not be considered in decision making on the proposed policy.

ADDRESSES: Send written comments (in triplicate, if possible) to: the Docket Clerk, U.S. Environmental Protection Agency Enforcement and Compliance Docket and Information Center, Mail Code: 2201T), Docket Number EC–P–2001–003, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20004. Please use a font size no smaller than 12. Comments may also be sent electronically to *docket.oeca@epa.gov,* or faxed to (202) 566–1511. Attach electronic comments as an ASCii (text) file, and avoid the use of special characters and any form of encryption. Be sure to include the docket number EC–P–2001–003 on your document. In person, deliver comments to the Enforcement and Compliance Docket and Information Center, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., EPA West, Room B133, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Kenneth Harmon, telephone (202)564–7049; e-mail *harmon.kenneth@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background and History

EPA's enforcement response policies generally provide for initiation of an enforcement action and assessment of standard penalties (which can be adjusted downward on the basis of the violator's inability to pay) if a local government entity is discovered to have violated environmental regulations. In 1994, EPA began informal discussions with the States of Oregon and Idaho, later joined by the State of Nebraska, centered on those States' planned use of enforcement discretion with respect to small community violators. These States noted that small communities may have more difficulty complying with environmental regulations than larger communities do. Small communities that lack personnel trained in environmental management may be unaware of environmental requirements. Once informed of their environmental noncompliance, small communities may not know how to correct their problems. Because small communities have a smaller tax base and a smaller pool of ratepayers, their residents often must pay higher per household costs for environmental compliance. Oregon, Idaho, and Nebraska sought assurances that EPA would defer to a State's exercise of enforcement discretion to reduce or waive the normal noncompliance penalty where a State determines that a small community violator is working diligently in good faith to identify and correct its noncompliance.

In 1995, EPA responded by issuing the *Policy on Flexible State Enforcement Responses to Small Community Violations* (''the *Small Communities Policy*''). The *Small Communities Policy* established parameters within which EPA encourages States to provide incentives for small communities to seek State assistance in identifying their environmental problems, developing a priority-based schedule for returning to full comprehensive environmental compliance, and building the technical, managerial, and financial capacity needed to achieve and sustain compliance.

II. Overview of the Small Communities Policy

EPA's 1995 *Small Communities Policy* gives States [1] considerable freedom to tailor small community environmental compliance assistance practices or programs that meet specific local needs. EPA's deference on penalty reductions and waivers under the *Small Communities Policy* is generally restricted to agreements States enter into with communities with no more than 2,500 permanent residents. These communities must be working diligently in good faith to achieve and sustain *comprehensive* environmental compliance, *i.e.*, compliance with every environmental requirement to which their government operations are subject. If a small community cannot achieve comprehensive compliance within 180 days of the State's commencement of compliance assistance to the community, within that same 180 days, the community must enter into a written and enforceable agreement with the State that establishes a schedule for addressing and correcting all of its environmental violations as soon as practicable. A State that seeks EPA's deference to its decision to reduce a small community's noncompliance penalties must have adequate processes for:

- Responding quickly to requests for compliance assistance;
- Selecting communities to participate in the State's compliance assistance program;
- Assessing a community's good faith and compliance status;
- Establishing priorities for addressing noncompliance; and
- Ensuring prompt correction of violations

The Agency reserves all of its enforcement authorities, including its discretion to initiate an enforcement action to address any violation or circumstance that may present an imminent and substantial endangerment to, has caused or is causing actual serious harm to, or presents a serious threat to, public health or the environment.

Deference under the *Small Communities Policy* is not warranted if, in EPA's judgment, a State's program to reduce or waive small communities' noncompliance penalties in exchange for comprehensive environmental compliance fails to satisfy the conditions of the *Small Communities Policy.* Neither is deference under the *Small Communities Policy* warranted if, in EPA's judgment, a State's application of its program to reduce or waive small communities' noncompliance penalties in exchange for comprehensive environmental compliance fails to provide, in a specific case, adequate protection to human health and the environment because that application neither requires nor results in reasonable progress toward, and achievement of, environmental compliance by a date certain.

III. Differences Among the Self-Disclosure Policies

In addition to the *Small Communities Policy,* EPA has issued *Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations* (the *Audit Policy*) and the *Small Business Compliance Policy* (the *Small Business Policy*), both of which were last revised in April of 2000. These policies provide penalty relief to regulated entities who, upon discovering their violations, promptly disclose them to EPA and promptly return to compliance. Although the *Small Communities Policy* is often grouped with the *Audit Policy* and the *Small Business Policy* under the shared term ''self-disclosure policies,'' it differs in significant ways. The *Audit Policy* and the *Small Business Policy* apply only to violations discovered outside the scope of a compliance assessment required by statute or regulation. The *Small Communities Policy* can apply to a violation no matter how discovered. It can apply to violations discovered

[1] ''State'' means the agency of any State, Commonwealth, or territory of the United States that has received EPA's approval to implement environmental laws and regulations. An Indian Tribe can be a State if it has received EPA's approval for treatment as a State.

outside the scope of required compliance assessments as well as to violations discovered during required compliance assessments and to violations discovered by the regulator during the course of an inspection. While the *Audit Policy* and the *Small Business Policy* do not provide penalty relief for repeat violations, the *Small Communities Policy* allows application of the policy to communities with a history of noncompliance if the State determines that the community has been acting in good faith and to the best of its ability to address violations and achieve compliance. The *Audit Policy* and the *Small Business Policy* generally allow disclosing violators no more than 60 days and 90 days, respectively, to correct their violations (the *Small Business Policy* will allow 180 days for corrections if the violator first submits a written schedule, and up to 360 days for corrections if the violator will correct the violations by putting pollution prevention measures in place). The *Small Communities Policy* gives communities up to 180 days to correct violations without a written agreement and schedule, but, if a community cannot achieve compliance within 180 days, the policy permits the community to enter into a written and enforceable agreement with the State establishing a schedule for the community to address all of its violations as expeditiously as practicable in order of risk-based priority. Also, the *Audit Policy* and the *Small Business Policy* do not require, as the *Small Communities Policy* does, that noncompliers evaluate their compliance with all applicable regulatory requirements. This significant difference between the *Small Communities Policy* and the other self-disclosure policies is the best illustration that the *Small Communities Policy* has a different purpose. The *Audit Policy* and the *Small Business Policy* are intended to provide incentives for regulated entities to conduct self-audits and disclose the violations they discover. The *Small Communities Policy* is intended to encourage States to conduct comprehensive evaluations of their small communities' compliance with every environmental requirement that applies to the community's governmental operations, and then work with communities to help them build the technical, managerial, and financial capacity they need to achieve and sustain comprehensive environmental compliance.

IV. The January 23, 2002 Federal Register Notice

Although State comprehensive environmental compliance assistance programs have provided compliance assistance to more than 250 small communities since EPA issued the *Small Communities Policy,* most of that activity took place in just two States. In discussions with small community and State stakeholders questioning why so few States had implemented the policy, EPA learned that many stakeholders find aspects of the policy problematic. Some stakeholders believe that the *Small Communities Policy's* population cap of 2,500 is too low. Many States point out that EPA has not provided funding for States to establish programs offering comprehensive environmental compliance assistance to small communities. Many small communities do not see how participating in a State's comprehensive compliance assistance program would benefit them. These and other perceived shortcomings of the policy were seen as impediments to its more wide-spread implementation among the States.

On January 23, 2002, EPA published a **Federal Register** notice (67 FR 3185) requesting public comment on possible revisions to various aspects of the *Small Communities Policy.* The **Federal Register** notice sought comment on: (1) Raising the policy's population cap to allow participation of larger (but still small) communities; (2) allowing comprehensive environmental compliance assistance projects confined within the ''fenceline'' of one of a community's operations; (3) reducing the resource burdens associated with establishing and participating in comprehensive environmental compliance assistance programs; and (4) enhancing incentives for both States and small local governments to participate in such programs. The **Federal Register** notice also discussed the relationship between actions undertaken in accordance with the *Small Communities Policy* and actions undertaken as part of an environmental management system (EMS). EPA noted that if a small local government receiving comprehensive environmental compliance assistance from the State were to develop and implement an EMS as part of its strategy to address its noncompliance, the local government should incorporate its EMS activities into the written and enforceable agreement and the schedule required by the policy. Finally, EPA requested comment on more general aspects of the *Small Communities Policy,* including the policy's definition of community, the time frames for disclosure and correction of violations, and the types of violations to which the *Small Communities Policy* would apply.

EPA received comments from ten respondents. A summary of these comments and the comments themselves are available from EPA's Enforcement and Compliance Docket and Information Center (EDIC) in the EPA Docket Center (EPA/DC), EPA West Room B102, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number of the EDIC is (202) 566–1514. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then type in the docket ID number identified above.

V. The Role of the EPA Inspector in Providing Compliance Assistance During Inspections

On June 25, 2003, EPA issued a national policy titled: *The Role of the EPA Inspector in Providing Compliance Assistance During Inspections (Inspector Policy).* EPA's *Inspector Policy* concerns the actions of EPA inspectors, not State inspectors, conducting compliance inspections, but it can provide useful guidance for States. The *Inspector Policy* encourages EPA inspectors' current practice of providing compliance assistance during on-site compliance inspections, and clarifies what compliance assistance is appropriate in such circumstances. The *Inspector Policy* can be accessed at *www.epa.gov/Compliance/resources/policies/monitoring/ inspection/inspectorrole.pdf.*

VI. Proposed Changes to the Small Communities Policy

EPA today proposes replacing the term ''community'' with the term ''local government'' as derived from U.S. Census Bureau definitions. This change, which clarifies EPA's intent to focus compliance assistance on small governmental entities, is also reflected in the title of the revised policy: the *Small Local Governments Compliance Assistance Policy.* EPA also proposes three major changes to the *Small Communities Policy,* one related to the cap on the population of participating local governments, one allowing projects of restricted scope in some circumstances, and one encouraging local governments to develop and implement EMS. These changes are intended to make it easier for more local

governments to get needed compliance assistance from their States, and to promote more effective management of environmental responsibilities by local governments.

The following sections discuss the revised term used to describe entities eligible for participation under the policy, proposed revisions to the population cap and to the requirement of comprehensive assistance at all of a local government's operations, and the proposed addition of an EMS option.

A. Entities Eligible To Receive all Benefits

The 1995 *Small Communities Policy* applied to ''small communities'', which EPA defined as ''communities, generally comprised of fewer than 2,500 residents, [that are]:

- Non-profit
- Governing entities (incorporated or unincorporated)
- That own facilities that supply municipal services.

EPA now proposes to minimize possible confusion by replacing the term ''community'' with the term ''local government'', thereby designating familiar, legally-defined entities as those entities eligible to receive benefits under the policy. Although EPA originally adopted a broad definition of eligible entities to provide States flexibility to develop compliance assistance programs that addressed the State's particular needs, in the seven years the policy has been in force, EPA has seen no evidence that States wish to offer comprehensive environmental compliance assistance to communities that are not traditional units of local government. EPA's proposal derives its definition of ''local government'' from United States Census Bureau definitions (*see, www.census.gov/geo /www/tiger/ glossary.html#glossary*) related to ''governmental unit''. As used by the policy, the term ''local government'' can mean any organized unit of government authorized in a State's constitution and statutes, and established to provide general government for a defined area. This includes governments designated as a county, parish (in Louisiana), municipality, borough, city, village, town, township, or plantation (in Maine).

EPA acknowledges that this definition differs from ''local government'' as defined in Section 2 of the Homeland Security Act of 2002 (Pub. L. 107–296). For the purposes of that Act, Congress defined 'local government' as:

(A) A county, municipality, city, town, township, local public authority, school district, special district, intrastate district, council of governments (regardless of whether the council of governments is incorporated as a nonprofit corporation under State law), regional or interstate government entity, or agency or instrumentality of a local government;

(B) An Indian tribe or authorized tribal organization, or in Alaska a Native village or Alaska Regional Native Corporation; and

(C) A rural community, unincorporated town or village, or other public entity.

For the *Small Local Governments Compliance Assistance Policy* EPA proposes a more restrictive definition because it is the Agency's intention to focus the benefits of the policy on small units of general purpose local government. It is EPA's belief that special districts and governmental entities comprised of more than one participating governmental unit are created specifically for the purpose of ensuring that the resulting governmental unit has the technical, managerial, and financial capacity to discharge its responsibilities. EPA also believes single-medium compliance assistance programs or compliance assistance efforts designed for that specific sector of the regulated community can best meet the needs of governmental entities created for the purpose of delivering one type of service (not general services) to the public.

EPA invites public comment on this proposed change to the definition of entities eligible to receive the full benefits of the *Small Local Governments Compliance Assistance Policy*, particularly to the extent the policy would now not apply either to unincorporated entities that provide municipal services, or to district government entities authorized by State statute to provide, not general services, but to perform a specific function (*e.g.*, school, water, or power districts).

B. Proposed Revisions to the Population Cap

EPA's January 23, 2002 **Federal Register** notice sought comment on two specific questions related to the population cap: (1) Should the policy raise its current cap to allow participation of communities with more than 2,500 residents? and (2) should the population cap be replaced by a test of a community's capacity to address its environmental responsibilities?

Nine of the ten commenters addressed the population cap. All nine favored giving State programs flexibility to admit communities with more than 2,500 permanent residents. Four commenters supported raising the population cap to 10,000, both to be consistent with some of the population-dependent provisions of the Safe Drinking Water Act (in which public water systems that serve more than 10,000 users are labeled ''large'') and because the commenters believe communities with populations of up to 10,000 often provide essential public services to a customer base too small to fund a full-time professional environmental staff. Three commenters indicated that while a population of 2,500 could serve as a reliable rule of thumb for determining which communities need compliance assistance, they recommended that States be given discretion to justify application of the policy to larger communities if those larger communities can be shown also to need compliance assistance.

None of the eight respondents who offered comments on capacity tests supported determining a community's eligibility for compliance assistance solely on the basis of a capacity test. Three commenters rejected capacity tests outright, as they believe small local governments lack the expertise and resources needed to gather the information that would be required by such tests, and States lack the resources needed to evaluate the large number of small local governments potentially eligible for assistance. Five commenters asserted that States should have the flexibility to use a capacity test as a means of determining if a community whose population exceeds the population cap should nonetheless be eligible for participation.

After considering these comments, EPA decided to propose a hybrid approach. The proposed revised policy establishes a two-tiered population cap. EPA will defer to the States' acceptance into their programs of local governments with up to 3,300 permanent residents without analysis demonstrating a lack of technical, managerial, or financial capacity on the part of the local government. The proposed revised policy also provides that States can apply a capacity test to justify the participation of a local government with more than 3,300 but no more than 10,000 permanent residents. As a practical matter, such an upper limit is necessary if EPA wishes to focus comprehensive compliance assistance resources on small local governments who most need it while encouraging larger municipalities to use their greater technical, managerial, and financial capacity to assume more responsibility for ensuring their environmental compliance. In proposing these population levels for the population cap and the upper population limit, EPA

acknowledges the desirability of consistency with the definition of small local government in environmental statutes (most notably regulations implementing the Safe Drinking Water Act, in which public water systems serving 3,300 and fewer users are labeled ''small'') and in the recent Public Health Security and Bioterrorisim Preparedness and Response Act of 2002 (Pub. L. 107–188) (which, in its amendments to the Safe Drinking Water Act, reaffirmed 3,300 as the population level below which public water systems were exempt from some requirements). EPA also acknowledges that States, in implementing the *Small Local Governments Compliance Assistance Policy* are free to adopt a more stringent population cap if they believe lower population levels are more appropriate for their local circumstances. If, for example, a State believes population levels of 2,500 without a demonstration of incapacity and up to 5,000 with a demonstration of incapacity are more appropriate to its local circumstances, the State can establish those levels for its program. A State may choose to evaluate the capacity of requiring all potential participating local governments, or choose not to conduct any capacity tests and simply limit participation in its program to local governments no larger than 3,300 permanent residents. A State also has the option of providing comprehensive environmental compliance assistance to local governments without regard to their populations, but if the State reduces or waives the normal noncompliance penalties of local governments with more than 10,000 permanent residents, EPA may find it appropriate to initiate its own enforcement action to recover additional remedies.

EPA's proposed revised policy recommends that States adopt a number of listed capacity measures the Agency has drawn from studies performed by EPA's Boise Environmental Finance Center. In the context of measuring the ability of small local governments to implement the requirements of the Safe Drinking Water Act, the Boise Environmental Finance Center identified a number of factors that influence the technical, managerial, and financial capacity of local governments (*see, http://sspa.boisestate.edu/efc/*). EPA adapted many of these measures for inclusion into the proposed revised policy, and recommends that States incorporate these measures as appropriate for their local conditions. A State that has provided compliance assistance to a small local government with more than 3,300 but no more than 10,000 permanent residents and seeks EPA deference to its decision to reduce or waive the normal noncompliance penalty of that small local government must have a capacity test in place and consistently apply it. EPA requests comment on the recommended measures presented in the proposed revised policy.

C. Fencelining

Restricting the scope of activities to the boundaries of some subset of operations or facilities is called ''fencelining''. In its January 23, 2002, **Federal Register** notice, EPA asked if, as a cost saving measure, the *Small Local Governments Compliance Assistance Policy* should countenance ''fenceline'' projects. That is, should the policy apply if the State and small local government designate one of the local government's operations (*i.e.* vehicle fleet maintenance, provision of drinking water, grounds keeping, *etc.*), evaluate the local government's compliance with every environmental requirement that applies within the fenceline of that operation, and develop and implement a plan that addresses every environmental concern within that fenceline?

Nine commenters addressed this point. Four commenters advised against allowing fenceline projects. Fencelining need not be incorporated into the policy, three of these four commenters asserted, because most States already offer statute-specific compliance assistance with respect to individual local government operations. These commenters suggested that allowing fencelining would abandon the policy's primary purpose—helping small local governments achieve and sustain *comprehensive* environmental compliance. Fencelining, they feared, would perpetuate a focus on operations with known or suspected violations while leaving other potentially more serious noncompliance at other operations undiscovered and unaddressed.

Three other commenters believed fencelining's probable focus on known compliance concerns could be used to direct limited compliance assistance resources to where they are most needed. These commenters, however, advised limiting fencelining in some way. They suggested including restrictions to ensure that the policy did not become a compliance assistance program for one type of operation only, allowing fencelining only at operations EPA determines to be of particular concern, or allowing fencelining only at larger local governments where conducting comprehensive evaluations of all operations would be a prohibitive drain on available resources.

EPA does primarily intend the policy to promote the provision of comprehensive environmental compliance assistance to small local governments. The Agency, however, acknowledges that fencelining can help States limit the cost of providing comprehensive compliance assistance to a local government that engages in a wide range of operations. EPA also notes there is no compelling reason to limit the scope of a fenceline to just one of a local government's operations. A State and a participating local government may have the capacity and the desire to undertake a comprehensive compliance assistance project incorporating more than one, but less than all, of the local government's operations.

After reviewing the comments, EPA proposes to defer to States' decisions to reduce or waive the normal noncompliance penalties for fenceline projects involving only local governments with between 3,301 and 10,000 permanent residents. With respect to compliance assistance to small governments with 3,300 or fewer permanent residents, EPA will generally defer to a State's decision to reduce or waive the normal noncompliance penalty only if the effort produced an enforceable agreement to achieve comprehensive compliance at all of the small government's operations.

EPA seeks comment on whether this approach strikes an appropriate balance between the Agency's goal of encouraging States to provide truly comprehensive environmental compliance assistance to small local governments, and the Agency's goal of encouraging States to provide some form of comprehensive environmental compliance assistance to local governments with between 3,301 and 10,000 permanent residents. In developing this proposal, EPA considered that its *Audit Policy* and *Small Business Policy* currently provide fenceline-based penalty reductions and waivers to violators (including local governments) that voluntarily discover, promptly disclose, and expeditiously correct environmental noncompliance.

If the *Small Communities Policy* were revised to support fenceline projects for some local governments, it would still differ from the *Audit Policy* and the *Small Business Policy* in some important ways:

- Application of the *Small Communities Policy* is not limited to

those violations that are voluntarily discovered.

- Projects under the *Small Communities Policy* must result in an assessment of the local government's compliance with all applicable environmental requirements, even if the project is confined within the fenceline of a subset of the local government's operations.
- The *Small Communities Policy* gives local governments the flexibility to prioritize among their violations and develop a schedule to address all of their noncompliance as expeditiously as practicable in order of risk-based priority.

D. Environmental Management Systems

An environmental management system (EMS) is an individualized internal management system designed, documented, and implemented to identify and manage the environmental impacts of an entity's operations. Developing and implementing an EMS is an effective way for a local government to identify the environmental aspects of its operations and manage its environmental responsibilities for continual improvement. EPA noted the similarities between the goals of the *Small Communities Policy* and the goals of an EMS in its January 23, 2002, **Federal Register** notice. Both the policy and an EMS establish a mechanism for moving a small local government toward sustained environmental compliance. In the **Federal Register** notice, the Agency noted that the primary difference between the two is the policy's focus on discovering and addressing all of a local governments' environmental noncompliance and an EMS's focus on implementing a system that provides for a local government's ongoing management of all its environmental responsibilities. EPA indicated in the **Federal Register** notice that if a small local government receiving comprehensive environmental compliance assistance from the State were to develop and implement an EMS as part of its strategy to address its noncompliance, the local government should incorporate its EMS activities into the written and enforceable agreement and the schedule required by the policy.

All commenters on this point acknowledged the value of an EMS, but urged that development and implementation of an EMS, and the associated resource demands, not be made a condition of EPA deference.

After considering the comments, EPA's has decided the policy, while not making EMSs mandatory, should provide local governments an incentive to develop and implement an environmental management system. Accordingly, the proposed revisions to the *Small Communities Policy* create an EMS option that will be available to small local governments that learn of environmental noncompliance as a result of a State's inspection of some subset of the small local government's operations. The revised policy would apply to small local governments that address their environmental noncompliance by entering into a written and enforceable agreement with the State establishing a schedule for the local government to: (1) Correct, as expeditiously as practicable in order of risk-based priority, the violations the State discovered during the inspection; *and* (2) develop and implement an environmental management system for all of its governmental operations. Local governments with populations between 3,301 and 10,000 that the State has determined eligible to participate under the policy may develop and implement an EMS applicable within a fenceline that incorporates the operation at which the violations were discovered. Not later than 180 days after the State notifies the local government of the violations discovered during the inspection, the local government must enter into an enforceable agreement that establishes a schedule for correcting the violations, and for developing and implementing an EMS for its governmental operations. If the local government corrects the violations before the 180 days have passed, the written and enforceable agreement it enters into with the State can contain only provisions related to developing and implementing its EMS. In accordance with the schedule established by the EMS agreement, but in no event later than one year after entering into the EMS agreement with the State, a local government would demonstrate it has developed an EMS by producing and submitting to the State an EMS manual documenting how it will accomplish the essential elements of an environmental management system. Not less than one year, and not more than three years after the local government submits its EMS manual to the State, the State, or an independent third party approved by the State, would conduct an EMS audit to confirm that a local government has been implementing, and is continuing to implement, its EMS. This process is discussed more fully in part J of the policy.

EPA proposes the EMS option as an alternative to the process established by the prior *Small Communities Policy.* That policy encourages small local governments to ask the State to perform a comprehensive environmental evaluation of *all* the local government's operations, enter into a written and enforceable compliance agreement establishing a schedule to correct all of its violations as expeditiously as practicable in order of risk-based priority, and correct all of its violations in accordance with that schedule.

The EMS option would establish a process in which the small local government would, as expeditiously as practicable and in order of risk-based priority, correct all of the violations discovered by the State during its inspection of a *subset* of the local government's operations. In committing to develop and implement an EMS, the *small local government* would be responsible for ensuring performance of the comprehensive analysis of the environmental aspects of all of its operations (or in the case of a local government approved for a fenceline project, all of its operations within the fenceline). If at any point during the development and implementation of its EMS a small local government discovers additional noncompliance, it must disclose these violations to the State as required by laws and regulations or in accordance with EPA's self-disclosure policies. The State and the small local government may then amend the terms of their agreement under the policy's EMS option to incorporate a schedule for correction of the newly discovered violations. The State and the small local government may, however, choose to address any noncompliance discovered after the entry of the EMS option agreement in any manner consistent with this policy and other EPA enforcement policies and guidelines.

Local governments that wish to develop and implement an EMS should consult the EPA-sponsored Public Entity EMS Resource Center (PEER Center) at *www.peercenter.net*, and the nearest of its affiliated Local Resource Centers. The PEER Center provides case studies of completed local government EMS projects, process information, and guidance to local governments who wish to develop and implement an environmental management system. EPA will continue to support efforts to facilitate the development of EMS's by small local governments, will work to ensure State programs have access to EPA EMS tools, services, and funding, and will recommend that local governments that participate in State programs implementing the policy be given priority access to the Local Resource Centers.

As this option was not described in the January 23, 2002, **Federal Register** notice, EPA seeks public comment on this point.

VII. Miscellaneous Issues

In its January 23, 2002, **Federal Register** notice, EPA solicited comments on a number of other issues, including possible ways (such as fencelining) to reduce the States' burden of developing and implementing a comprehensive environmental compliance assistance program for small local governments, incentives for States and local governments to participate in such programs, the relationship between the policy and environmental management systems, and if a separate compliance assistance policy is needed for Tribal governments. With the exception of comments related to fencelining, the comments EPA received on these issues did not indicate a need for substantive revisions to the policy in these areas.

A. Burden on States

In addition to fencelining, EPA specifically asked for comment on four other possible ways to reduce a State's burden of developing and implementing a comprehensive environmental compliance assistance program: In-kind contributions from EPA; shifting costs to communities; tiering; and streamlining.

The commenters supported development and dissemination of in-kind contributions (*i.e.* compliance assistance materials, tools, and services that help implement a comprehensive environmental compliance assistance program) by EPA. Commenters advised against shifting costs to small local governments by requiring local governments to evaluate their own compliance status and devise a strategy to achieve and sustain environmental compliance as a prerequisite to receiving compliance assistance from the State. Commenters favored tiering, the provision of different levels of service to different classes of local governments, as a way to focus intensive compliance assistance where it is most needed. Streamlining drew little comment except from those commenters who pointed out that different branches of Federal government should always attempt to coordinate related mandates to the maximum extent possible.

Commenters' support for in-kind contributions from EPA was tempered by their belief that such contributions would be of limited value, as State environmental standards often differ from Federal regulations in some details, and federally-produced materials would not provide information on State contacts. Shifting costs to small local governments drew negative comment. Respondents asserted that this approach, by requiring small local governments to identify their environmental responsibilities and develop a plan to address their environmental concerns before requesting assistance from the State, would be antithetical to the policy's goal of providing compliance assistance to small local governments unable to understand and address their environmental responsibilities. Respondents also questioned the reliability of compliance evaluations performed by untrained individuals—even if conducted with checklists and guidance materials provided for that purpose.

EPA generally agrees with these comments. While the Agency's in-kind assistance may not be able to meet every need of States and local governments, EPA believes, in most instances, States will need to make only minor modifications to incorporate essential State details the Federal materials may lack. For this reason, EPA will continue its efforts to make its compliance assistance materials as useful as possible, and to facilitate dissemination of the assistance to local governments. EPA also agrees that requiring small local governments to identify compliance concerns and a strategy for addressing them as a prerequisite of participation in a State's comprehensive compliance assistance program could effectively bar entry of the very local governments the policy was intended to reach. We acknowledge, however, that States with limited available resources can always establish eligibility criteria intended to restrict the number of qualifying applicants. One option would be for a State to establish tiers of service that allow the local governments defined as small to participate without first identifying a compliance concern while requiring larger, more capable local governments to make such a showing as part of an application process.

In an attempt to promote streamlining, EPA has been an active participant in the U.S. Small Business Administration's E-Government project. E-Government is joining Federal agencies together to develop and pilot an on-line, interactive one-stop compliance assistance information source for businesses and local governments. Users will enter the system and complete a profile that describes their operations. E-Government will then generate links to compliance assistance resources available from the various Federal agencies that regulate the user's activities.

Because EPA believes flexibility will allow Federal and State agencies to make best use of in-kind contributions from EPA, strategies for shifting costs to local governments, tiering levels of service, and streamlining among related government mandates, the proposed revised policy does not require states to take specific actions in these areas. EPA welcomes comments on this approach.

B. Incentives for Participation

EPA's January 23, 2002, **Federal Register** notice described potential benefits of a comprehensive environmental compliance assistance program for States and small local governments. Benefits to an implementing State include more complete and accurate assessments of the environmental compliance status of its small local governments, measurements of progress toward reducing risks to the health of its citizens and the environment, and improved ability to plan and budget for future environmental and infrastructure needs. EPA also discussed options for recognizing States for their efforts to provide comprehensive environmental compliance assistance to small local governments, providing priority access to EPA compliance assistance tools and services, and the likelihood of EPA funding for pilot projects.

All comments EPA received in response focused on Federal grants, which the commenters perceived as the only effective incentive for States to implement the policy.

To provide an incentive for local government participation, the *Small Communities Policy* contemplates that States will reduce or waive the normal noncompliance penalties for local governments that participate in their comprehensive environmental compliance assistance programs. Seven years of limited participation by local governments has shown this to be an ineffective incentive. In the January 23, 2002, **Federal Register** notice, EPA noted that achieving and sustaining comprehensive environmental compliance created other benefits for local governments. A participating local government can expect to identify all its environmental compliance concerns; develop a plan for achieving and sustaining environmental compliance; learn how to build the technical, managerial, and financial capacity necessary to meet its compliance goals; gain assurance it is keeping its residents safe from environmental risks; and plan and budget for the future operations confident they will not face surprise

costs from unforeseen environmental problems. Other benefits to participating communities may include recognition from EPA or their states, priority access to EPA compliance assistance tools and services, or priority access to EPA-funded compliance grants. There are also indications that local governments that undertake a comprehensive environmental compliance evaluation and implement a program to ensure sustained compliance can improve their bond ratings and reduce their insurance premiums. Commenters generally approved of these incentives and stressed the importance of public recognition both as a means of rewarding local governments for their efforts to achieve and sustain comprehensive environmental compliance and as a way to promote interest among other local governments.

To the extent yearly budgets allow, EPA's Office of Compliance will provide pilot grants to a limited number of States to help offset the resource demands of establishing a program to provide comprehensive environmental compliance assistance to small local governments. EPA will continue to work to provide and enhance other incentives for States. EPA will also continue to develop and expand the various local government incentives discussed above. As more tools and services are developed, and as funding for local government recognition becomes available, EPA will work to ensure coordination with State compliance assistance programs.

C. Application of the Policy to Tribes

EPA received no comments on whether or not the policy should create a distinction between States and Tribes that have received EPA approval for treatment as States. As a result, the proposed revised policy leaves the policy's effects on Tribal governments unchanged.

VIII. Other Comments

Commenters also suggested that the policy extend eligibility to non-governmental water systems that supply drinking water to a population equivalent to the population of a small local government, and to governmental organizations owned by a consortium of local governments that individually meet the policy's definition of small local government, but whose aggregated populations would exceed the policy's population cap. EPA does not propose making either of these suggested changes. Non-governmental water systems, even those serving small populations, represent themselves as having the technical, managerial, and financial capacity for compliant operation at the time they contract to offer service at an agreed-upon rate. Noncomplying non-governmental water systems can obtain penalty relief if they disclose and correct violations in accordance with the *Audit Policy* or the *Small Business Policy.* Either of those policies may be a better option than the *Small Local Governments Compliance Assistance Policy* for resolving environmental concerns at a single facility that engages in only one operation. Additionally, unique aspects of the *Small Local Governments Compliance Assistance Policy* may not be appropriate (*e.g.,* including violations discovered by the regulator) or applicable (*e.g.,* performing comprehensive environmental compliance evaluations of several operations; building technical, managerial, and financial capacity; and developing a schedule for addressing all violations in order of risk-based priority) to non-governmental water systems.

With respect to governmental organizations owned by a consortium of small local governments, EPA notes that small local governments pool their resources in this fashion to ensure the resulting organization will have the technical, managerial, and financial capacity needed to perform its intended functions. Determining the organization's eligibility on the basis of the populations of the individual local governments misstates the size of the tax base and rate base that support the organization. It also fails to consider that an organization that can meet the needs of the entire population served must necessarily be greater in size and sophistication than that of a similar organization that provides services only to a single small local government.

A common sentiment among commenters was a conviction that EPA should maintain the policy's considerable flexibility. Commenters thought it important that the policy establish outer bounds within which States have latitude to design a comprehensive environmental compliance assistance program tailored to the particular needs of their small local governments. In many respects, the proposed revised policy provides States more flexibility than the 1995 policy. Local governments with populations of up to 3,300 are defined as ''small'' and receive all of the policy's benefits without first demonstrating need. Local governments with populations between 3,301 and 10,000 can also receive all of the policy's benefits if a State's consistently applied capacity test determines that the local government lacks the technical, managerial, or financial capacity to achieve compliance without the State's assistance. In addition, these larger communities can participate on a ''fenceline'' basis to reduce the resource demands on both the State and the local government. The proposed revisions also increase flexibility by providing the EMS option to States and small local governments that wish to pursue this alternative. One way in which the proposed revision may arguably have decreased the States' flexibility under the policy is in replacing the former term ''small community'' with the term ''local government''.

IX. Possible EPA Implementation of a Federal Policy Similar to the *Small Local Governments Compliance Assistance Policy*

EPA takes the lead in providing compliance assistance to small local governments and initiating enforcement responses to their violations when the Agency is responsible for directly implementing a program, where EPA has primary enforcement authority within a jurisdiction, or where EPA takes action after consulting with the primacy or authorized State. EPA could develop a Federal policy similar to the *Small Local Governments Compliance Assistance Policy* as a tool EPA Regions could elect to use, at their discretion, in appropriate circumstances. If EPA were to adopt a similar policy, the Agency would reserve the right to determine the circumstances in which such a Federal policy would apply to the violations of small local governments. For example, EPA could choose to implement the policy only when, consistent with the Agency's priority-setting process, the Agency decides to deploy compliance assurance and enforcement resources to address small local government noncompliance that is a significant contributor to impaired waters, as part of a geographic initiative, or as part of an integrated strategy. Although EPA did not raise this issue in its January 23, 2002, **Federal Register** notice, internal Agency discussions identified the issue as one for possible clarification. EPA now seeks comment on whether and how the Agency could implement a Federal policy similar to the proposed *Small Local Governments Compliance Assistance Policy* in its compliance assistance and enforcement activities.

Dated: September 23, 2003.

Michael M. Stahl,

Director, Office of Compliance.

Small Local Governments Compliance Assistance Policy

A. Introduction and Purpose

The *Small Local Governments Compliance Assistance Policy* is intended to promote comprehensive environmental compliance among small local governments by providing incentives for them to make use of State compliance assistance programs, environmental audits, environmental management systems (EMS), or to participate in any activities that may increase small local governments' understanding of their environmental requirements and how to comply with those requirements. The policy accomplishes this by authorizing States [1] to reduce or waive, in certain circumstances, the civil penalty EPA guidance would normally require States to assess for the small local government's environmental violations, and to use enforcement discretion to provide compliance incentives for small local governments. EPA acknowledges that States and small local governments can realize environmental benefits by negotiating, entering into, and implementing enforceable compliance agreements and schedules that require local governments to correct all of their environmental violations expeditiously while allowing the local government to prioritize among competing environmental mandates on the basis of comparative risk.[2] Small local governments can also realize environmental benefits by entering into enforceable agreements to develop and implement an EMS to manage the environmental aspects of their operations. States may provide small local governments an incentive to request compliance assistance by waiving part or all of the normal penalty for a small local government's violations if the criteria of this policy have been met. If a State acts in accordance with this policy and addresses small local government environmental noncompliance with compliance assistance in a way that results in the small local government making reasonable progress toward compliance, EPA generally will not pursue a separate Federal civil administrative or judicial action for additional penalties or additional injunctive relief.

This policy does not apply to any criminal conduct by small local governments or their employees.

B. Background

This policy implements section 223 of the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996.

C. Who Is Eligible for Compliance Assistance Under This Policy?

This policy applies to State comprehensive environmental compliance assistance activity related to facilities owned and operated by small local governments. A local government is defined as an organized unit of local government, authorized in a State's constitution and statutes, and established to provide general government to a county, municipality, city, town, township, village, or borough. A small local government is a local government that provides public services to 3,300 or fewer permanent residents. A local government that supplies public services to between 3,301 and 10,000 permanent residents can also qualify for treatment as a small local government if the State determines, in accordance with a capacity test (as described below), that the technical, managerial, and financial capacity of the local government is so limited that the local government is unlikely to achieve and sustain comprehensive environmental compliance without the State's assistance.

This policy supersedes the previous version of the policy titled the *Policy on Flexible State Enforcement Responses to Small Community Violations,* which became effective on November 25, 1995. To the extent this policy may differ from the terms of applicable enforcement response policies (including penalty policies) under media-specific programs, this document supersedes those policies.

D. How Can a Small Local Government Qualify for Penalty Reduction?

This policy seeks to encourage small local governments to achieve sustained comprehensive environmental compliance in one of two ways. A small local government can work with the State to identify all of the local government's environmental noncompliance and then enter into a written and enforceable agreement establishing a schedule to correct all of its violations in order of risk-based priority. Alternatively, a small local government can enter into a written and enforceable agreement establishing a schedule to: 1. Correct, as expeditiously as practicable, all violations discovered by the State during an inspection of some subset of the local government's operations in order of risk-based priority; *and* 2. develop and implement an EMS for all of its governmental operations. EPA's deference to such an exercise of a State's enforcement discretion in response to a small local government's violations will be based on an assessment of the adequacy of the process the State establishes and follows in:

- Responding expeditiously to a small local government's request for compliance assistance;
- Determining which local governments with between 3,301 and 10,000 residents qualify for treatment as small local governments;
- Assessing the small local government's good faith and compliance status;
- Establishing priorities for addressing noncompliance; and
- Ensuring either prompt correction of all environmental violations discovered during the State's comprehensive environmental compliance evaluation of all the local government's operations, or prompt correction of all violations discovered during a State inspection of some subset of the local government's operations and prompt development and implementation of an EMS for all of its governmental operations.

A State must document all findings and activities that are necessary to show adherence to the terms of this policy. If the small local government commits to correct its separate violations in order of risk-based priority, the State's records must discuss the rationale for establishing priorities among the violations to be addressed and explain why the compliance agreement and schedule represents the shortest practicable time schedule feasible under the circumstances.

EPA will defer more readily to a State that has previously submitted to the Agency a description of its comprehensive compliance assistance program for small local governments, thereby allowing EPA to familiarize itself with the adequacy of the State's processes.

[1] This policy will also apply to the actions of territories and to the actions of Native American Tribes where conditions have been met for EPA to treat the Tribe as a State.

[2] As described below, EPA does not intend that States and small local governments must prepare a formal comparative risk assessment as part of the small local government environmental compliance assistance process. Information avialable from EPA's National Center for Ecological Assessment at *www.epa.gov/ncea/ecologic.htm* will help States and local governments identify which local environmental problems pose the greatest risk to human health, ecosystem health, and quality of life.

E. How Should a State Select Participating Local Governments?

EPA intends this policy to apply only to small local governments unable to satisfy all applicable environmental mandates without assistance from the State. For the purposes of this policy, local governments with 3,300 or fewer permanent residents are assumed to need the State's compliance assistance. Local governments whose permanent residents number between 3,301 and 10,000 can qualify to receive the benefits of the policy if the State determines that the technical, managerial, and financial capacity of the local government is so limited that the local government is unlikely to achieve and sustain comprehensive environmental compliance without the State's assistance. To make this determination, a state must apply a capacity test that measures such indicators as:

- The local government finds it difficult to comply with routine reporting requirements (*e.g.*, the local government has submitted less than 90 percent of the required drinking water monitoring reports in the past year);
- The local government has no operation and maintenance plan for its utility operations, or has an operation and maintenance plan that is not routinely followed (*e.g.*, maintenance logs are not regularly updated, are incomplete, or are not kept at all);
- The required drinking water sanitary survey has not been scheduled, or the sanitary survey has been performed, but the local government has not addressed all identified significant deficiencies;
- Utility operators are untrained or uncertified, or staffing of certified operators is inadequate to meet the local government's needs;
- Utility systems were installed without State oversight and approval, or began operating without receiving final operational approval from the State;
- Rights essential to the provision of public services are not clearly established and documented by contract (*e.g.*, the local government has no contract with the source from which it obtains its drinking water, or for the disposal of its solid waste);
- The local government does not have current and approved by-laws, ordinances, or tariffs in place with respect to each of its public utility operations;
- There is no formal organizational structure for operation and maintenance of the local government's public utilities clearly identifying the owner, the operator, and the staff and their responsibilities;
- Either there are no written job descriptions clearly defining the responsibilities of public utility staff, or the staff is unfamiliar with such documents;
- Staff is untrained or inadequately trained;
- Written policies covering personnel, customer service, and risk management either do not exist or are routinely ignored;
- Lines of communication between public utility staff and agencies or private sector staff that can provide assistance are inadequate or nonexistent;
- The local government does not follow standard accounting principles in the funding of its public utilities, and either has not been audited or was issued an adverse opinion following an audit;
- The local government either does not have an annual budget for operation of a public utility or has an annual budget that is inadequate to meet the demands of operation, maintenance, and environmental compliance;
- Public utility rates do not include all users or have not been recently reviewed to examine operational sustainability and viability;
- A significant percentage of accounts (either payable or receivable) are chronically delinquent;
- Periodic budget reports and balance sheets are either not produced, or, if produced, have not been approved;
- The local government's tax base is inadequate to support needed environmental expenditures; or
- There are demographic factors that present quantifiable negative impacts on the local government's capacity.

The State must document the capacity test it applied and all findings it made to support its determination of incapacity, and maintain that documentation in records accessible for EPA review.

EPA's evaluation of the appropriateness of a State's small local government comprehensive environmental compliance assistance program will depend in part on whether the State uses adequate measures of technical, managerial, and financial capacity to ensure that only those local governments that truly need assistance were assessed noncompliance penalties that were reduced or waived beyond the extent normally allowed by EPA enforcement policies and guidance.

Not less than quarterly, a State should provide EPA with a list of local governments participating in its small local government environmental compliance assistance program to ensure proper State and Federal coordination on enforcement activity. In addition to any records related to a finding of a local government's incapacity, a State must keep records of contacts between the State and participating local governments, results of compliance assessments, actions taken by the local government to achieve compliance, any written compliance agreements and schedules, and any assessments of a local government's adherence to the terms of its compliance agreement and schedule should be kept in the State's files accessible for review by EPA.

F. How Should a State Assess a Local Government's Good Faith?

In considering whether a State has established and is following an adequate process for assessing a small local government's good faith, EPA generally will look at such factors as the participating local government's candor in contacts with State regulators and the local government's efforts to comply with applicable environmental requirements. Measures of a small local government's good faith include:

- Prompt self-disclosure of known violations;
- Attempts to comply or a request for compliance assistance prior to the initiation of an enforcement response;
- Willingness to participate in a comprehensive compliance evaluation;
- Prompt correction of known violations;
- Willingness to remediate harm to public health, welfare, or the environment;
- Readiness to enter into a written and enforceable compliance agreement establishing a schedule to correct all of its violations as expeditiously as practicable in order of risk-based priority, or to enter into a written and enforceable agreement establishing a schedule to correct all *known* violations as expeditiously as practicable in order of risk-based priority and to develop and implement an EMS for all of its governmental operations; and
- Adherence to the terms of the agreement and to the schedule.

G. What Is the Scope of Compliance Evaluation and Assistance a State Should Offer?

EPA intends this policy to encourage States to offer local governments comprehensive compliance assistance. Accordingly, a State's actions under the policy should promote an evaluation, performed by qualified personnel, of the small local government's compliance status with respect to all applicable environmental requirements. EPA acknowledges that a comprehensive

evaluation becomes more difficult to perform and requires more State resources as the size of the local government increases and as the local government offers more services to its residents. For this reason, the policy will allow ''fenceline'' projects at local governments with between 3,301 and 10,000 permanent residents if the State applies a capacity test consistent with the criteria described in part E of this policy and determines that the technical, managerial, and financial capacity of the local government is so limited that the local government is unlikely to achieve and sustain comprehensive environmental compliance without the State's assistance. A fenceline project is one that limits its scope to those activities conducted within a subset of the local government's operations.

A State's assessment of a local government's compliance status should include:

- A comprehensive evaluation of compliance with every applicable environmental requirement at all of the small local government's municipal operations (*see, Profile of Local Government Operations,* EPA 310–R–001, *www.epa.gov/compliance/resources/publications/assistance/sectors/notebooks/government.html;* or the Local Government Environmental Assistance Network, *www.lgean.org*) or, in the case of local governments with between 3,301 and 10,000 permanent residents that qualifies for participation after application of the State's capacity test, a comprehensive evaluation of compliance with every applicable environmental requirement within the fenceline of a defined subset of the local government's operations;
- The local government's current and anticipated future noncompliance with those requirements;
- The comparative risk to public health, welfare, or the environment of each current and anticipated future noncompliance; and
- The local government's compliance options.

In addition, EPA recommends that the process developed by the State include consideration of regionalization and restructuring as compliance alternatives. In the case of fenceline projects, the State should consider if compliance benefits can be achieved by consolidating staff and processes of the designated operations with other governmental operations within the local government. The State's process should also include consideration of the impact of promulgated regulations scheduled to become effective in the future.

This policy is also intended to encourage States to provide participating local governments incentives to develop and implement environmental management systems (EMSs). The EMS aspects of this policy are discussed in part J, below.

H. How Should a Small Local Government Set Priorities for Addressing Violations?

States seeking EPA's deference should require small local governments to correct any identified violations of environmental regulations as soon as possible, taking into consideration the local government's technical, managerial, and financial capacities, and the State's ability to assist in strengthening those capacities. A small local government should address all of its violations in order of risk-based priority.[3] While information regarding assessment of environmental risks is available from EPA's National Center for Ecological Assessment at *www.epa.gov/ncea/ecologic.htm,* the Agency expects that the comparative risk between violations will, in most instances, be apparent. For example, violations presenting a risk of ingestion or inhalation of, or contact exposure to, acute toxins must be a local government's highest priority for remediation and correction. Any identified violation or circumstance that may present an imminent and substantial endangerment to, has caused or is causing actual serious harm to, or presents a serious threat to, public health, welfare, or the environment is to be addressed immediately in a manner that abates the endangerment or harm and reduces the threat. Activities necessary to abate the endangerment or harm and reduce the threat posed by such violations or circumstances are not to be delayed while the State and small local government establish and implement the process for assigning priorities for correcting other violations.

I. How Can the State Ensure Prompt Correction of Violations?

If the small local government cannot correct all of its violations within 180 days of the State's commencement of compliance assistance to the local government, the State and the local government should, within 180 days of the State's commencement of compliance assistance to the local government, enter into and begin implementing a written and enforceable compliance agreement incorporating a schedule[4] that:

- Establishes a specified period for correcting all outstanding violations in order of risk-based priority;[5]
- Incorporates interim milestones that demonstrate reasonable progress toward compliance;
- Contains provisions to ensure continued compliance with all environmental requirements with which the local government is in compliance at the time the agreement is entered; and
- Incorporates provisions, where they would be applicable to the small local government, to ensure future compliance with any additional already promulgated environmental requirements that will become effective after the agreement is signed.

Consultation with EPA during the drafting of a compliance agreement and schedule and the forwarding of final compliance agreements and schedules to EPA are recommended to ensure appropriate coordination between the State and EPA.

J. What Is Required of a Small Local Government That Elects To Address Its Noncompliance by Developing and Implementing an Environmental Management System?

Small local governments that learn of environmental violations as a result of the state's inspection of some subset of the small local government's operations may address their noncompliance by entering into a written and enforceable agreement establishing a schedule to: (1) Correct the violations discovered by the state; *and* (2) develop and implement an environmental management system for all of its governmental operations. Local governments with between 3,301 and 10,000 permanent residents that the State has determined eligible to participate under the policy on a fenceline basis, may develop and implement an EMS for operations within the designated fenceline. The local government must enter into such an agreement with the State not later than 180 days after the State notifies the local government of the violations discovered during the inspection. The local government must either correct

[3] EPA does not intend that local governments should be permitted to delay addressing low-risk violations that can be easily and quickly corrected without impeding progress on long-term compliance efforts undertaken to address high-risk violations.

[4] Neither a State nor a local government may unilaterally alter or supersede a local government's obligations under existing Federal administrative orders or federal judicial consent decrees.

[5] States may allow weighing of unique local concerns and characteristics, but the process should be sufficiently standardized and objective that an impartial third person using the same process and the same facts would not reach significantly different results. Public notification and public participation are an importation part of the priority setting process.

those violations within the same 180 days or include, as part of the EMS agreement it enters into with the State, a written and enforceable agreement that establishes a schedule to correct the violations in accordance with the usual terms of this policy.

As part of its schedule, the EMS agreement will include a deadline, not later than one year after entry into the agreement, for the local government's submission to the State of its EMS manual (*see* element 9, below), and a commitment to ensure the performance of an EMS audit not less than one year and not more than three years after the submission of its EMS manual (*see* element 16, below). The EMS manual must contain policies, procedures, and standards explaining and showing how the small local government's EMS conforms to and will accomplish these essential elements of an EMS:

1. *Environmental policy*—The local government must develop a statement of its commitment to environmental excellence and use this statement as a framework for planning and action.

2. *Environmental aspects*—The local government must identify which of its activities, products, and services have impacts on the environment and what those impacts are.

3. *Legal and other requirements*—The local government must identify the environmental laws and regulations that apply to its operations.

4. *Objectives and targets*—The local government must establish goals for its operations that are consistent with its environmental policy, that will eliminate the gap between the local government's current procedures and an accepted EMS framework, and that will reduce the environmental impacts of its operations.

5. *Environmental management program*—The local government must plan specific actions that will achieve its objectives and targets.

6. *Structure and responsibility*—The local government will establish roles and responsibilities for staff and management to implement the environmental management system, and provide adequate resources.

7. *Training, awareness and competence*—The local government will have a plan to ensure its employees are trained and capable of carrying out their environmental responsibilities.

8. *Communication*—The local government will establish a process for internal and external communications on environmental management issues.

9. *EMS documentation*—The local government will maintain information both on its environmental management system and necessary for its operation. As part of this effort, the local government prepare an EMS manual that contains the policies, procedures, and standards explaining and showing how the local government's EMS conforms to and will accomplish the essential EMS elements. In accordance with the schedule established by its EMS agreement, and in no event later than one year after entering into the EMS agreement, the local government will submit a copy of its EMS manual to the State as proof that the local government has developed an EMS.

10. *Document control*—The local government will establish a system to ensure effective management of documents related to the EMS and to environmental activities.

11. *Operational control*—The local government will establish a system to identify, plan, and manage its operations consistent with its objectives and targets.

12. *Emergency preparedness and response*—The local government will identify potential emergencies with environmental impacts and develop procedures for preventing them and for responding to them if unprevented.

13. *Monitoring and measurement*—The local government will monitor key EMS activities and track performance. One periodic measure will be an assessment of compliance with legal requirements.

14. *Nonconformance and corrective and preventative action*—The local government will identify and correct deviations from its EMS, and take actions to prevent their recurrence.

15. *Records*—The local government will maintain and manage records of EMS performance.

16. *EMS audit*—Not less than one year, and not more than three years after the local government submits its EMS manual to the State, the State, or an independent third approved by the State, will conduct an EMS audit to confirm that a local government has been and is continuing to implement its EMS.

17. *Management review*—The local government must provide for periodic review of its EMS by local government management, with the goal of continual improvement of both the system and environmental performance.

A fuller explanation of these 17 essential elements and of the EMS process can be found in *Environmental Management Systems: An Implementation Guide for Small and Medium-Sized Organizations* (EPA Document Number EPA 832–B–01–001; available electronically at *www.epa.gov/OW-OWM.html/iso14001/ems2001final.pdf).* Additional guidance and information regarding how to obtain assistance from a local EMS resource center can be found at *www.peercenter.net.*

During the development and implementation of its EMS, the small local government may discover violations that were unknown to it at the time of its entry into the EMS agreement with the State. Such violations must be disclosed to the State as required by regulations or in accordance with EPA self-disclosure policies. The small local government and the State may agree to modify the terms of the terms of the agreement and schedule to incorporate correction of these violations. The small local government and the State may also to consider discovery of additional violations a separate event that can be resolved in any manner consistent with the terms of this policy and EPA enforcement policies and guidelines. An assessment of whether or not the local government has corrected all discovered violations as expeditiously as practicable in order of risk-based priority should be part of the EMS audit.

K. What Are the Limits on EPA Deference?

EPA reserves all of its enforcement authorities. EPA will generally defer to a State's exercise of its enforcement discretion in accordance with this policy, except that EPA may require immediate with respect to any violation or circumstance that may present an imminent and substantial endangerment to, has caused or is causing actual serious harm to, or presents a serious threat to, public health, welfare, or the environment.[6]

The *Small Local Governments Compliance Assistance Policy* does not apply if, in EPA's judgment:

- A State's small local government environmental compliance assistance program process fails to satisfy the adequacy criteria stated above; or
- A State's application of its small local government environmental compliance assistance program process fails, in a specific case, to provide adequate protection to public health and the environment because it neither

[6] EPA will regard as a matter of national significance any violation or circumstance that may present an imminent and substantial endangerment to, has caused or is causing actual serious harm to, or presents a serious threat to, public health, welfare, or the environment that is left unaddressed by a small local government participating in a State environmental compliance assistance program. Such circumstances require consultation with or the concurrence of, as appropriate, the Assistant Administrator for Enforcement and Compliance Assurance or his or her delegatee before initiation of an EPA enforcement response.

requires nor results in reasonable progress toward either achievement of environmental compliance or implementation of an adequate EMS by a date certain.

Where EPA determines that this policy does not apply, and where EPA elects to exercise its enforcement discretion, other EPA enforcement policies remain applicable. The State's and EPA's options in these circumstances include discretion to take or not take formal enforcement action in light of factual, equitable, or local government capacity considerations with respect to violations that had been identified during compliance assistance and were not corrected. Neither the State's actions in providing, nor in failing to provide, compliance assistance shall constitute a legal defense in any enforcement action. However, a local government's good faith efforts to correct violations during compliance assistance may be considered a mitigating factor in determining the appropriate enforcement response or penalty in subsequent enforcement actions.

Nothing in this policy is intended to release a State from any obligations to supply EPA with required routinely collected and reported information. As described above, States should provide EPA with lists of participating small local governments and copies of final compliance agreements and schedules. States should also give EPA immediate notice upon discovery of a violation or circumstance that may present an imminent and substantial endangerment to, has caused or is causing actual serious harm to, or presents serious threats to, public health, welfare, or the environment.

This policy has no effect on the existing authority of citizens to initiate a legal action against a local government alleging environmental violations.

This policy sets forth factors for consideration that will guide the Agency in its exercise of enforcement discretion. It states the Agency's views as to how the Agency intends to allocate and structure enforcement resources. The policy is not final agency action, and is intended as guidance only. This policy is not intended for use in pleading, or at hearing or trial. It does not create any rights, duties, obligations, or defenses, implied or otherwise, in any third parties.

[FR Doc. 03–25137 Filed 10–2–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7568–4]

Proposed Administrative Order on Consent Issued Pursuant to Sections 7003(a) and 3013(a) of the Resource Conservation and Recovery Act, In Re: the Former Medallic Art Facility, Danbury, CT

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed administrative settlement and request for public comment.

SUMMARY: In accordance with Section 7003(d) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901–6987, notice is hereby given of a proposed administrative order on consent for remediation of the former Medallic Art facility located in Danbury, Connecticut. The settling party is the Fairway Asset Management II, L.L.C. (Respondent), 52 Deer Hill Avenue, P.O. Box 1242 Danbury, CT 06813. The U.S. Environmental Protection Agency—Region I (EPA) is proposing to enter into this administrative order on consent to address claims under the Resource Conservation and Recovery Act (''RCRA''),42 U.S.C. 6901 *et. seq.,* as amended by the Hazardous and Solid Waste Amendments of 1984. Notice is being published to inform the public of the proposed settlement and of the opportunity to comment. This settlement, embodied in a RCRA Administrative Order on Consent (''AOC''), requires Respondent to adequately monitor contaminated groundwater on-site; propose an interim remedy to control or abate the spread of contamination; close a contaminated impoundment on-site; implement a groundwater recovery system; and monitor its effectiveness. The proposed order will be issued pursuant to Sections 7003(a) and 3013(a) of the Resource Conservation and Recovery Act, 42 U.S.C. 6973(a) and 6934(a).

For thirty (30) days following the date of publication of this notice, the EPA will receive written comments relating to the settlement. The EPA will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate.

DATES: Comments must be submitted on or before November 3, 2003.

ADDRESSES: The proposed settlement and administrative record is available for public inspection at the Danbury Public Library, 170 Main Street, Danbury, CT 06810, (203) 797–4505; and at the EPA Records Center, 1 Congress Street, Boston, MA 02114–2023. Please call the EPA Records Center at (617) 918–1440 to schedule an appointment. A copy of the proposed settlement may be obtained from Kristin Balzano, U.S. Environmental Protection Agency, Region I, 1 Congress Street, Suite 1100 (SES), Boston, MA 02114–2023 (Telephone Number: 617–918–1772). Comments should reference the former Medallic Art facility in Danbury, Connecticut, EPA Docket No. RCRA 01–2002–0030 and should be addressed to Kristin Balzano, U.S. Environmental Protection Agency, Region I, 1 Congress Street, Suite 1100 (SES), Boston, MA 02114–2023.

The EPA's response to any comments received will be available for public inspection at the EPA Records Center, 1 Congress Street, Boston, MA 02114–2023, Telephone Number: (617) 918–1440.

FOR FURTHER INFORMATION CONTACT: Joshua Secunda, U.S. Environmental Protection Agency, Region I, 1 Congress Street, Suite 1100 (SEL), Boston, MA 02114–2023, Telephone Number: (617) 918–1736.

SUPPLEMENTARY INFORMATION: In accordance with the Resource Conservation and Recovery Act (''RCRA''), 42 U.S.C. 6901 *et seq.*, notice is hereby given of a proposed administrative order on consent pursuant to Sections 7003(a) and 3013(a) of RCRA, 42 U.S.C. 6973(a) and 6934(a) concerning the former Medallic Art facility in Danbury, CT. The settlement was approved by EPA Region I, subject to review by the public pursuant to this Notice. EPA will receive written comments relating to this settlement for thirty (30) days from the date of publication of this Notice.

Dated: September 23, 2003.

Susan Studlien,

Acting Director, Office of Site Remediation and Restoration, EPA—Region I.

[FR Doc. 03–25138 Filed 10–2–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

September 23, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other

Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before November 3, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments regarding this Paperwork Reduction Act submission to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0678.

Title: Part 25 of the Commission's Rules Governing the Licensing of, and Spectrum Usage by, Satellite Network Earth Stations and Space Stations.

Form Nos: FCC Forms 312, 312 EZ, 312–R and 312 Schedule S.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 6,274.

Estimated Time Per Response: 11 hours.

Frequency of Response: On occasion reporting requirement and third party disclosure requirement.

Total Annual Burden: 65,120 hours.

Total Annual Cost: $12,043,000.

Needs and Uses: The Commission adopted the Schedule S, a standardized form for space station license applications, and Form 312–EZ for earth station license applications. The implementation of the decisions in the Schedule S rulemaking will enable the Commission to review space station and earth station applications more quickly than is now possible, and therefore, increase speed of service to the public. In particular, the implementation of mandatory electronic filing of most satellite and earth station applications will result in a reduction of burden hours per submission for the applicants.

OMB Control No.: 3060–0681.

Title: Toll-Free Service Access Codes, CC Docket No. 95–155, 47 CFR part 52, subpart D, sections 52.101–52.111.

Form No: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions.

Number of Respondents: 300.

Estimated Time Per Response: 15 hours.

Frequency of Response: On occasion reporting requirement and third party disclosure requirement.

Total Annual Burden: 4,500 hours.

Total Annual Cost: N/A.

Needs and Uses: Responsible Organizations (RespOrgs) who wish to make a specific toll free number unavailable must submit written request to the toll free database administrator, Database Services Management, Inc. (DSMI). This requirement will hold those RespOrgs more accountable and will decrease abuses of lag time in the process. It will prevent numbers from being held in unavailable status without demonstrated reasons, and will make more numbers available for subscribers who need and want them. If DSMI is uncertain whether a number should be placed in unavailable status, it should seek guidance from the Commission's Wireline Competition Bureau.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–25036 Filed 10–2–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

September 23, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before November 3, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments regarding this Paperwork Reduction Act submission to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0723.

Title: Public Disclosure of Network Information by Bell Operating Companies (BOCs).

Form No: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities

Number of Respondents: 7.

Estimated Time Per Response: 50 hours.

Frequency of Response: On occasion reporting requirement and third party disclosure requirement.

Total Annual Burden: 350 hours.

Total Annual Cost: N/A.

Needs and Uses: Bell Operating Companies (BOCs) must make public disclosure of network information. This will prevent them from designing new network services or changing network technical specifications to the advantage of their own payphones. The information required by the BOCs must be provided to third parties. All of the requirements would be used to ensure the BOCs comply with their obligations under the 1996 Act.

OMB Control No.: 3060–0775.

Title: Separate Affiliate Requirement for Independent Local Exchange Carrier (LEC) Provision of International, Interexchange Services (47 CFR 64.1901–64.1903).

Form No: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities

Number of Respondents: 10.

Estimated Time Per Response: 6,056 hours.

Frequency of Response: Recordkeeping requirement.

Total Annual Burden: 60,563 hours.

Total Annual Cost: $1,003,000.

Needs and Uses: The Commission imposes this recordkeeping requirement to ensure that independent LECs providing international, interexchange services through a separate affiliate are in compliance with the Communications Act of 1934, as amended, and with Commission policies and regulations. The Commission is submitting this information collection as an extension (no change) for the full three year OMB clearance.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–25037 Filed 10–2–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, October 2, 2003, 10 a.m., meeting open to the public. This meeting was cancelled.

DATE AND TIME: Wednesday, October 8, 2003 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED: Compliance matters pursuant to 2 U.S.C. 437g. Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C. Matters concerning participation in civil actions or proceedings or arbitration. Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, October 9, 2003 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC. (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Draft Advisory Opinion 2003–23: Women Engaged in Leadership, Education, and Action in Democracy (''WE LEAD'') by counsel, Joseph E. Sandler and Neil P. Reiff.

Draft Advisory Opinion 2003–24: National Center for Tobacco Free Kids (''NCTFK'') by counsel, Michael B. Trister.

Routine Administrative Matters.

FOR FURTHER INFORMATION CONTACT: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 03–25247 Filed 10–1–03; 11:16 am]

BILLING CODE 6715–01–M

FEDERAL HOUSING FINANCE BOARD

Sunshine Act Meeting Notice; Announcing a Partially Open Meeting of the Board of Directors

TIME AND DATE: The open portion of the meeting of the Board of Directors is scheduled to begin at 10 a.m. on Wednesday, October 8, 2003. The closed portion of the meeting will follow immediately the open portion of the meeting.

PLACE: Board Room, Second Floor, Federal Housing Finance Board, 1777 F Street, NW, Washington, DC 20006.

STATUS: The first portion of the meeting will be open to the public. The final portion of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED AT THE OPEN PORTION OF MEETING:

Appointment of Two Members of the Financing Corporation Directorate. Section 21(b) of the Federal Home Loan Bank Act (12 U.S.C. 1441(b)) requires the agency to select two Federal Home Loan Bank presidents to serve as members of the Financing Corporation (FICO) Directorate.

Appointment of Director—Federal Home Loan Bank of Indianapolis. Section 7 of the Federal Home Loan Bank Act (12 U.S.C. 1427) requires the agency to appoint public interest directors to the boards of directors of the Federal Home Loan Banks.

Final Rule Regarding the Privacy and Freedom of Information Acts. Consideration of a final rule adopting the interim final rule approved in June 2003 without substantive change. *See* 68 FR 39810 (July 3, 2003). The revised Privacy Act regulation is written in a ''user-friendly'' format, reflects a reassignment of responsibility and authority for running the agency's Privacy Act program to the Office of General Counsel, and amends the Freedom of Information Act fee schedule to take into account increased salary and operational costs.

MATTERS TO BE CONSIDERED AT THE CLOSED PORTION OF MEETING: Periodic Update of Examination Program Development and Supervisory Findings.

FOR FURTHER INFORMATION CONTACT: Mary Gottlieb, Paralegal Specialist, Office of General Counsel, by telephone at 202/408–2826 or by electronic mail at gottliebm@fhfb.gov.

Dated: September 30, 2003.

By the Federal Housing Finance Board.

Arnold Intrater,

General Counsel.

[FR Doc. 03–25218 Filed 10–1–03; 9:24 am]

BILLING CODE 6725–01–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 October 17, 2003.

A. Federal Reserve Bank of Kansas City (James Hunter, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. James C. Lewien, Centennial, Colorado; as co-trustee of the Kenneth J. Freund Irrevocable Trust No. 2, to retain control of Commerce Bankshares, Inc., Aurora, Colorado, and thereby indirectly acquire Commerce Bank, Aurora, Colorado.

Board of Governors of the Federal Reserve System, September 29, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–25078 Filed 10–2–03; 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 28, 2003.

A. Federal Reserve Bank of Cleveland (Stephen J. Ong, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101–2566:

1. S & T Bancorp, Inc., Indiana, Pennsylvania; to acquire up to 9.9 percent of the outstanding voting shares of IBT Bancorp, Inc., Irwin, Pennsylvania, and thereby indirectly acquire Irwin Bank & Trust Co., Irwin, Pennsylvania.

2. Town Square Financial Corporation, Ashland, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of Town Square Bank, Ashland, Kentucky.

Board of Governors of the Federal Reserve System, September 29, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–25079 Filed 10–2–03; 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 30, 2003.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. Community Bank of Georgia, Inc., Baxley, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Community Bank of Georgia, Baxley, Georgia (in organization).

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. Citizens Bancshares of Sparta, Inc., Sparta, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of The Citizens Bank of Sparta, Sparta, Missouri.

Board of Governors of the Federal Reserve System, September 30, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–25190 Filed 10–2–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Consumer Advisory Council

ACTION: Notice of Meeting of Consumer Advisory Council.

The Consumer Advisory Council will meet on Thursday, October 23, 2003. The meeting, which will be open to public observation, will take place at the Federal Reserve Board's offices in Washington, D.C., in Dining Room E on the Terrace level of the Martin Building. Anyone planning to attend the meeting should, for security purposes, register no later than Tuesday, October 21, by completing the form found on-line at: *https://www.federalreserve.gov/secure/forms/cacregistration.cfm*.

Additionally, attendees must present photo identification to enter the building.

The meeting will begin at 9:00 a.m. and is expected to conclude at 1:00 p.m. The Martin Building is located on C Street, NW, between 20th and 21st Streets.

The Council's function is to advise the Board on the exercise of the Board's responsibilities under various consumer financial services laws and on other matters on which the Board seeks its advice. Time permitting, the Council will discuss the following topics:

Payroll Cards: Discussion of whether there any requirements of the Electronic Fund Transfer Act, which is implemented by Regulation E, that should not apply to prepaid payroll cards.

Funding and Long–term Sustainability of Non–profit Organizations: Discussion of issues related to long–term sustainability and

innovative programs to counter declines in operating income.

Convenience Checks Issued in Connection with Credit Cards: Discussion of whether Truth in Lending Act provisions for credit cards should apply and whether the disclosures provided with convenience checks are adequate.

Committee Reports: Council committees will report on their work.

Other matters initiated by Council members also may be discussed.

Persons wishing to submit views to the Council on any of the above topics may do so by sending written statements to Ann Bistay, Secretary of the Consumer Advisory Council, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. Information about this meeting may be obtained from Ms. Bistay, 202–452–6470.

Board of Governors of the Federal Reserve System, September 30, 2003.

Jennifer J. Johnson

Secretary of the Board

[FR Doc. 03–25191 Filed 10–2–03; 8:45 am]

BILLING CODE 6210–01–S

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0221]

GSA Board of Contract Appeals Rules Procedure

AGENCY: GSA Board of Contract Appeals, GSA.

ACTION: Notice of request for comments regarding a renewal to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the General Services Administration will be submitting to the Office of Management and Budget (OMB) a request to review and approve a renewal of a currently approved information collection requirement regarding the GSA Board of Contract Appeals (GSBCA) Rules Procedures.

Public comments are particularly invited on: Whether this collection of information is necessary 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; ways to enhance the quality, utility, and clarity of the information to be collected.

DATES: Submit comments on or before December 2, 2003.

FOR FURTHER INFORMATION CONTACT: Margaret Pfunder, Chief Counsel, GSA Board of Contract Appeals, Room 7022, 1800 F Street, NW., Washington, DC 20405 or telephone (202) 501–0272.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the Regulatory Secretariat, General Services Administration (MVA), Room 4035, 1800 F Street, NW., Washington, DC 20405.

SUPPLEMENTARY INFORMATION:

A. Purpose

The GSBCA requires the information collected in order to conduct proceedings in contract appeals and petitions, and cost applications. Parties include those persons or entities filing appeals, petitions, cost applications, and government agencies.

B. Annual Reporting Burden

Respondents: 55
Responses Per Respondent: 1
Hours Per Response: .117
Total Burden Hours: 6.4

Obtaining Copies of Proposals

Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVA), 1800 F Street, NW., Room 4035, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 3090–0221, GSA Board of Contract Appeals Rules Procedure, in all correspondence.

Dated: September 26, 2003.

Michael W. Carleton,

Chief Information Officer.

[FR Doc. 03–25097 Filed 10–2–03; 8:45 am]

BILLING CODE 6820–AL–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–74–03]

Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project: International Performance Standards Project—New—Public Health Practice Program Office (PHPPO), Centers for Disease Control and Prevention (CDC).

The Centers for Disease Control and Prevention (CDC) Public Health Practice Program Office (PHPPO), is proposing to implement a required data collection to:

a. Assess public health preparedness of countries to respond to a public health threat or emergency.

b. Assess progress of countries towards (1) identifying any gaps that need to be strengthened in their public health systems, (2) achieving the critical and enhanced capacities of their public health systems, and (3) setting optimal standards for system performance that will enhance the delivery of public health services.

c. Identify the focus of future proposed work plans, as well as help countries develop a public health research agenda.

d. Provide a consistent framework for each country to characterize the status of its public health infrastructure.

This assessment will use the International Instrument for performance measurement of Essential Public Health Functions. This instrument is used for rapid assessment of capacity at the level of the National Health Authority of countries to respond to public health threats and emergencies. This instrument focuses on the six areas of fiscal year 2002 Supplemental Funds for Public Health Preparedness and Response for Bioterrorism (Announcement Number 99051), as the framework for data collection. The six focus areas are:

- Preparedness Planning and Readiness Assessment
- Surveillance and Epidemiology Capacity
- Laboratory Capacity—Biological Agents
- Health Alert Network/ Communication and Information Technology
- Risk Communication and Health Information Dissemination (Public Information and Communication)
- Education and Training

Hard copy assessment instruments will be used in a group setting within countries to collect the data. The respondents will be individuals from all levels of the health system who are knowledgeable about the functions of their system. This process is being done

in conjunction with the World Bank and the governments of the different countries who elect to undertake performance measurement of their public health systems using this methodology. The process will be funded through the Bank and the government of the countries. No Federal funds will be used in the process. It is anticipated that more than nine (9) countries may be involved. The annualized burden is estimated to be 120 hours.

	Number of respondents	Number of responses per respondents	Avg. burden response in hrs.
Year 1	5	1	120

Dated: September 29, 2003.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control Prevention.

[FR Doc. 03–25083 Filed 10–2–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–75–03]

Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project: Potential Reproductive and Neurological Effects of Exposure to Acrylamide—NEW—The National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

The mission of the National Institute for Occupational Safety and Health (NIOSH) is to promote safety and health at work for all people through research and prevention. Consistent with this mission, NIOSH is undertaking a study of the reproductive and neurobehavioral effects of the occupational exposure to acrylamide. Acrylamide workers and control workers (N = 100 per group) will be recruited from manufacturing, end-user and non-exposed settings. Exposure will be characterized by acrylamide hemoglobin, adduct and urinary metabolite levels, ambient area, personal air, and dermal sampling. Reproductive effects will be evaluated by examining semen quality, sperm DNA integrity, reproductive hormone levels, and prostate specific antigen (PSA) levels.

Neurobehavioral effects will be assessed using sensation-tactile, postual stability, grooved pegboard, and simple reaction time tests. Two questionnaires will be administered on one occasion. Questionnaire information will be collected concurrently to augment test interpretation, adjust for potential confounders and covariates during regression analysis, correlate specific jobs and job activities with exposure measurements, and for validation purposes. Findings from this study will clarify if the adverse reproductive effects observed in animal studies are also present in acrylamide-exposed workers, and if preclinical neurobehavioral deficits are present at acrylamide doses currently considered to be within safe limits. This study is scheduled for implementation in late 2003 and 2004. The annualized estimated burden for this data collection is 87 hours.

Survey questionnaire	Number of respondents	Number of responses/respondent	Average burden/response (in hours)
Medical & Reproductive History Questionnaire	100	1	13/60
Occupational History Questionnaire	100	1	34/60
Non-participant Questionnaire	250	1	2/60

Dated: September 29, 2003.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control Prevention.

[FR Doc. 03–25084 Filed 10–2–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–77–03]

Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project: 2004 Methodological Study of the Youth Risk Behavior Survey (YRBS)—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background

CDC intends to conduct a methodological study of the Youth Risk Behavior Survey in the Spring of 2004 to assess the effects of setting and mode of survey administration on the reporting of health-risk behaviors among adolescents. This study will provide methodological guidance for future surveys, especially surveys of adolescents. In 2000, the Office of the Assistant Secretary for Planning and Evaluation (ASPE), Department of Health and Human Services (HHS), commissioned five expert papers written on the topic ''Examining Substance Abuse Data Collection Methodologies.'' The papers focused on the Youth Risk Behavior Survey (YRBS), the National Survey on Drug Use and Health (NSDUH, formerly the National Household Survey on Drug Abuse, or NHSDA), and Monitoring the Future (MTF). A consensus among the authors was that disparate results across the studies are most likely a product of methodological differences across the surveys. The 2004 Methodological Study of the YRBS is designed to measure the extent to which the prevalence of health-risk behaviors among students varies by whether the survey is administered in schools versus students' homes (setting), and by whether the survey is administered using paper and pencil questionnaire booklets versus computer assisted self interviewing (mode).

Approximately 5,480 high school students will be given questionnaires in one of the four setting/mode combinations. Elucidation of the impact of these factors on prevalence will assist in reducing response effects and improving the quality of the YRBS data. The total estimated annualized burden for this data collection is 4,110 hours.

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
High school students—paper & pencil, school-based questionnaire	1,344	1	45/60
High school students—paper & pencil, home-based questionnaire	1,344	1	45/60
High school students—CASI, school based questionnaire	1,344	1	45/60
High school students—CASI, home based questionnaire	1,344	1	45/60
School administrators recruitment	104	1	45/60

Dated: September 29, 2003.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control Prevention.

[FR Doc. 03–25085 Filed 10–2–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–76–03]

Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project: WISEWOMAN Reporting System—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background

The WISEWOMAN program, which focuses on reducing cardiovascular disease risk factors among at-risk women, was in response to the ''Secretary of Health and Human Services Continuous Improvement Initiative'', asking for the development of programs that examine ways in which service delivery can be improved for select populations. Title XV of the Public Health Service Act, Section 1509 originally authorized the Secretary of the Department of Health and Human Services to establish up to three demonstration projects. Through appropriations language, the CDC WISEWOMAN program is now allowed to fund up to 15 projects, although current plans includes 12 demonstration projects. At full implementation, the projects are expected to screen approximately 30,000 women annually for cardiovascular disease risk factors. The program targets women already participating in the National Breast and Cervical Cancer Early Detection Program (NBCCEDP) and provides screening for select cardiovascular disease risk factors (including elevated cholesterol, hypertension, and abnormal blood glucose levels), lifestyle interventions, and medical referrals as required in an effort to improve cardiovascular health among participants.

CDC proposes to collect and analyze baseline and follow-up data (12 months post enrollment) for all participants. These data, called the minimum data elements (MDE's), includes demographic and risk factor information about women served in each program and information concerning the number and type of intervention sessions attended. The MDE data allows for an assessment of how effective WISEWOMAN is at reducing the burden of cardiovascular disease risk factors among participants. CDC also proposes to collect programmatic data for all WISEWOMAN programs. Programmatic data includes information related to grantee management, public education and outreach, professional education, service delivery, cost, and an assessment of how well each program is meeting their stated objectives.

All required data will be submitted electronically to a contractor to conduct the WISEWOMAN evaluation. MDE and cost data will be submitted twice a year, October 15 and April 15. October 15 reporting will cover all MDE's and costs for activities that took place between January 1 and June 30, and the April 15 submission will cover MDE's and costs for activities occurring between July 1 and December 31. Quarterly reports containing programmatic data will be due to RTI on January 31 (reflecting October 1–December 31 program activities), April 30 (reflecting January 1–March 31), July 31 (reflecting April 1–June 30), and October 31 (reflecting July 1–September 30). All reports will be due in a pre-determined format provided by CDC and the contractor. The contractor will provide training as requested to WISEWOMAN personnel at each

location concerning data collection and submission.

All information collected as part of the WISEWOMAN evaluation will be used to assess the costs, effectiveness, and cost-effectiveness of WISEWOMAN in reducing cardiovascular disease risk factors, for obtaining more complete health data among vulnerable populations, promoting public education of disease incidence and risk-factors, improving the availability of screening and diagnostic services for under-served women, ensuring the quality of services provided to women, and developing strategies for improved interventions. Because certain demographic data are already collected as part of NBCCEDP, the additional burden on grantees will be modest. Once the infrastructure is established to capture the additional WISEWOMAN data, the response burden is expected to be reduced even further. The annualized estimated burden for this data collection is 2,160 hours.

Form	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Screening MDE report	15	2	16
Intervention MDE report	15	2	8
Cost report	15	2	16
Quarterly report	15	4	16

Dated: September 29, 2003.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03–25086 Filed 10–2–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[CMS–10000, CMS–10097, CMS–10086, CMS–10093]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Medicare Consumer Assessment of Health Plan Survey-Fee for Service (CAHPS-FFS); *Form No.:* CMS–10000 (OMB# 0938–0796); *Use:* Under the Balanced Budget Act of 1997, CMS is required to provide general and plan comparative information to beneficiaries that will help them make more informed plan choices. A CAHPS fee-for-service survey is needed to provide information comparable to those data collected from the CAHPS managed care survey; *Frequency:* Annually; *Affected Public:* Individuals or Households; *Number of Respondents:* 142,920; *Total Annual Responses:* 142,920; *Total Annual Hours:* 47,640.

2. *Type of Information Collection Request:* New Collection; *Title of Information Collection:* Medicare Contractor Provider Satisfaction Survey; *Form No.:* CMS–10097 (OMB# 0938–NEW); *Use:* CMS needs standard data about Medicare provider's satisfaction with their Medicare contractors, who are charged with all Medicare claims processing and related activities on behalf of the Agency. Respondents will be staff representatives of hospitals, skilled nursing facilities, rural health clinics, home health agencies, end-stage renal disease clinics, physicians, non-physicians, durable medical equipment suppliers, laboratories and ambulance providers. The Survey will be used as a mechanism for evaluating and improving Medicare providers' satisfaction with their Medicare contractors. The results will provide CMS with a comprehensive review of contractor-provider business relations from the perspective of the 'customer' or Provider. The information will help the Agency appropriately address provider concerns about Medicare Contractors' performance, aid in business/contracting decisions, evaluate contractor performance and assist or guide contractors in identifying/implementing 'best practices' or quality improvement initiatives.; *Frequency:* On Occasion; *Affected Public:* Business or other for-profit and Not-for-profit institutions; *Number of Respondents:* 6,052; *Total Annual Responses:* 6,052; *Total Annual Hours:* 4,204.

3. *Type of Information Request:* Extension of a currently approved collection; *Type of Information Collection:* CMS/AoA Aging and Disability Resource Center Grant Program; *CMS Form Number:* CMS–10093 (OMB# 0938–0903); *Use:* Information sought by CMSO/DEHPG is needed to award competitive grants to States to develop Aging and Disability Resource Centers; *Frequency:* On occasion; *Affected Public:* State, local, or tribal government, Not-for-profit institutions, Business or other for-profit; *Number of Respondents:* 50; *Total Annual Responses:* 50; *Total Annual Burden Hours:* 160.

4. *Type of Information Request:* Extension of a currently approved collection; *Type of Information Collection:* Medicaid Program: Real Choice Systems Change Grants for Community Living; *CMS Form Number:* CMS–10086 (OMB# 0938–0901); *Use:* Executive Order 13217, ''Community-Based Alternatives for Individuals with Disabilities'' called upon the federal government to assist states and localities to swiftly implement the decision of the United States Supreme Court in *Olmstead* v. *L.C.*, stating: ''The United States is committed to community-based alternatives for individuals with disabilities and recognizes that such services advance the best interests of the United States.'' State agencies and community groups will be applying for these grants; *Frequency:* On occasion;

Affected Public: State, local, or tribal government; not-for-profit institutions; *Number of Respondents:* 150 *Total Annual Responses:* 150; *Total Annual Burden Hours:* 1500.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web site address at *http://cms.hhs.gov/regulations/pra/default.asp,* or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov,* or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address:

CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances, Attention: Melissa Musotto, Room C5–14–03, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: September 26, 2003.

Julie Brown,

CMS Reports Clearance Officer, Office of Strategic Operations and Strategic Affairs, Division of Regulations Development and Issuances.

[FR Doc. 03–25062 Filed 10–2–03; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–10024, CMS–2384, CMS–R–64]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Medicare Health Survey (MHS) and Data Collection for Administering the PACE Health Survey to Beneficiaries Enrolled in PACE and the Dual Eligible Demonstrations; *Form No.:* CMS–10024 (OMB# 0938–0844); *Use:* The Centers for Medicare & Medicaid Services has developed a survey, the PHS, that is similar to the Health Outcomes Survey (HOS). This survey was approved for PACE and the Wisconsin Partnership Program (WPP) on March 14, 2003. OMB also approved the use of the PHS to beneficiaries enrolled in Minnesota Senior Health Options and Minnesota Disability Health Options (MSHO/MnDHO) on June 3, 2003 for a 6-month period. This PRA submission combines OMB approval for PACE, WPP 0938–0844 with OMB approval for MSHO/MnDHO 0938–0899 and requests to administer the PHS to beneficiaries enrolled in MassHealth SCO as well as administer the PHS in year 2005. The main purpose of the PHS is to collect health status information that may be used to adjust Medicare payment to MSHO/MnDHO health plan organizations. It has been successfully pilot-tested to assess response rates and accuracy of responses under different distribution approaches. The pilot test enabled CMS to select an approach whereby PACE and Dual Eligible Demonstration enrollees will be sent surveys to fill out and can request assistance from family or professionals; *Frequency:* Annually; *Affected Public:* Individuals or Households and Not-for-profit institutions; *Number of Respondents:* 15,859; *Total Annual Responses:* 10,785; *Total Annual Hours:* 1,798.

2. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Third Party Premium Billing Request and Supporting Regulations in 42 CFR 408.6 and 408.202; *Form No.:* CMS–2384; *Use:* The Third Party Premium Billing Request is used as an authorization to designate that a family member or other interested party receive the Medicare Premium Bill and pay it on behalf of a Medicare beneficiary. Section 408.202 requires a State to get written authorization from Medicare beneficiaries for CMS to send billing notices directly to the State or local government agency and to release any information required under the SMI premium surcharge agreement; *Frequency:* On occasion; *Affected Public:* Individuals or households; *Number of Respondents:* 17,350; *Total Annual Hours:* 6,446.

3. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Indirect Medical Education (IME) and Supporting Regulations in 42 CFR 412.105; *Form No.:* HCFA-R–64 (OMB# 0938–0456); *Use:* This collection of information on interns and residents (IR) is needed to properly calculate Medicare program payments to hospitals that incur indirect costs for medical education. The agency's Intern and Resident Information System uses the information for producing automated reports of duplicate full-time equivalent IRs for IME. The reports provide contractors with information to ensure that hospitals are properly reimbursed for IME, and help eliminate duplicate reporting of IR counts which inflate payments. The collection of this information affects 1,350 hospitals which participate in approved medical education programs; *Frequency:* Annually; *Affected Public:* Not-for-profit institutions, and Business or other for-profit; *Number of Respondents:* 1,350; *Total Annual Responses:* 1,350; *Total Annual Hours:* 2,700. To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web site address at *http://cms.hhs.gov/regulations/pra/default.asp,* or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov,* or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Brenda Aguilar, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: September 25, 2003.

Julie Brown,

CMS Reports Clearance Officer, Office of Strategic Operations and Strategic Affairs, Division of Regulations Development and Issuances.

[FR Doc. 03–25063 Filed 10–2–03; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003N–0425]

Agency Information Collection Activities; Proposed Collection; Comment Request; Substances Prohibited From Use in Animal Food or Feed; Animal Proteins Prohibited in Ruminant Feed

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension for an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the recordkeeping requirements placed on handlers of ruminant protein to prevent the establishment and amplification of bovine spongiform encephalopathy (BSE) in the United States by ensuring that ruminant animal feed does not contain animal protein derived from mammalian tissue.

DATES: Submit written or electronic comments on the collection of information by December 2, 2003.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.fda.gov/dockets/ecomments*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1472.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Substances Prohibited From Use in Animal Food or Feed; Animal Proteins Prohibited in Ruminant Feed—21 CFR Part 589 (OMB Control Number 0910–0339)—Extension

Epidemiological evidence gathered in the United Kingdom suggests that BSE, a progressively degenerative central nervous system disease, is spread to ruminant animals by feeding protein derived from ruminants infected with BSE. While BSE has yet to be diagnosed in the United States, measures were necessary to prevent the establishment and amplification of this fatal disease in this country. Effective August 4, 1997, FDA amended its regulations in part 589 (21 CFR part 589) to create new § 589.2000 to regulate handlers of certain animal protein intended for use in ruminant feed. The regulation was designed to ensure that ruminant feed does not contain protein derived from mammalian tissue. It requires that firms that manufacture, blend, process or distribute both mammalian and nonmammalian materials intended for use in ruminant feed maintain written procedures to prevent commingling and cross-contamination of these materials.

Respondents to this collection of information are individuals or firms that manufacture, blend, process or distribute, or use feed or feed ingredients that contain or may contain protein that may be derived from mammalian tissue.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency of Recordkeeping	Total Annual Records	Hours per Record	Total Hours
589.2000(e)(1)(iv)	400	1	400	14	5,600

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

The estimated number of recordkeepers, i.e., persons that separate mammalian and nonmammalian materials, is derived from inspections of firms handling animal protein intended for use in animal feed. The estimate of the time required for this recordkeeping requirement is based on agency communication with industry.

Dated: September 25, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–25042 Filed 10–2–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 03N–0286]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; User Fee Cover Sheet; Form FDA 3397

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 November 3, 2003.

ADDRESSES: The Office of Management and Budget (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.

User Fee Cover Sheet; Form FDA 3397—(OMB Control Number 0910–0297—Extension

Under sections 735 and 736 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 379h), the Prescription Drug User Fee Act of 1992 (PDUFA) (Public Law 102–571), as amended by the Food and Drug Administration Modernization Act of 1997 (Public Law 105–115), and the Prescription Drug User Fee Amendments of 2002 (Public Law 107–188), FDA has the authority to assess and collect user fees for certain drug and biologics license applications and supplements. Under this authority, pharmaceutical companies pay a fee for certain new human drug applications, biologics license applications, or supplements submitted to the agency for review. Because the submission of user fees concurrently with applications and supplements is required, review of an application by FDA cannot begin until the fee is submitted. Form FDA 3397, the user fee cover sheet, is designed to provide the minimum necessary information to determine whether a fee is required for review of an application, to determine the amount of the fee required, and to account for and track user fees. The form provides a cross-reference of the fee submitted for an application with the actual application by using a unique number tracking system. The information collected is used by FDA's Center for Drug Evaluation and Research (CDER) and Center for Biologics Evaluation and Research (CBER) to initiate the administrative screening of new drug applications, biologics license applications, and supplemental applications.

Respondents to this collection of information are new drug and biologics manufacturers. Based on FDA's database system for fiscal year (FY) 2002, there are an estimated 225 manufacturers of products subject to PDUFA. However, not all manufacturers will have any submissions and some may have multiple submissions in a given year. The total number of annual responses is based on the average number of submissions received by FDA in FY 2000 through 2002. CDER estimates 2,494 annual responses that include the following submissions; 105 new drug applications; 1,557 chemistry supplements; 670 labeling supplements; and 162 efficacy supplements. CBER estimates 737 annual responses that include the following submissions; 11 biologics license applications; 640 manufacturing (chemistry) supplements; 72 labeling supplements; and 14 efficacy supplements. Based on previous estimates, the rate of submissions is not expected to change significantly in the next few years. The estimated hours per response are based on past FDA experience with the various submissions and range from 5 to 30 minutes. The hours per response are based on the average of these estimates.

In the **Federal Register** of July 3, 2003 (68 FR 39954), FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received.

TABLE 1.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
FDA 3397	225	14.36	3,231	0.30	969
Total					969

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: September 25, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–25043 Filed 10–2–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) The proposed collection of information for the proper performance of the functions of the agency; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Children's Hospitals Graduate Medical Education Payment Program (CHGME PP) (OMB No. 0915–0247): Revision

The CHGME PP was enacted by Public Law 106–129 to provide Federal support for graduate medical education (GME) to freestanding children's hospitals. This legislation attempts to provide support for GME comparable to the level of Medicare GME support received by other, non-children's hospitals. The legislation indicates that eligible children's hospitals will receive payments for both direct and indirect medical education. Direct payments are designed to offset the expenses associated with operating approved graduate medical residency training programs and indirect payments are designed to compensate hospitals for expenses associated with the treatment of more severely ill patients and the additional costs relating to teaching residents in such programs.

Technical assistance workshops and consultation with applicant hospitals resulted in an opportunity for hospital representatives to raise issues and provide suggestions resulting in proposed revisions in the CHGME application forms and instructions.

Data is collected on the number of full-time equivalent residents in applicant children's hospitals' training programs to determine the amount of direct and indirect medical education payments to be distributed to participating children's hospitals. Indirect medical education payments will also be derived from a formula that requires the reporting of discharges, beds, and case mix index information from participating children's hospitals. Hospitals will be requested to submit such information in an annual application. Hospitals will also be requested to submit data on the number of full-time equivalent residents a second time during the Federal fiscal year to participate in the reconciliation payment process.

The estimated average annual reporting for this data collection is approximately 150 hours per hospital. The estimated annual burden is as follows:

Form	Number of respondents	Responses per respondent	Total number of responses	Hours per response	Total burden hours
HRSA 99–1	54	1	54	99.9	5,395
HRSA 99–1 (Reconciliation of FTE counts)	54	1	54	8	432
HRSA 99–2	54	1	54	14	756
HRSA 99–4	54	1	54	28	1,512
Total	54		54		8,095

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 16C–17, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: September 29, 2003.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 03–25092 Filed 10–2–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Committee on Interdisciplinary, Community-Based Linkages; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meeting.

Name: Advisory Committee on Interdisciplinary, Community-Based Linkages.

Dates and Times:

October 26, 2003, 5 p.m.–8 p.m.

October 27, 2003, 8:30 a.m.–5:30 p.m.

October 28, 2003, 8:30 a.m.–4 p.m.

Place: The Washington Terrace Hotel, 1515 Rhode Island Avenue, NW., Washington, DC 20005.

Status: The meeting will be open to the public.

Agenda: Agenda items will include, but not be limited to: Welcome; plenary session on cultural competency and diversity for the grant programs under the purview of the Committee with presentations by speakers representing the Department of Health and Human Services (DHHS), constituent groups, field experts and committee members. Meeting content will focus on how cultural competency and diversity relate to health status outcomes. The following topics will be addressed at the meeting: What are the Title VII grant programs doing in the areas of cultural competency and diversity and under what authority, if any? Why should there be a culturally competent and diverse workforce? and What are the policy issues

and possible recommendations relevant to these programs?

Proposed agenda items are subject to change as priorities dictate.

Public Comments: Public comment will be permitted before lunch and at the end of the Committee meeting on October 27, 2003. Oral presentations will be limited to 5 minutes per public speaker. Persons interested in providing an oral presentation should submit a written request, with a copy of their presentation to: Jennifer Donovan, Deputy Executive Secretary, Division of State, Community and Public Health, Bureau of Health Professions, Health Resources and Services Administration, Room 9–105, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–8044.

Requests should contain the name, address, telephone number, and any business or professional affiliation of the person desiring to make an oral presentation. Groups having similar interests are requested to combine their comments and present them through a single representative. The Division of State, Community and Public Health will notify each presenter by mail or telephone of their assigned presentation time.

Persons who do not file a request in advance for a presentation, but wish to make an oral statement may register to do so at the Washington Terrace Hotel, Washington, DC on October 27, 2003. These persons will be allocated time as the Committee meeting agenda permits.

For Further Information Contact: Anyone requiring information regarding the Committee should contact Jennifer Donovan, Division of State, Community and Public Health, Bureau of Health Professions, Health Resources and Services Administration, Room 9–105, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–8044.

Dated: September 29, 2003.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 03–25091 Filed 10–2–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; NCI Cancer Information Service Demographic/ Customer Service Data Collection

SUMMARY: Under the provisions of section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Cancer Institute (NCI), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** on June 9, 2003, Vol. 68, No. 25, pages 34405–34406 and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number. *Proposed Collection: Title:* The National Cancer Institute Cancer Information Service Demographic Customer Service Data Collection. *Type of Information Collection Request:* Revision with change of a currently approved collection (OMB No. 0925–0208, expires 10/31/2003). *Need and Use of Information Collection:* The National Cancer Institute's Cancer Information Service (CIS) provides the latest information on cancer, clinical trials, and tobacco cessation. Characterizing users and how they found out about the CIS is essential to customer service, program planning and promotion. This effort involves a brief survey of users of the 1–800–4–CANCER toll-free service and LiveHelp, a Web-based chat service. The telephone survey contains seven questions—3 customer service and 4 demographic—asked of a subset of callers (cancer patients, their family or friends, and the general public) at the end of usual service for an annual total of approximately 286,000 callers. 100% of these callers will be asked the three customer service questions for an annual total of approximately 286,000 callers; 25% of callers will be asked the four demographic questions for an annual total of approximately 71,500 callers. If the call is the result of a special promotion, 50% of callers will be surveyed for demographics. Special promotions account for an estimated 30% of calls for an annual total of approximately 42,900 callers. The combined annual total is 400,400 callers. The LiveHelp web survey involves asking the same seven questions to 50% of the same subset of users for an annual total of approximately 5,500 users. The combined total to be surveyed each year is 405,900 users of the telephone and LiveHelp services for total of 1,951 annual burden hours. *Frequency of Response:* Single time. *Affected Public:* Individuals or households. *Type of Respondents:* Patients, relatives, friends, and general public. The annual reporting burden is as follows:

TABLE 1.—RESPONDENT AND BURDEN ESTIMATE

Type of respondents	Number of respondents	Frequency of response	Average time per response	Annual hour burden
Individuals or Households				
Telephone:				
—3 questions (100%)	286,000	1	0.00328	937
—4 questions (25%)	71,500	1	0.0083	594
—4 questions (50%) special promotions	42,900	1	0.0083	356
Subtotal	400,400			
LiveHelp:				
—7 questions (50%)	5,500	1	0.0116	64
Subtotal	5,500			64
Annualized Totals	405,900			1,951

The annualized cost to respondents is estimated at: $31,904. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper

performance of the function of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information being collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503. Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Madeline La Porta, Associate Deputy Director, Cancer Information Service, OC, NCI, 6116 Executive Boulevard, MSC 8322, Room 3036A, Bethesda, MD 20892–8322, or call non-toll-free number (301) 594–8025 or e-mail your request, including your address to: *laportam@mail.nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

Dated: September 26, 2003.

Reesa Nichols,

NCI Project Clearance Liaison.

[FR Doc. 03–25067 Filed 10–2–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; Agricultural Health Study—A Prospective Cohort Study of Cancer and Other Diseases Among Men and Women in Agriculture

SUMMARY: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Cancer Institute (NCI), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on August 1, 2003, pages 45257–8 and allowed 60 days for public comment. Comments were received from two individuals, both of whom are contractors interested in the potential for conducting portions of the proposed information collection activities. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection

Title: Agricultural Health Study—A Prospective Cohort Study of Cancer and Other Diseases Among Men and Women in Agriculture. *Type of Information Collection Request:* Revision of a currently approved collection (0925–0406, expiration 11/31/03). *Need and Use of Information Collection:* The Agricultural Health Study is in its 5th year of follow-up data collection on a prospective cohort of 89,658 farms, their spouses, and commercial applicators of pesticides from Iowa and North Carolina. Follow-up is not yet complete for a segment of the cohort, commercial applicators (n = 4,916). An extension until November 30, 2005 is requested to complete this data collection. *Frequency of Response:* Single time reporting. *Affected Public:* Individuals. *Type of Respondents:* Commercial pesticide applicators. The annual reporting burden is as follows: *Estimated Number of Respondents:* 2,548 *Estimated Number of Responses per Respondent:* 1.0; *Average Burden Hours Per Response:* 1.74; and *Estimated Total Annual Burden Hours Requested:* 3,707. The annualized cost to respondents is estimated at: $59,312. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Request for Comments

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments contact: Michael C.R. Alavanja, Dr. P.H., Epidemiology and Biostatistics Program, Division of Cancer Etiology, National Cancer Institute, EPN 8000, 6120 Executive Boulevard, Rockville, MD 20852, or call (310) 435–4720, or E-mail your request, including your address to: *alavanjam@mail.nih.gov*

Comments Due Date

Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

Dated: September 26, 2003.

Reesa Nichols,

NCI Project Clearance Liaison.

[FR Doc. 03–25068 Filed 10–2–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The invention listed below is owned by an agency of the U.S. Government and is available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent application listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent application.

A New Target for Angiogenesis and Anti-angiogenesis Therapy

Frank Cuttitta *et al.* (NCI).
U.S. Provisional Application No. 60/425,018 filed 07 Nov 2002 (DHHS Reference No. E–294–2002/0–US–01).
Licensing Contact: Catherine Joyce; 301/435–5031; *joycec@mail.nih.gov.*

Proadrenomedullin N-terminal 20 peptide (PAMP) is a 20 amino-acid molecule originating from the post-translational processing of pre-proadrenomedullin. PAMP has heretofore been known as a potent hypotensive and vasodilatory agent. PAMP and adrenomedullin (AM) are the two known bioactive products generated from cleavage of pre-proadrenomedullin. PAMP and AM are known to have vasodilatory and hypotensive activities. AM is also known to have angiogenic activity, whereas no such activity has previously been attributed to PAMP.

The inventors have discovered that, in addition to its hypotensive and vasodilatory effects, PAMP functions as a potent angiogenic factor. When compared to other well-known angiogenic factors such as vascular endothelial growth factor (VEGF) and basic fibroblast growth factor (bFGF), PAMP is roughly one million times more potent on a molar basis.

In one aspect, the invention relates to the use of PAMP inhibitors to inhibit angiogenesis in vivo. These methods would be useful, for example, in inhibiting the growth of tumors and in treating other diseases characterized by excessive angiogenesis including psoriasis, diabetic retinopathy, and chronic wounds. In a second aspect, the invention relates to the use of PAMP or PAMP derivatives to promote angiogenesis, for example, in subjects with coronary artery disease or cerebral ischemia.

Dated: September 27, 2003.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 03–25072 Filed 10–2–03; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Colon Cancer Screening in Primary Care Practice.

Date: October 23, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: C. Michael Kerwin, PhD, MPH, Scientific Review Administrator, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, National Institutes Of Health, 6116 Executive Boulevard, Room 8057, MSC 8329, Bethesda, MD 20892–8329, 301–496–7421, *kerwinm@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: September 29, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–25179 Filed 10–2–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Community Clinical Oncology Program & Minority-Based Community Clinical Oncology Program.

Date: November 19, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Executive Plaza North, 6130 Executive Blvd., Rockville, MD 20852.

Contact Person: Timothy C. Meeker, MD., Scientific Review Administrator, Special Referral and Resources Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 8088, Rockville, MD 20852, 301/594–1279.

(Catalogue of Federal Domestic Assistant Program Nos. 93.292, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health HHS)

Dated: September 29, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–25180 Filed 10–2–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as

amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Nursing Research Special Emphasis Panel Nursing Research Core Center Grants (P30).

Date: November 12–13, 2003.

Time: November 12, 2003, 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Time: November 13, 2003, 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: John E. Richters, PhD, Scientific Review Administrator, Office of Review, Division of Extramural Activities, National Institute of Nursing Research, National Institutes of Health, 6701 Democracy Blvd. Room 715, Bethesda, MD 20817, (301) 594–5971, *jrichters@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: September 25, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–25069 Filed 10–2–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552(c)(4) and 552b(c)(6), Title 5 U.S.C. as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Nursing Research Special Emphasis Panel, Nursing Research Development Center Grants (P20).

Date: November 5–6, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: John E. Richters, PhD, Scientific Review Administrator, Office of Review, Division of Extramural Activities, National Institute of Nursing Research, National Institutes of Health 6701 Democracy Blvd. Room 715, Bethesda, MD 20817, (301) 594–5971, *jrichters@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: September 25, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–25070 Filed 10–2–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institutes of Nursing Research; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institutes of Nursing Research Special Emphasis Panel, Postdoctoral Fellowship Applications SEP.

Date: October 16, 2003.

Time: 5:15 p.m. to 5:35 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Jeffrey M. Chernak, PhD., Scientific Review Administrator, Office of Review, National Institutes of Nursing Research, 6701 Democracy Plaza, Suite 712, MSC 4870, Bethesda, MD 20817, (301) 402–6959, *chernak@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institutes of Nursing Research, Special Emphasis Panel, Career Development Award Applications SEP.

Date: October 16, 2003.

Time: 5:35 p.m. to 6:05 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Jeffrey M. Chernak, PhD., Scientific Review Administrator, Office of Review, National Institutes of Nursing Research, 6701 Democracy Plaza, Suite 712, MSC 4870, Bethesda, MD 20817, (301) 402–6959, *chernak@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: September 25, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–25071 Filed 10–2–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Review of PO1 Applications.

Date: November 3–4, 2003.

Time: 7 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Nat. Inst. of Environmental Health Sciences, Building 101, Rodbell Auditorium,

111 T. W. Alexander Drive, Research Triangle Park, NC 27709.

Contact Person: Janice B. Allen, Ph.D., Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Science, P.O. Box 12233, MD EC–30/Room 3170 B, Research Triangle Park, NC 27709, 919/541–7556.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, E-Learning for Hazmat and Emergency Response (SBIR/STTR Initiative).

Date: November 5, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Inst. of Environmental Health Sciences, Building 101, Rodbell Auditorium, 111 T. W. Alexander Drive, Research Triangle Park, NC 27709.

Contact Person: Sally Eckert-Tilotta, Ph.D., National Inst. of Environmental Health Sciences, Office of Program Operations, Scientific Review Branch, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, 919/541–1446, *eckert1@niehs.nih.gov.*

(Catalogue of Federal Domestic Assistant Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: September 29, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–25174 Filed 10–2–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Atopic Dermatitis Statistical Center.

Date: October 29–30, 2003.

Time: 8 a.m to 5 p.m.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Lucy A. Ward, PhD, DVM, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/ NIAID, 6700B Rockledge Drive, Bethesda, MD 20892–7616, 301–496–2550, *lw275a@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: September 29, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–25175 Filed 10–2–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Bioinformatics Resource Centers for Biodefense and Emerging/Re-emerging Infectious Diseases.

Date: October 22–24, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

Contact Person: Gregory P. Jarosik, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, 6700B Rockledge Drive, MSC–7616, Bethesda, MD 20892, 301–496–2550, *gjarosik@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: September 29, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–25176 Filed 10–2–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, Review of R21 Application.

Date: October 28, 2003.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Wilco Building, 6000 Executive Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Sathasiva B. Kandasamy, PhD, Scientific Review Administrator, Extramural Project Review Branch, Office of Scientific Affairs, National Institute on Alcohol Abuse and Alcoholism, 6000 Executive Blvd., Suite 409, Bethesda, MD 20892–7003, (301) 443–2926, *skandasa@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards of Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: September 29, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–25177 Filed 10–2–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. the grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Biodefense and Emerging Infectious Diseases Research Opportunities.

Date: October 20, 2003.

Time: 1:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: 6700B Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Quirijn Vos, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–496–2550, qvos@niaid.nih.gov.

(Catalogue of Federal Domestic Assistance Programs Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: September 29, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–25178 Filed 10–2–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Translational Research for the Prevention and Control of Diabetes.

Date: November 19, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Marriott Bethesda, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Michele L. Barnard, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 753, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8898, *barnardm@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Obesity/Energy Balance.

Date: December 11–12, 2003.

Time: 5 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Marriott Bethesda Suites, 6711 Democracy Blvd., Bethesda, MD 20817.

Contact Person: Paul A. Rushing, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 747, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8895, *rushingp@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: September 29, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–25181 Filed 10–2–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Oncological Sciences Integrated Review Group, Drug Discovery and Molecular Pharmacology Study Section.

Date: October 15–17, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Arlington, 1325 Wilson Boulevard, Arlington, VA 22209.

Contact Person: Philip Perkins, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6208, MSC 7804, Bethesda, MD 20892, (301) 435–1718, *perkinsp@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Biophysical and Chemical Sciences Integrated Review Group, Molecular and Cellular Biophysics Study Section.

Date: October 16–17, 2003.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC 20009.

Contact Person: Nancy Lamontagne, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4170, MSC 7806, Bethesda, MD 20892, (301) 435–1726, *lamontan@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 CNNT 01S: Clinical Neuroplasticity and Neurotransmitters.
Date: October 16–17, 2003.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Melrose Hotel, 2430 Pennsylvania Ave., NW., Washington, DC 20037.
Contact Person: William C. Benzing, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5190, MSC 7846, Bethesda, MD 20892, (301) 435–1254, *benzingw@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business Innovation Research.
Date: October 21–22, 2003.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Contact Person: Gopal C. Sharman, DVM, PhD, Diplomate American Board of Toxicology, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2184, MSC 7818, Bethesda, MD 20892, (301) 435–1783, *sharmag@csr.nih.gov.*

Name of Committee: Cardiovascular Sciences Integrated Review Group, Cardiovascular Study Section.
Date: October 23–24, 2003.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.
Contact Person: Anshumali Chaudhari, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4124, MSC 7802, Bethesda, MD 20814, (301) 435–1210.

Name of Committee: Health of the Population Integrated Review Group, Epidemiology of Clinical Disorders and Aging Study Section.
Date: October 23–24, 2003.
Time: 8:30 a.m. to 5:30 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Contact Person: Mary Ann Ann Guadagno, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4186, MSC 7770, Bethesda, MD 20892, (301) 451–8011.

Name of Committee: Biology of Development and Aging Integrated Review Group, Development—2 Study Section, Development 1 Study Section.
Date: October 23–24, 2003.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Old Town Alexandria Holiday Inn Select, 480 King Street, Alexandria, VA 22314.
Contact Person: Sherry L. Dupere, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5136, MSC 7840, Bethesda, MD 20892, (301) 435–1021, *duperes@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Bacteriology and Mycology.
Date: October 27–28, 2003.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.
Contact Person: Timothy J. Henry, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3196, MSC 7848, Bethesda, MD 20892, (301) 435–1147. *henry@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 BM1 02: Tuberculosis.
Date: October 29, 2003.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.
Contact Person: Timothy J. Henry, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3196, MSC 7848, Bethesda, MD 20892, (301) 435–1147, *henryt@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Hearing Mechanisms: Human Subjects Studies.
Date: October 29, 2003.
Time: 1 p.m. to 2:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: John Bishop, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892, (301) 435–1250.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Cardiovascular Regulator.
Date: October 30, 2003.
Time: 3 p.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Chhanda L. Ganguly, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7802, Bethesda, MD 20892, (301) 435–1739, *gangulyc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, SEP for Trudi Mcfarland's Member Conflicts.
Date: October 30, 2003.
Time: 4 p.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Karin F. Helemrs, PhD, Scientific Review Administrator, Center for Scientific Review/SNEM IRG, 6701 Rockledge Drive, Room 3166, MSC 7770, Bethesda, MD 20892, (301) 435–1017, *helmersk@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Bioengineering.
Date: October 31, 2003.
Time: 8 a.m. to 12 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 2007.
Contact Person: Gopal C. Sharma, DVM, PhD, Diplomate American Board of Toxicology, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2184, MSC 7818, Bethesda, MD 20892, (301) 435–1783, *sharmag@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS).

Dated: September 29, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–25171 Filed 10–2–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Mammalian Genetics Study Section, October 23, 2003, 9 a.m. to October 24, 2003, 1 p.m., One Washington Circle Hotel, One Washington Circle, Washington, DC, 20037 which was published in the **Federal Register** on September 16, 2003, 68 FR 54235–54237.

The meeting will end at 12 p.m. on October 24, 2003. The meeting dates and location remain the same. The meeting is closed to the public.

Dated: September 29, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–25172 Filed 10–02–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, October 19, 2003, 5:30 PM to October 21, 2003, 5 p.m., Embassy Suites Hotel, 4300 Military Road, Washington, DC 20015 which was published in the **Federal Register** on September 9, 2003, 68 FR 53183–53186.

The meeting will be held at the Embassy Suites Hotel, 1250 22nd Street, NW., Washington, DC 20037. The meeting dates and time remain the same. The meeting is closed to the public.

Dated: September 29, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–25173 Filed 10–02–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG 2003–15506]

Information Collection Under Review by the Office of Management and Budget (OMB): OMB Control Numbers: 1625–0052 (Formerly 2115–0563), 1625–0057 (Formerly 2115–0578), 1625–0033 (Formerly 2115–0135), 1625–0026 (Formerly 2115–0106), and 1625–0065 (Formerly 2115–0592)

AGENCY: Coast Guard, DHS.

ACTION: Request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this request for comments announces that the Coast Guard has forwarded the five Information Collection Requests (ICRs) abstracted below to the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB) for review and comment. Our ICRs describe the information we seek to collect from the public. Review and comment by OIRA ensures that we impose only paperwork burdens commensurate with our performance of duties.

DATES: Please submit comments on or before November 3, 2003.

ADDRESSES: To make sure that your comments and related material do not enter the docket [USCG 2003–15506] more than once, please submit them by only one of the following means:

(1)(a) By mail to the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(b) By mail to OIRA, 725 17th Street, NW., Washington, DC 20503, to the attention of the Desk Officer for the Coast Guard.

(2)(a) By delivery to room PL–401 at the address given in paragraph (1)(a) above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329. (b) By delivery to OIRA, at the address given in paragraph (1)(b) above, to the attention of the Desk Officer for the Coast Guard.

(3) By fax to (a) the Facility at 202–493–2251 and (b) OIRA at 202–395–5806, or e-mail to OIRA at *oira_docket@omb.eop.gov* attention: Desk Officer for the Coast Guard.

(4)(a) Electronically through the Web Site for the Docket Management System at *http://dms.dot.gov.* (b) OIRA does not have a website on which you can post your comments.

(5) Electronically through Federal eRule Portal: *http://www.regulations.gov.*

The Facility maintains the public docket for this notice. Comments and material received from the public, as well as documents mentioned in this notice as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 (Plaza level), 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.*

Copies of the complete ICRs are available for inspection and copying in public dockets. They are available in docket USCG 2003–15506 of the Docket Management Facility between 10 a.m. and 5 p.m., Monday through Friday, except Federal holidays; for inspection and printing on the internet at *http://dms.dot.gov;* and for inspection from the Commandant (G–CIM–2), U.S. Coast Guard, room 6106, 2100 Second Street, SW., Washington, DC, between 10 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Barbara Davis, Office of Information Management, 202–267–2326, for questions on this document; Andrea M. Jenkins, Program Manager, U.S. Department of Transportation, 202–366–0271, for questions on the docket.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this request for comment by submitting comments and related materials. We will post all comments received, without change, to *http://dms.dot.gov,* and they will include any personal information you have provided. We have an agreement with DOT to use the Docket Management Facility. Please see the paragraph on DOT's ''Privacy Act'' below.

Submitting comments: If you submit a comment, please include your name and address, identify the docket number for this request for comment [USCG–2003–15506], indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit them by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change the documents supporting this collection of information or even the underlying requirements in view of them.

Viewing comments and documents: To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://dms.dot.gov* at any time and conduct a simple search using the docket number. You may also visit the Docket Management Facility in room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone can search the electronic form of all comments received in dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Privacy Act Statement of DOT in the **Federal Register** published on April 11, 2000 [65 FR 19477], or you may visit *http://dms.dot.gov.*

Regulatory History

This request constitutes the 30-day notice required by OIRA. The Coast Guard has already published [68 FR 40280 (July 7, 2003)] the 60-day notice required by OIRA. That notice elicited no comments.

Request for Comments

The Coast Guard invites comments on the proposed collections of information to determine whether the collections are necessary for the proper performance of the functions of the Department. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the collections; (2) the accuracy of the Department's estimated burden of the collections; (3) ways to enhance the quality, utility, and clarity of the information that is the subject of the collections; and (4) ways to minimize the burden of collection on respondents, including the use of automated collection techniques or other forms of information technology.

Comments, to DMS or OIRA, must contain the OMB Control Number of the ICR addressed. Comments to DMS must contain the docket number of this request, USCG 2003–15506. Comments to OIRA are best assured of having their full effect if OIRA receives them 30 or fewer days after the publication of this request.

Information Collection Request

1. *Title:* Nondestructive Testing of Certain Cargo Tanks on Unmanned Barges.

OMB Control Number: 1625–0052.

Type of Request: Extension of a currently approved collection.

Affected Public: Owners of tank barges.

Form: This collection of information does not require the public to fill out forms, but does require the submittal of information to the Coast Guard in written format.

Abstract: The Coast Guard uses the results of nondestructive testing to evaluate the suitability of older pressure-vessel-type cargo tanks of unmanned barges to remain in service. Once every ten years, it subjects such a tank on an unmanned barge 30 years old or older to nondestructive testing.

Annual Estimated Burden Hours: The estimated burden is 72 hours a year.

2. *Title:* Small Passenger Vessels—46 CFR Subchapters K and T.

OMB Control Number: 1625–0057.

Type of Request: Extension of a currently approved collection.

Affected Public: Owners and operators of small passenger vessels.

Form: CG–841, CG–854, CG–948, CG–949, CG–3752 and CG–5256.

Abstract: The information is necessary for the proper administration and enforcement of the program on safety of commercial vessels as it affects small passenger vessels. Collecting it affects small passenger vessels (under 100 gross tons) that carry more than 6 passengers.

Annual Estimated Burden Hours: The estimated burden is 366,798 hours a year.

3. *Title:* Display of Fire-Control Plans for Vessels.

OMB Control Number: 1625–0033.

Type of Request: Extension of a currently approved collection.

Affected Public: Owners and operators of vessels.

Form: This collection of information does not require the public to fill out forms, but does require the posting and updating of general arrangement plans of certain vessels to minimize danger to personnel onboard, damage to the vessel and the safety of the port and environment.

Abstract: This collection of information takes the form of the posting or display of specific plans on certain categories of commercial vessels. The availability of these plans aids firefighters and damage-control efforts in response to emergencies.

Annual Estimated Burden Hours: The estimated burden is 911 hours a year.

4. *Title:* Approval of Plans and Records for Foreign Vessels Carrying Oil in Bulk.

OMB Control Number: 1625–0026.

Type of Request: Extension of a currently approved collection.

Affected Public: Owners and operators of vessels.

Form: This collection of information does not require the public to fill out forms, but does require the submittal of information to the Coast Guard in written format.

Abstract: The Coast Guard collects plans and records to determine whether foreign tank vessels comply with applicable standards for design and construction.

Annual Estimated Burden Hours: The estimated burden is 157 hours a year.

5. *Title:* Offshore Supply Vessels (OSVs)—46 CFR Subchapter L.

OMB Control Number: 1625–0065.

Type of Request: Extension of a currently approved collection.

Affected Public: Owners and operators of vessels.

Form: This collection of information does not require the public to fill out forms, but does require the submittal of information to the Coast Guard in written format.

Abstract: Requirements are necessary to instruct those on board of actions to take in an emergency. These requirements help verify compliance with rules without inspectors' presence to witness routine matters; they even enable OSVs based overseas to stay in compliance without undergoing reinspection here.

Annual Estimated Burden Hours: The estimated burden is 6,175 hours a year.

Dated: September 30, 2003.

Clifford I. Pearson,

Director of Information and Technology.

[FR Doc. 03–25186 Filed 10–2–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2001–10486]

RIN 1625–AA32

Standards for Living Organisms in Ship's Ballast Water Discharged in U.S. Waters

AGENCY: Coast Guard, DHS.

ACTION: Notice of public meetings.

SUMMARY: Under the direction of the National Invasive Species Act, and the National Environmental Policy Act, the Coast Guard seeks consultation with all interested and affected stakeholders to discuss issues to be addressed in the programmatic environmental impact statement for the development of ballast water discharge standards as stated in the September 26, 2003, **Federal Register** (68 FR 55559). To accomplish this, the Coast Guard will hold five regional public scoping meetings in order to expand the opportunity for public input. We seek comments from any interested or affected stakeholders and encourage all stakeholders to attend these meetings.

DATES: The public scoping meetings will be held on the following dates in the cities listed:

- New Orleans, LA, October 27, 2003, from 12 p.m. to 4 p.m. and 5 p.m. to 7 p.m.;
- Oakland, CA, October 29, 2003, from, 12 p.m. to 4 p.m. and 5 p.m. to 7 p.m.;
- Cleveland, OH, October 31, 2003, from, 12 p.m. to 4 p.m. and 5 p.m. to 7 p.m.;
- Norfolk, VA, November 3, 2003, from, 12 p.m. to 4 p.m. and 5 p.m. to 7 p.m.; and
- Washington DC, November 7, 2003, from 11 a.m. to 3 p.m. and 4 p.m. to 6 p.m.

ADDRESSES: The Coast Guard will hold the public scoping meetings at the following locations:

- New Orleans, LA—New Orleans Marriott, 555 Canal Street, New Orleans, LA 70130, 1–504–581–1000;
- Oakland, CA—Elihu Harris Building, 1515 Clay Street, Oakland, CA 94612, 1–510–622–2398;
- Cleveland, OH—Holiday Inn Select, 1111 Lakeside Avenue, Cleveland, OH 44114, 1–216–241–5100;
- Norfolk, VA—Marriott Norfolk Waterside, 235 E. Main Street, Norfolk, VA 23510, 1–757–627–4200; and
- Washington, DC—EPA East Building, Room 1153, 1201 Constitution Avenue, NW., Washington, DC 20590, 1–202–566–1200.

You may also submit your comments on this scoping effort directly to the Docket Management Facility. To ensure that your comments and related material are not entered more than once in the docket [USCG–2001–10486], please submit them by only one of the following means:

(1) By mail to the Docket Management Facility (USCG–2003–14273), U.S. Department of Transportation, room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web site for the Docket Management System at *http://dms.dot.gov*.

(5) Federal eRulemaking Portal: *http://www.regulations.gov*.

You must also mail comments on collection of information to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, ATTN: Desk Officer, United States Coast Guard. In choosing among these means, please give due regard to the recent difficulties and delays associated with delivery of mail through the U.S. Postal Service to Coast Guard Headquarters.

The Docket Management Facility maintains the public docket for this notice. Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov*.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review Department of Transportation's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: If you have any questions about the project or the meetings, contact Mr. Bivan R. Patnaik, U.S. Coast Guard at (202) 267–1744 or *bpatnaik@comdt.uscg.mil*.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages you to submit comments and related material on the development of the programmatic environmental impact statement. If you do so, please include your name and address, identify the docket number [USCG–2001–10486], and provide the reasons for each comment. You may submit your comments and material by mail, delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. Public comments will also be accepted at these public scoping meetings.

Information on Service for Individuals With Disabilities

If you plan to attend these meetings and require special assistance, such as sign language interpretation or other reasonable accommodations, contact us as indicated in **FOR FURTHER INFORMATION CONTACT**.

Public Scoping Meetings

The Coast Guard encourages interested and affected stakeholders to attend the meetings and present oral comment or written comments during the meetings. The meetings are open to members of the public. Please note that the meetings may close early if all business is finished. If you are unable to attend the meetings, we encourage you to submit comments to the Docket Management Facility as indicated under Addresses by December 26, 2003.

Background and Purpose

On September 26, 2003, the Coast Guard published a notice of intent with request for comments in the **Federal Register** (68 FR 55559) to develop a programmatic environmental impact statement (PEIS) in preparation of a proposed rulemaking to establish standards for ballast water discharges. As part of the scoping process summarized in that notice, and authorized by 40 CFR 1508.22(b)(4), the Coast Guard will hold public meetings at the times and locations noted above under **DATES** and **ADDRESSES.** You may consult the notice of intent for further information about the proposed rule for establishing standards for ballast water discharges. Please note that information regarding the PEIS can also be found at the following Web sites: *http://www.uscg.mil/hq/g-m/mso/mso4/ans.html*; and *http://www.epa.gov/owow/invasive_species/*.

Dated: September 30, 2003.

Joseph J. Angelo,

Director of Standards, Marine Safety, Security & Environmental Protection.

[FR Doc. 03–25188 Filed 10–2–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4820–N–38]

Notice of Proposed Information Collection: Comment Request; Single Family Acquired Asset Management System (SAMS)

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* December 2, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8003, Washington, DC 20410 or *Wayne_Eddins@hud.gov.*

FOR FURTHER INFORMATION CONTACT: Joseph McCloskey, Director, Office of Single Family Asset Management, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–1672 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Single Family Acquired Asset Management System (SAMS).

OMB Control Number, if applicable: 2502–0486.

Description of the need for the information and proposed use: This information collection is an integral part of HUD's ability to create and maintain sound financial management practices, and to maintain effective internal control over the property disposition program. In managing its program of acquired single-family properties, HUD reimburses contractors and vendors for their services in maintaining, marketing, and selling HUD homes, and collects funds the sales of these properties. The information is captured in HUD's automated Single Family Acquired Asset Management System. The system also is used to record and process financial transactions.

Agency form numbers, if applicable: Sams–1100, 1101, 1103, 1106, 1106–C, 1108, 1110, 1111, 1111–A, and 1117.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated total number of hours needed to prepare the information collection is 65,870; the number of respondents is 272,950 generating approximately 272,950 annual responses; the frequency of response is on occasion; and the estimated time needed to prepare the response varies from 12 minutes to 30 minutes.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: September 26, 2003.

Sean G. Cassidy,

General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. 03–25038 Filed 10–2–03; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4815–N–77]

Notice of Submission of Proposed Information Collection to OMB: Assisted Living Conversion Program (ALCP)

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

This information collection is a grant application and reporting forms for HUD's Assisted Living Conversion Program (ALCP). HUD will use the grant applications to determine an applicant's need for and capacity to administer grant funds.

DATES: *Comments Due Date:* November 3, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2502–0542) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; e-mail *Lauren_Wittenberg@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov*; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins or on HUD's Web site at *http://mf.hud.gov:63001/po/i/icbts/collectionsearch.cfm.*

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Assisted Living Conversion Program (ALCP).

OMB Approval Number: 2502–0542.

Form Numbers: HUD–50080–ALCP, HUD–92045, SF–269, SF–424, HUD–424B, HUD–2880, HUD–2991.

Description of the Need for the Information and Its Proposed Use: This information collection is a grant application and reporting forms for HUD's Assisted Living Conversion Program (ALCP). HUD will use the grant applications to determine an applicant's need for and capacity to administer grant funds.

Respondents: Not-for-profit institutions.

Frequency of Submission: On occasion, quarterly, semi-annually, annually.

Reporting Burden: Number of Respondents 30; Average responses per respondent 4.5; Total annual responses 135; Average burden per response 18.8 hrs.

Total Estimated Burden Hours: 2,550.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: September 26, 2003.

Donna Eden,

Director, Office of Investment Strategies, Policy & Mngt., Office of the Chief Information Officer.

[FR Doc. 03–25039 Filed 10–2–03; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4815–N–78]

Notice of Submission of Proposed Information Collection to OMB: Youthbuild Program

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

The Youth build Program provides disadvantaged youth, predominately high school dropouts, with educational opportunities and job skills training. Information is collected from eligible applicants for a competition to determine which entities will receive grant funds.

DATES: *Comments Due Date:* November 3, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2506–0142) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; E-mail *Lauren_Wittenberg@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov*; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins or on HUD's Web site at *http://mf.hud.gov:63001/po/i/icbts/collectionsearch.cfm*.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Youthbuild Program.

OMB Approval Number: 2506–0142.

Form Numbers: HUD–40211, SF 1199A, HUD 27054.

Description of the Need for the Information and its Proposed Use: The Youthbuild Program provides disadvantaged youth, predominately high school drop outs, with educational opportunities and job skills training. Information is collected from eligible applicants for a competition to determine which entities will receive grant funds.

Respondents: State, Local, or Tribal Government.

Frequency of Submission: On occasion, quarterly, semi-annually.

Reporting Burden: Number of Respondents 300; Average responses per respondent 1.4; Total annual responses 416; Average burden per response 28hrs.

Total Estimated Burden Hours: 11,660.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: September 26, 2003.

Donna Eden,

Director, Office of Investment Strategies, Policy & Mngt, Office of the Chief Information Officer.

[FR Doc. 03–25040 Filed 10–2–03; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4809–N–40]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: October 3, 2003.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, Department of Housing and Urban Development, Room 7262, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing—and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OC (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless.

Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: September 25, 2003.

John D. Garrity,

Director, Office of Special Needs Assistance Programs.

[FR Doc. 03–24811 Filed 10–2–03; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice To Announce the Revision of the Alabama Beach Mouse Recovery Plan

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice to announce the revision of the Alabama beach mouse recovery plan; request for information.

SUMMARY: We, the Fish and Wildlife Service, announce our intention to prepare a separate species recovery plan for the Alabama beach mouse (ABM) (*Peromyscus polionotus ammobates*), which is listed as endangered throughout its range, under the Endangered Species Act of 1973, as amended (Act). A 1987 multi-species recovery plan addressed recovery needs for three subspecies of the old field mouse (*Peromyscus polionotus*) that inhabit the beaches and dunes of the Gulf coast of Alabama and Florida—the ABM, the Choctawhatchee beach mouse (*P. p. allphrys*), and the Perdido Key beach mouse (*P. p. trissyllepsis*). The 1987 recovery plan is being revised to prepare a separate species recovery plan for the ABM. A separate species recovery plan is needed for the ABM in order to incorporate new information related to the range of the species, to update information regarding known habitat, and to update the framework for addressing problems of the species and for prioritizing actions necessary for recovery. The ABM recovery plan will not include recovery information on the Choctawhatchee beach mouse or the Perdido Key beach mouse. Recovery plans for the Choctawhatchee beach mouse and the Perdido Key beach mouse will be updated or revised at a later date.

To ensure a comprehensive revision, we are soliciting information on the ABM's population status and trends, threats, and conservation efforts.

DATES: Information related to this notice must be received by December 2, 2003, to be considered in the initial stages of the revision. However, we will accept information and comments submitted after this date for consideration at later stages in the recovery planning process until further notice.

ADDRESSES: Information should be mailed to the Daphne Ecological Services Field Office, U.S. Fish and Wildlife Service, P.O. Drawer 1190, Daphne, AL 36526. Information may also be sent via fax to 251–441–6222 or through the Internet Web site for the ABM recovery plan at *http://daphne.fws.gov*.

Comments and materials received will be available for public inspection, by appointment, during normal business hours at the Daphne Field Office at 1208 Main Street, Daphne, Alabama.

FOR FURTHER INFORMATION, CONTACT: Lori McNease at the above mailing address (telephone 251–441–5867, fax 251–441–6222, e-mail *alabamabeachmouse@fws.gov*).

SUPPLEMENTARY INFORMATION:

Background

The ABM was listed as endangered under the Act on June 6, 1985 (50 FR 23884). Upon listing a species, section 4(f) of the Act requires the preparation and implementation of a recovery plan and revisions to such plans as necessary. Under section 4(f)(1)(B), each plan, at a minimum, must contain—(a) a description of such site-specific management actions as may be necessary to achieve the plan's goal for conservation and survival of the species; (b) objective, measurable criteria that, when met, would result in a determination, in accordance with the provisions of this section, that the species be removed from the list; and (c) estimates of the time required and the cost to carry out those measures needed to achieve the plan's goal and to achieve intermediate steps toward that goal.

In addition, recovery plans must include a concise summary of the current status of the species and its life history, and an assessment of the factors that led to population declines and/or which are impeding recovery. The plan must also include a comprehensive monitoring and evaluation program for gauging the effectiveness of recovery measures and overall progress toward recovery.

In 1987, we issued a multi-species recovery plan for three listed beach mice along the Gulf coast of Alabama and Florida. The plan is being revisited at this time in order to prepare a separate species recovery plan for the ABM. An Alabama Beach Mouse Recovery Team, consisting of governmental and non-governmental organizations as well as species experts and stakeholders, was established to draft this revision.

Since the development of the 1987 plan, significant research has been accomplished and important conservation and recovery activities have been undertaken. As a result, we have a greater knowledge of the species, its status, and distribution. These advances in our understanding of the ABM make a revision of the ABM recovery plan necessary at this time. The revised ABM recovery plan will serve as a basis for future recovery efforts, guide research to ensure that new information will contribute toward the greatest research needs, and enable effective monitoring to allow us to track the status of the ABM and the factors that may affect the species.

A schedule for completing the revised ABM recovery plan will be made available on the internet website for the ABM recovery plan when it is developed by the recovery team (*see* **ADDRESSES**). Draft sections of the Work in Progress will also be made available on the internet website to provide interested stakeholders an opportunity to review and provide input on the revised plan during its development. Once all sections of the revised plan have been drafted, we will publish a notice of availability of the draft recovery plan in the **Federal Register** and will formally solicit public comment on the draft prior to finalizing the plan.

Information Solicited

To ensure that the revised ABM recovery plan is based on the best available data, we are soliciting information on historical and current abundance; historical and current distribution and movements; population status and trends; genetics; current or planned activities that may adversely impact the species; and ongoing efforts to protect the ABM along the Alabama Gulf coast. We request that all data, information, and comments be accompanied by supporting documentation such as maps, bibliographic references, or reprints of pertinent publications.

All submissions must contain the submitter's name and address, as well as any association, institution, or business that the person represents. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Respondents may request that we withhold their home address, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity, as allowable by law. If you wish for us to withhold your name and/or address, you must state this request prominently at the beginning of your comment. We will not consider anonymous comments. To the extent consistent with applicable law, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives of organizations or

businesses, available for public inspection in their entirety.

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533 (f).

Dated: September 15, 2003.

Sam D. Hamilton,

Regional Director, Southeast Region, Fish and Wildlife Service.

[FR Doc. 03–25087 Filed 10–2–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–930–1430–ET, CACA 7767 and CACA 44322]

Public Land Order No. 7585; Partial Revocation of Executive Order dated February 26, 1852; Withdrawal of Public Lands and Transfer of Jurisdiction; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order partially revokes an Executive Order insofar as it affects 6.15 acres of public lands withdrawn for use by the Department of Navy for military purposes. This order also withdraws the same lands from surface entry and mining, and transfers the jurisdiction to the Department of Veterans Affairs, for expansion and operation of the Fort Rosecrans National Cemetery.

DATES: October 3, 2003.

FOR FURTHER INFORMATION CONTACT: Duane Marti, BLM California State Office, 2800 Cottage Way, Sacramento, California 95825–1886; (916) 978–4675.

SUPPLEMENTARY INFORMATION: The Department of Navy no longer needs the lands for military purposes and concurs with the transfer of jurisdiction. A memorandum of agreement between the Department of Navy and the Department of Veteran Affairs contains provisions relative to future use of the lands by the Department of Veterans Affairs.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (2000), it is ordered as follows:

1. The Executive Order, dated February 26, 1852, which withdrew public lands for military purposes, is hereby revoked insofar as it affects the following described lands:

San Bernardino Meridian

T. 17 S., R. 4 W.,

Parcels 2, 3, and 4.

The areas described aggregate 6.15 acres in San Diego County.

2. Subject to valid existing rights, the lands described in Paragraph 1, are hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws, 30 U.S.C., Ch. 2 (2000), for the Department of Veterans Affairs to expand the Fort Rosecrans National Cemetery.

3. Subject to valid existing rights, the jurisdiction of the lands described in Paragraph 1 and their related resource uses are hereby transferred to the Department of Veterans Affairs, so that the lands can be managed as part of the Fort Rosecrans National Cemetery and shall thereafter be subject to all laws and regulations applicable thereto.

Dated: September 12, 2003.

Rebecca W. Watson,

Assistant Secretary—Land and Minerals Management.

[FR Doc. 03–25066 Filed 10–2–03; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–340–1430–ES; CACA–43408]

Notice of Realty Action; Recreation and Public Purposes (R&PP) Act Classification; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action.

SUMMARY: The following public lands in Lake County, California have been examined and found suitable for classification for lease or conveyance to the Lake County Flood Control and Water Conservation District under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The Lake County Flood Control and Water Conservation District proposes to construct and maintain a multipurpose trail system on the public lands that would tie into the trail system on their 2,550 acre of adjacent land. The trails would be constructed for non-motorized use, including hiking, equestrian and all-terrain bicycles.

Lease and/or conveyance is consistent with current BLM land use planning and would be in the public interest. The lands are located at:

Mount Diablo Meridian, California

T. 13 N., R 10 W.
Section 34: NE, S2NW, N2SE.
Section 35: SWNE, W2NW, SENW, SW, W2SE.

The area described contains 720 acres.

The lease/patent, when issued, will be subject to the following terms, conditions, and reservations:

1. Provision of the Recreation and Public Purpose 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. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove the minerals.
4. A right-of-way for an access road granted to Bob Neilsen under CACA–31323.
5. A right-of-way for an access road reserved by the Bureau of Land Management on the Adobe Creek Road under CAS–076875.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Ukiah Field Office, 2550 North State Street, Ukiah, California. Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land use laws, including the general mining laws, except for lease and/or conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. The segregation for exchange under CACA–30111FD will be revoked. For a period until November 17, 2003, interested persons may submit comments regarding the proposed lease/conveyance or classification of the lands to the Field Manager, Ukiah Field Office, 2550 North State Street, Ukiah, CA 95482.

Classification Comments: Interested parties may submit comments involving the suitability of the land for the development of hiking, equestrian and all-terrain bicycle trails. 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 hiking, equestrian and all-terrain bicycles trails. Any adverse comments will be reviewed by the State

Director. In the absence of any adverse comments, the classification will become effective.

Dated: January 17, 2003.

Howard K. Stark,

Chief, Branch of Lands Management.

Editorial Note: This document was received in the Office of the Federal Register on September 29, 2003.

[FR Doc. 03–25065 Filed 10–2–03; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Correction

As set forth in the **Federal Register** on August 5, 2002 (68 FR 46226), Mallinckrodt, Inc., Mallinckrodt & Second Streets, St. Louis, Missouri 63147, was granted a registration as a bulk manufacturer of certain Schedule I and II controlled substances.

By letter dated August 12, 2003, Mallinckrodt, Inc., advised that the Notice of Registration erroneously included heroin (9200) and nicomorphine (9312), basic classes of Schedule I controlled substances. Therefore, drug codes 9200 and 9312 are hereby withdrawn from the firm's bulk manufacturer registration.

Dated: September 8, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–25101 Filed 10–2–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP(OVW) Docket No. 1382]

Meeting of the National Advisory Committee on Violence Against Women

AGENCY: Office on Violence Against Women, Justice.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming public meeting of the National Advisory Committee on Violence Against Women (hereinafter ''the Committee'').

DATES: The meeting will take place on October 8 from 9 a.m. to 5 p.m., and on October 9 from 9 a.m. to 4 p.m.

ADDRESSES: The meeting will take place at the Madison Hotel, 1177 15th Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Kristina Rose, The National Advisory Committee on Violence Against Women, 810 Seventh Street, NW., Washington, DC 20531. Telephone: (202) 307–6026. E-mail: *AskNAC@ojp.usdoj.gov.* Fax: (202) 307–3911. You may view the Committee's Web site at: *http://www.ojp.usdoj.gov/vawo/nac/welcome.html.*

SUPPLEMENTARY INFORMATION: The Committee is chartered by the Attorney General, and co-chaired by the Attorney General and the Secretary of Health and Human Services (the Secretary), to provide the Attorney General and the Secretary with practical and general policy advice concerning implementation of the Violence Against Women Act of 1994, the Violence Against Women Act of 2000, and related laws, and will assist in the efforts of the Department of Justice and the Department of Health and Human Services to combat violence against women, especially domestic violence, sexual assault, and stalking.

In addition, because violence is increasingly recognized as a public health problem of staggering human cost, the Committee will bring national attention to the problem of violence against women and increase public awareness of the need for prevention and enhanced victim services.

This meeting will primarily focus on the Committee's work; there will, however, be an opportunity for public comment on the Committee's role in providing general policy guidance on implementation of the Violence Against Women Act of 1994, the Violence Against Women Act of 2000, and related legislation.

Meeting Format

This meeting will be held according to the following schedule:

1. Date: Wednesday, October 8, 2003

Time: 9 a.m–5 p.m.; including breaks and a working lunch.

2. Date: Thursday, October 9, 2003

Time: 9 a.m.–4 p.m., including breaks and a working lunch.

The meeting schedule for October 8, 2003 will begin with presentations from invited speakers and reports on the work of the Committee's subcommittees. Time will be reserved for comments from the public, beginning at 10:30 a.m. and ending at 11 a.m. See the section below on Reserving Time for Public Comment, for information on how to reserve time on the agenda.

The meeting scheduled for October 9, 2003, will consist of reports from subcommittees and of discussions surrounding the development of the final report.

Attending the Meeting

The meeting will be open to the public. Registrations for public attendance will be accepted on a space available basis. Members of the public who wish to attend must register at least six (6) days in advance of the meeting by contacting Kristina Rose at the e-mail address or fax number listed above. Access to the meeting will not be allowed without registration, and all attendees will be required to sign in at the meeting registration desk. Please bring photo identification and allow extra time prior to the meeting.

Individuals who will need special accommodations for a disability in order to attend the meetings should notify Kristina Rose at the above e-mail address or by fax, no later than October 6, 2003. We will attempt to meet requests after this date, but cannot guarantee availability of the requested accommodation. The meeting site is accessible to individuals with disabilities.

Submitting Written Comments

Interested parties are invited to submit written comments to the Committee, by October 6, 2003, using one of the following methods: by e-mail to *AskNAC@ojp.usdoj.gov;* by fax on (202) 307–3911; or by U.S. mail to The National Advisory Committee on Violence Against Women, 810 Seventh Street, NW., Washington, DC, 20531.

Reserving Time for Public Comment

If you are interested in participating during the public comment period of the meeting, on the implementation of the Violence Against Women Act of 1994, and the Violence Against Women Act of 2000, you are requested to reserve time on the agenda by contacting the Office on Violence Against Women, Office of Justice Programs, U.S. Department of Justice, by e-mail or fax. Please include your name, the organization you represent, if appropriate, and a brief description of the issue you would like to present. Participants will be allowed approximately 3 to 5 minutes to present their comments, depending on the number of individuals who reserve time on the agenda. Participants are also encouraged to submit two written copies of their comments at the meeting.

Given the expected number of individuals interested in providing comments at the meetings, reservations for presenting comments should be made as soon as possible. Persons who

are unable to obtain reservations to speak during the meetings are encouraged to submit written comments, which will be accepted at the meeting site or may be mailed to the Committee at the address listed under the section on Submitting Written Comments.

Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

Diane M. Stuart,

Director, Office on Violence Against Women.

[FR Doc. 03–25073 Filed 10–2–03; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

May 27, 2003.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation, contact Darrin King on (202) 693–4129 (this is not a toll-free number) or e-Mail: *king.darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Occupational Safety and Health Administration (OSHA), Office of Management and Budget, Room 10235, Washington, DC 20503, (202) 395–7316 (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Type of Review: Extension of a currently approved collection.

Agency: Occupational Safety and Health Administration.

Title: Standard on Walking-Working Surfaces—29 CFR part 1910 Subpart D.

OMB Number: 1218–0199.

Frequency: On occasion.

Type of Response: Recordkeeping and Third party disclosure.

Affected Public: Business or other for-profit; Not-for-profit institutions; Federal Government; and State, Local or Tribal Government.

Number of Respondents: 10,000.

Information collection requirement	Annual responses	Average response time (hours)	Annual burden hours
Load Limit Marking—29 CFR 1910.22(d)(1)	2,100	0.33	693
Marking of Portable Metal Ladders Having Defects—29 CFR 1910.26(c)(2)(vii)	10,000	0.05	500
Maintaining and Disclosing Drawings and Specifications of Outrigger Scaffolds Designed by a Registered Professional Engineer—29 CFR 1910.28(e)(3)	0	0.00	0
Total	12,100		1,193

Total Annualized capital/startup: $0.

Total annual costs (operating/maintaining systems or purchasing services): $0.

Description: The collections of information contained in the Walking-Working Surfaces standard are necessary to protect workers from the collapse of overloaded floors and the failure of defective portable metal ladders.

Paragraph 1910.22(d)(1) requires that load limits approved by the building official be marked on plates supplied and securely affixed by the owner of the building, or his duly authorized agent, in a conspicuous place in each space to which they relate. The plates are not to be removed or defaced but, if lost, removed, or defaced, they shall be replaced by the owner or his agent.

Under paragraph 1910.26(c)(2)(vii), ladders having defects are to be marked and taken out of service until repaired by either the maintenance department or the manufacturer.

Paragraph 1910.28(e)(3) requires that outrigger scaffolds designed by a registered professional engineer be constructed and erected in accordance with table D–16 of this section. A copy of the detailed drawings and specifications showing the sizes and spacing of members shall be kept on the job.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 03–25106 Filed 10–2–03; 8:45 am]

BILLING CODE 4510–23–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

September 22, 2003.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation, contact Darrin King on 202–693–4129 (this is not a toll-free number) or e-Mail: *king.darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Employment and Training Administration (ETA), Office of Management and Budget, Room 10235, Washington, DC 20503 (202–395–7316; this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary

for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Employment and Training Administration.

Type of Review: Extension of a currently approved collection.

Title: Application for Alien Employment Certification.

OMB Number: 1205–0015.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions; Farms; Federal Government; and State, local, or tribal government.

Type of Response: Reporting.

Frequency: On occasion.

Number of Respondents: 111,200.

Requirement	Number of responses	Average response time (hours)	Estimated burden hours
Form 750 Parts A and B	100,000	2.8	280,000
H–2A Applications (Form 750 Part A Only)	4,200	1	4,200
H–2B Applications (Form 750 Part A Only)	7,000	1.4	9,800
Totals:	111,200		294,000

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: Under section 212(a)(5)(A) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(5)(A)), certain aliens may not obtain a visa for entrance into the United States in order to engage in permanent employment unless the Secretary of Labor has first certified to the Secretary of State and to the Attorney General that: (1) There are not sufficient U.S. workers who are able, willing, qualified and available at the time of application for a visa and admission into the U.S. and at the place where the alien is to perform the work; and (2) the employment of the alien will not adversely affect the wages and working conditions of U.S. workers similarly employed. Form ETA 750, parts A and B, is the application form submitted by employers that forms the basis for a determination as to whether the Secretary shall provide such a certification. Form ETA 750, part A, is also utilized to collect information that permits the Department to meet Federal responsibilities for administering two nonimmigrant programs: The H–2A and H–2B temporary labor certification programs. The H–2A temporary agricultural program establishes a means for agricultural employers who anticipate a shortage of domestic workers to bring nonimmigrant aliens to the U.S. to perform agricultural labor or services of a temporary or seasonal nature. The H–2B program establishes a means for employers to bring nonimmigrant aliens to the U.S. to perform nonagricultural work of a temporary or seasonal nature.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 03–25107 Filed 10–2–03; 8:45 am]

BILLING CODE 4510–23–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

September 23, 2003.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation, contact Darrin King on 202–693–4129 (this is not a toll-free number) or e-mail: *king.darin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Employment Standards Administration (ESA), Office of Management and Budget, Room 10235, Washington, DC 20503 (202–395–7316 / this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Type of Review: Extension of currently approved collection.

Agency: Employment Standards Administration.

Title: Regulations Governing the Administration of the Longshore and Harbor Workers' Compensation Act.

OMB Number: 1215–0160.

Affected Public: Individuals or households and Business or other for-profit.

Frequency: On occasion and Annually.

Type of Response: Recordkeeping and Reporting.

Number of Respondents: 170,564.

Information Collection	Annual Responses	Average Response Time (Hours)	Annual Burden Hours
LS–200, Report of Earnings	12,800	0.17	2,176
LS–200, Report of Earnings with no earnings information to report	3,200	0	0
Liens	10	0.5	5
Certifications	5	0.75	4
Reinstatements	2	0.5	1
Settlement Applications	4,500	2	9,000
Section 8(f) Payments	550	5	2,750
ESA–100 (LS), Annual Report	42,000	0.02	840
LS–271, Application for Self-Insured Employer	20	2	40
LS–274, Report of Injury Experience of Self-Insured Employer	412	1	412
LS–201, Notice of Employee's Injury of Death	4,500	0.25	1,125
LS–513, Report of Payments	900	0.5	450
LS–267, Claimant's Statement	1,300	0.033	43
LS–203, Employee's Claim for Compensation	10,125	0.25	2,531
LS–204, Attending Physician's Supplementary Report	90,000	0.5	45,000
LS–262, Claim for Death Benefits	240	0.25	60
Total	170,564		64,437

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $56,984.

Description: The Longshore and Harbor Workers' Compensation Act, as amended (Pub. L. 98–426) pertains to the provision of benefits to workers injured in maritime employment on the navigable waters of the United States or in an adjoining area customarily used by an employer in loading, unloading, repairing, or building a vessel, as well as coverage extended to certain other employees. The regulations and associated forms cover the submission of information necessary for the processing of claims for benefits under the Longshore Act.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 03–25108 Filed 10–2–03; 8:45 am]

BILLING CODE 4510–23–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

September 17, 2003.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of each ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation, contact Darrin King on 202–693–4129 (this is not a toll-free number) or e-mail: *king.darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Employment Standards Administration (ESA), Office of Management and Budget, Room 10235, Washington, DC 20503 (202–395–7316/this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Type of Review: Extension of a currently approved collection.

Agency: Employment Standards Administration.

Title: Health Insurance Claim Form.

OMB Number: 1215–0055.

Affected Public: Business or other for-profit; Not-for-profit institutions; and Individuals or households.

Frequency: On occasion.

Number of Respondents: 533,427.

Number of Annual Responses: 2,133,708.

Estimated Time Per Response: 7 minutes.

Total Burden Hours: 248,812.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: The information collected by the Form OWCP–1500 is required to reimburse health care providers for services rendered to injured employees covered under the Federal Employees' Compensation Act, 5 U.S.C. 8101 *et seq.,* the Black Lung Benefits Act, 30 U.S.C. 901 *et seq.,* and the Energy Employees Occupational Illness Compensation Program Act of 2000 42 U.S.C. 7384 *et seq.* Appropriate reimbursement cannot be made without documentation that details services provided by health care professionals throughout the country.

Type of Review: Extension of a currently approved collection.

Agency: Employment Standards Agency.

Title: Authorization for Release of Medical Information.

OMB Number: 1215–0057.

Affected Public: Individuals or households.

Frequency: One time.

Number of Respondents: 1,500.

Number of Annual Responses: 1,500.

Estimated Time Per Response: 5 minutes.

Total Burden Hours: 125.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: The Black Lung Benefits Act, as amended, 30 U.S.C. 901 *et seq.,* and 20 CFR 725.405 require that all relevant medical evidence be considered before a decision can be made regarding a claimant's eligibility for benefits. The CM–936 is a form that gives the claimant's consent for release of information required by the Privacy Act of 1974, and contains information required by medical institutions and private physicians to enable them to release pertinent medical information.

Ira L. Mills,

Department Clearance Officer.

[FR Doc. 03–25109 Filed 10–2–03; 8:45 am]

BILLING CODE 4510–23–M

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Title 29 CFR Part 29, Labor Standards for the Registration of Apprenticeship Programs and Title 29 CFR Part 30, Equal Employment Opportunity in Apprenticeship and Training

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

DATES: Submit comments on or before December 2, 2003.

ADDRESSES: Send comments to Anthony Swoope, Administrator, Office of Apprenticeship Training, Employer and Labor Services, 200 Constitution Ave., NW., Room N–4671, Washington, DC 20210; Telephone number: (202) 693–2796 (this is not a toll-free number); E-mail Internet address: *swoope.anthony@dol.gov* and Fax number (202) 693–2808.

FOR FURTHER INFORMATION CONTACT: Anthony Swoope, Administrator, Office of Apprenticeship Training, Employer and Labor Services, 200 Constitution Ave., NW., Room N–4671, Washington, DC 20210; Telephone number: (202) 693–2796 (this is not a toll-free number); E-mail Internet address: *swoope.anthony@dol.gov* and Fax number (202) 693–2808.

SUPPLEMENTARY INFORMATION:

I. Background

The National Apprenticeship Act of 1937 authorizes and directs the Secretary of Labor ''to formulate and promote the furtherance of labor standards necessary to safeguard the welfare of apprentices, to extend the application of such standards by encouraging the inclusion thereof in contracts of apprenticeship, to bring together employers and labor for the formulation of programs of apprenticeship, to cooperate with State agencies engaged in the formulation and promotion of standards of apprenticeship, and to cooperate with the Secretary of Education * * *'' (29 U.S.C. 50). Section 50a of the Act authorizes the Secretary of Labor to ''publish information relating to existing and proposed labor standards of apprenticeship,'' and to ''appoint national advisory committees * * *'' (29 U.S.C. 50a).

Title 29 CFR part 29 sets forth labor standards to safeguard the welfare of apprentices, and to extend the application of such standards by prescribing policies and procedures concerning registration, for certain Federal purposes, of acceptable apprenticeship programs with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services (formerly known as the Bureau of Apprenticeship and Training). These labor standards, policies and procedures cover registration, cancellation, and deregistration of apprenticeship programs and apprenticeship agreements; the recognition of a State agency as the appropriate agency for registering local apprenticeship programs for certain Federal purposes; and matters relating thereto.

Title 29 CFR part 30 sets forth policies and procedures to promote equality of opportunity in apprenticeship programs registered with the U.S. Department of Labor and recognized State Apprenticeship Agencies. These policies and procedures apply to recruitment and selection of apprentices, and to all conditions of employment and training during apprenticeship. The procedures provide for review of apprenticeship programs, for registering apprenticeship programs, for processing complaints, and for deregistering noncomplying apprenticeship programs. This part also provides policies and procedures for continuation or withdrawal of recognition of State agencies which register apprenticeship programs for Federal purposes.

II. Desired Focus of Comments

Currently, the Employment and Training Administration is soliciting comments concerning the proposed revision of the collection of information on the registered apprenticeship program under Title 29 CFR part 29 (Labor Standards for the Registration of Apprenticeship Programs) and the proposed extension of the collection of information regarding Title 29 CFR part 30 (Equal Employment Opportunity in Apprenticeship and Training) to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

A copy of the proposed information collection requests (ICRs) can be obtained by contacting the office listed above in the addressee section of this notice.

III. Current Actions

Recordkeeping and data collection activities regarding registered apprenticeship are by-products of the registration system. Organizations which apply for apprenticeship sponsorship enter into an agreement with the Federal Government or cognizant State government to operate their proposed programs consistent with 29 CFR part 29. Apprenticeship sponsors are not required to file reports regarding their apprentices other than individual registration and update information as an apprentice moves through their program. This revision request includes the addition of

Program Characteristics before the Title of the current form, Apprenticeship Agreement (ETA–671), to incorporate the collection of information on programs registered. It reinstates the voluntary disclosure of the apprentice's social security number. It also incorporates the identification by the applicant of his/her status as an incumbent worker prior to becoming an apprentice, the pre-apprentice hourly wage data 90 days or one quarter prior to registration, and provides instructions on those data elements that are not self-explanatory as requested previously by the Office of Management and Budget.

Type of Review: Revision for the Title 29 CFR part 29, Labor Standards for the Registration of Apprenticeship Programs and Extension for the Title 29 CFR part 30, Equal Employment Opportunity in Apprenticeship and Training.

Agency: Employment and Training Administration.

Title: Title 29 CFR part 29, Labor Standards for the Registration of Apprenticeship Programs and Title 29 CFR part 30, Equal Employment Opportunity in Apprenticeship and Training.

OMB Number: 1205–0223 for 29 CFR part 29 and 1205–0224 for 29 CFR part 30.

Agency Number: ETA Form 671 (1205–0223) and ETA Form 9039 (1205–0224).

Recordkeeping: Apprenticeship sponsors are required to keep accurate records on recruitment, selection of the applicant and/or apprentice and the employment and training activities related to the apprentice and the qualifications of each applicant/apprentice pertaining to determination of compliance with the regulation. Records must be retained, where appropriate, regarding affirmative action plans and evidence that qualification standards have been validated. State Apprenticeship Councils are also obligated to keep adequate records pertaining to determination of compliance with these regulations. All of the above records are required to be maintained for five years. If this information was not required, there would be no documentation that the apprenticeship programs were being operated in a nondiscriminatory manner. Many apprenticeship programs are 4 years or more in duration; therefore, it is important to maintain the records for at least 5 years.

Affected Public: Applicants, Apprentices, Sponsors, State Apprenticeship Councils or Agencies, Tribal Government.

Cite/Reference/Form/etc: 29 CFR part 29 and 29 CFR part 30.

Total Respondents: 290,531.

Frequency: 1-time basis.

Total Responses: 290,531.

Average Time per Response: See Chart.

Estimated Total Burden Hours: 60,826.

SUMMARY OF BURDEN FOR 29 CFR PART 29

Sec.	Total respondents	Frequency	Total responses	Average time per response	Burden (hours)
29.3(b)	31,956	1-time basis	31,956	.33 hr./spon.	10,546
29.3	136,617	1-time basis	136,617	.25 hr./app.	34,154
29.6	118,786	1-time basis	118,786	.083 hr./app.	9,859
29.5	1,688	1-time basis	1,688	2 hrs./spon.	3,376
	1,414	1-time basis	1,414	2 hrs./SAC	2,828
29.7	40	1-time basis	40	1/12 hr. spon.	3
29.12	(30)	1-time basis	(30)	0	0
29.12*.					
29.12	30	1-time basis	30	2 hrs. SAC	60
29.13	0	0	0	0	0
Totals	290,531		290,531		60,826

*(accomplished in 1977; no new state agency expected in 2002)

Total Burden Cost (capital/startup): 0.

Total Burden Cost (operating/maintaining): 0.

ETA Form 9039.

Total Respondents: 32,036.

Frequency: 1-time basis.

Total Responses: 53,235.

Average Time per Response: See Chart.

Estimated Total Burden Hours: 5,714.

SUMMARY OF BURDEN FOR 29 CFR PART 30

Sec.	Total respondents	Frequency	Total responses	Average time per response	Burden (hours)
30.3	1,604	1-time basis	1,604	½ hr./spon.	802
30.4	84	1-time basis	84	1 hr./spon.	84
30.5	5,750	1-time basis	5,750	½ hr./spon.	2,875
30.6	50	1-time basis	50	5 hrs./spon.	250
30.8	31,956	1-time/program	31,956	1 min./spon.	533
30.8	30 State Agencies	1-time basis	13,741	5 min./spon.	1,145
30.11	31,956	1-time	31,956	Handout	
ETA 9039	50 appl./appr.	1-time basis	50	½ hr.	25
30.15	30 State Agencies	1-time	Completed		
30.19	30 State Agencies	varies			
Totals	32,036		53,235		5,714

Total Burden Cost (capital/startup): 0.

Total Burden Cost (operating/maintaining): 0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Emily Stover DeRocco,

Assistant Secretary, Employment and Training Administration.

[FR Doc. 03–25105 Filed 10–2–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be sued in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department.

Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modification to General Wage Determination Decisions

The number of the decisions listed to the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Rhode Island
- RI030001 (Jun. 13, 2003)
- RI030002 (Jun. 13, 2003)
- RI030003 (Jun. 13, 2003)

Volume II

District of Columbia
- DC030001 (Jun. 13, 2003)
- DC030002 (Jun. 13, 2003)
- DC030003 (Jun. 13, 2003)

Volume III

None

Volume IV

None

Volume V

None

Volume VI

Colorado
- CO030001 (Jun. 13, 2003)
- CO030002 (Jun. 13, 2003)
- CO030003 (Jun. 13, 2003)
- CO030004 (Jun. 13, 2003)
- CO030005 (Jun. 13, 2003)
- CO030006 (Jun. 13, 2003)
- CO030007 (Jun. 13, 2003)
- CO030008 (Jun. 13, 2003)
- CO030009 (Jun. 13, 2003)
- CO030010 (Jun. 13, 2003)
- CO030011 (Jun. 13, 2003)
- CO030012 (Jun. 13, 2003)
- CO030013 (Jun. 13, 2003)
- CO030016 (Jun. 13, 2003)

South Dakota
- SD030005 (Jun. 13, 2003)
- SD030009 (Jun. 13, 2003)

Volume VII

None

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under the Davis-Bacon And Related Acts''. This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts, are available electronically at no cost on the Government Printing Office site at *http://www.access.gpo.gov/davisbacon.* They are also available electronically by subscription to the Davis-Bacon Online Service *(http://davisbacon.fedworld.gov)* of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate Volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, This 25th Day of September, 2003.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 03–24804 Filed 10–2–03; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL COUNCIL ON DISABILITY

Youth Advisory Committee Meeting (Conference Call)

TIME AND DATE: 4:30 p.m. e.s.t., October 27, 2003.

PLACE: National Council on Disability, 1331 F Street, NW., Suite 850, Washington, DC 20004.

AGENCY: National Council on Disability (NCD).

STATUS: All parts of this conference call will be open to the public. Those interested in participating in this conference call should contact the appropriate staff member listed below.

AGENDA: Roll call, announcements, reports, new business, adjournment.

CONTACT PERSON FOR MORE INFORMATION: Geraldine Drake Hawkins, Ph.D., Program Specialist, National Council on Disability, 1331 F Street, NW., Suite 850, Washington, DC 20004; 202–272–2004 (voice), 202–272–2074 (TTY), 202–272–2022 (fax), *ghawkins@ncd.gov* (e-mail).

YOUTH ADVISORY COMMITTEE MISSION: The purpose of NCD's Youth Advisory Committee is to provide input into NCD activities consistent with the values and goals of the Americans with Disabilities Act.

Dated: September 30, 2003.

Ethel D. Briggs,

Executive Director.

[FR Doc. 03–25102 Filed 10–2–03; 8:45 am]

BILLING CODE 6820–MA–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extension

Rule 11Ac1–1—SEC File No. 270–404—OMB Control No. 3235–0461.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for extension of the previously approved collection of information discussed below.

Rule 11Ac1–1, Dissemination of Quotations, contains two related collections of information necessary to disseminate market makers' published quotations to buy and sell securities to the public. The first collection of information is found in Rule 11Ac1–1(c) 17 CFR 11Ac1–1(c). This reporting requirement obligates each ''responsible broker or dealer,'' as defined under the rule, to communicate to its exchange or association its best bids, best offers, and quotation sizes for any subject security, as defined under the rule. The second collection of information is found in Rule 11Ac1–1(b) 17 CFR11Ac1–1(b). This reporting requirement obligates each exchange and association to make available to quotation vendors for dissemination to the public the best bid, best offer, and aggregate quotation size for each subject security.[1] Brokers, dealers, other market participants, and members of the public rely on published quotation information to determine the best price and market for execution of customer orders.

It is anticipated that 721 respondents, consisting of 180 exchange specialists and 541 OTC market makers, will make 246,788,000 total annual responses pursuant to Rule 11Ac1–1, resulting in an annual aggregate burden of approximately 205,486 hours.

Written comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collections of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of collections of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

Dated: September 24, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–25115 Filed 10–2–03; 8:45 am]

BILLING CODE 8010–01–P

[1] A third requirement under the Rule 11Ac1–1, as amended at 17 CFR 11Ac1–1(c)(5), gives electronic communications networks (''ECNs'') the option of reporting to an exchange or association for public dissemination, on behalf of their OTC market maker or exchange specialist customers, the best priced orders and the full size for such orders entered by market makers, to satisfy such market makers' reporting obligation under Rule 11Ac1–1(c). Because this reporting requirement is an alternative method of meeting the market makers' reporting obligation, and because it is directed to nine or fewer persons (ECNs), this collection of information is not subject to OMB review under the Paperwork Reduction Act.

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of October 6, 2003:

A Closed Meeting will be held on Tuesday, October 7, 2003 at 2 p.m., and an Open Meeting will be held on Wednesday, October 8, 2003 at 9:30 a.m., in Room 1C30, the William O. Douglas Room.

Commissioner Atkins, as duty officer, determined that no earlier notice thereof was possible.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), (9)(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), (9)(ii) and (10), permit consideration of the

scheduled matters at the Closed Meeting.

The subject matter of the Closed Meeting scheduled for Tuesday, October 7, 2003 will be:

Institution and settlement of administrative proceedings of an enforcement nature;
Institution and settlement of injunctive actions;
Formal orders of investigation;
Adjudicatory matters; and
Post-argument discussion.

The subject matter of the Open Meeting scheduled for Wednesday, October 8, 2003 will be:

1. The Commission will consider whether to propose amendments to certain Rules, Schedules and Forms under the Securities Exchange Act of 1934 and the Investment Company Act of 1940 that would require companies, under certain circumstances, to include in their proxy materials security holder nominees for election as director.

For further information, please contact Lillian Cummins Brown at (202) 942–2900.

2. The Commission will consider whether to propose rule amendments and new rules under the Securities Exchange Act of 1934 (the ''Exchange Act'') that would establish two separate voluntary regulatory frameworks for the Commission to supervise broker-dealers and their affiliates on a consolidated basis.

One proposal would establish an alternative method to compute certain net capital charges for broker-dealers that are part of a holding company that manages risks on a group-wide basis and whose holding company consents to group-wide Commission supervision. The broker-dealer's holding company and its affiliates, if subject to Commission supervision, would be referred to as a ''consolidated supervised entity'' or ''CSE.'' The alternative method the broker-dealer would be allowed to use to compute certain market and credit risk capital charges would involve the use of internal mathematical models that the broker-dealer uses to measure its risk. The CSE would be required to comply with rules regarding its group-wide internal risk management control system and would have to periodically provide the Commission with consolidated computations of allowable capital and risk allowances (or other capital assessment) consistent with the Basel Standards. Commission supervision of the CSE would include recordkeeping, reporting, and examination requirements. Modifications to some of these requirements would be available for functionally regulated affiliates.

The other proposal would implement Section 17(i) of the Exchange Act, which created a new structure for consolidated supervision of holding companies of broker-dealers, or ''investment bank holding companies'' (''IBHCs'') and their affiliates. Pursuant to the Act, an IBHC that meets certain, specified criteria may voluntarily register with the Commission as a supervised investment bank holding company (''SIBHC'') and be subject to supervision on a group-wide basis. Pursuant to the proposed rules, registration as an SIBHC is limited to IBHCs that are not affiliated with certain types of banks and that have a substantial presence in the securities markets. The proposed rules would provide an IBHC with an application process to become supervised by the Commission as an SIBHC, and would establish regulatory requirements for those SIBHCs. Commission supervision of an SIBHC would include recordkeeping, reporting and examination requirements. Further, the SIBHC also would be required to comply with rules regarding its group-wide internal risk management control system and would have to periodically provide the Commission with a consolidated computations of allowable capital and risk allowances (or other capital assessment) consistent with Basel Standards.

The proposals would also include technical and conforming amendments to the risk assessment rules (Exchange Act Rules 17h–1T and 17h–2T). In addition, the SIBHC proposal would adjust the audit requirements for OTC derivative dealers to allow accountants to use agreed-upon procedures when conducting audits of risk management control systems.

For further information, please contact Lourdes Gonzalez or Linda Stamp Sundberg at (202) 942–0073 or Bonnie Gauch (202) 942–0765 or Rose Russo Wells as (202) 942–0143.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942–7070.

Dated: September 30, 2003.

Jonathan G. Katz,

Secretary.

[FR Doc. 03–25248 Filed 10–1–03; 11:27 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48555; File No. SR–Amex–2003–54]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the American Stock Exchange LLC Relating to the Limitation of Liability of the Options Clearing Corporation to Exchange Members

September 29, 2003.

On May 30, 2003, the American Stock Exchange LLC (''Amex'' or ''Exchange'') submitted to the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish Amex Rule 945. This Rule would provide that the Options Clearing Corporation (''OCC'') would have no liability to Amex members, with respect to the use, non-use, or inability to use the Options Intermarket Linkage (''Linkage''), and that Linkage is a facility or service afforded by the Exchange for the purposes of Article IV, Section 1(e) of the Amex Constitution. The proposed rule change was published for comment in the **Federal Register** on August 19, 2003.[3] The Commission received no comments on the proposed rule change. This order approves the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[4] and, in particular, the requirements of Section 6(b) of the Act[5] and the rules and regulations thereunder. The Commission finds that the rule change is consistent with Section 6(b)(5) of the Act,[6] which requires, among other things, that the rules of the Exchange be designed to foster cooperation and coordination with persons engaged in regulation, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission notes that the Amex, along with the other exchanges that are Participants in the Linkage Plan, entered into an agreement with the OCC, which operates the central core or ''hub'' to and from which all Linkage orders are routed.[7] In the Agreement, the Amex committed to file a proposed rule change with the Commission that would limit the liability of the OCC to Amex members.

The Commission believes that this proposed rule change should foster cooperation and promote a relationship between the Amex and the OCC that is conducive to the effective operation of the Linkage. Further, the Commission believes that the Amex's proposal to characterize the Linkage as a facility or service of the Exchange for the purposes

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 48319 (August 12, 2003), 68 FR 49825.

[4] In approving this proposed rule change the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] Linkage Project and Facilities Management Agreement (''the Agreement'') (January 30, 2003).

of Article IV, Section 1(e) of the Amex Constitution is reasonable.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (File No. SR–Amex–2003–54) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–25117 Filed 10–2–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48557; File No. SR–Amex–2003–71]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the American Stock Exchange LLC Relating to the Elimination of the Minor Floor Violation Disciplinary Committee

September 29, 2003.

On July 25, 2003, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to eliminate the Amex's Minor Floor Violation Disciplinary Committee (''MFVDC''). Under the proposed rule change, the responsibilities of the MFVDC will be transferred to the Exchange's Enforcement Department.

The proposed rule change was published for comment in the **Federal Register** on August 28, 2003.[3] The Commission received no comments on the proposal.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[4] In particular, the Commission believes that the proposed rule change is consistent with Section 6(b)(6)[5] of the Act which requires, among other things, that the Exchange's rules provide that its members and persons associated with its members be appropriately disciplined for violations of the federal securities laws and the Exchange's rules. The Commission believes that consolidating the responsibility for initiating disciplinary action under Amex's minor rule violation plan exclusively in the Exchange's Enforcement Department should provide a more consistent process for the disciplining of Amex's members and persons associated with its members.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[6] that the proposed rule change (SR–Amex–2003–71) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–25118 Filed 10–2–03; 8:45 am]

BILLING CODE 8010–01–P

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See Securities Exchange Act Release No. 48382 (August 20, 2003), 68 FR 51818.

[4] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f(b)(6).

[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48553; File No. SR–NASD–2003–144]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Extend, for an Additional Six-Month Period, a Pilot Rule Regarding Waiver of California Arbitrator Disclosure Standards

September 26, 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 September 24, 2003, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by NASD. NASD has designated the proposed rule change as constituting a ''non-controversial'' rule change pursuant to Rule 19b–4(f)(6) under the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD is proposing to extend the pilot rule in IM–10100(f) of the NASD Code of Arbitration Procedure, which requires industry parties in arbitration to waive application of contested California arbitrator disclosure standards, upon the request of customers, and associated persons with claims against other industry parties, for a six-month period.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In July 2002, the California Judicial Commission adopted a set of rules, ''Ethics Standards for Neutral Arbitrators in Contractual Arbitration'' (''California Standards''),[4] governing ethical standards for arbitrators. The rules were designed to address conflicts of interest in private arbitration forums that are not part of a federal regulatory system overseen on a uniform, national basis by the SEC. The California Standards imposed disclosure requirements on arbitrators that conflict with the disclosure rules of NASD and the New York Stock Exchange (''NYSE''). Because NASD could not both administer its arbitration program in accordance with its own rules and comply with the new California Standards at the same time, NASD initially suspended the appointment of arbitrators in cases in California, but offered parties several options for pursuing their cases.[5]

In November 2002, NASD and NYSE filed a lawsuit in federal district court

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] California Rules of Court, Division VI of the Appendix, entitled, ''Ethics Standards for Neutral Arbitrators in Contractual Arbitration.''

[5] These measures included providing venue changes for arbitration cases, using non-California arbitrators when appropriate, and waiving administrative fees for NASD-sponsored mediations.

seeking a declaratory judgment that the California Standards are inapplicable to arbitration forums sponsored by self-regulatory organizations (''SROs'').[6] That litigation is currently pending on appeal. Since then, other lawsuits relating to the application of the California Standards to SRO-sponsored arbitration have been filed, several of which are also still pending.

To allow arbitrations to proceed in California while the litigation was pending, NASD implemented a pilot rule to require all industry parties (member firms and associated persons) to waive application of the California Standards to the case, if all the parties in the case who are customers, or associated persons with claims against industry parties, have done so.[7] In such cases, the arbitration proceeds under the NASD Code of Arbitration Procedure, which already contains extensive disclosure requirements and provisions for challenging arbitrators with potential conflicts of interest.[8]

The pilot rule, which was originally approved for six months on September 26, 2002, was extended in March 2003, and is now due to expire on September 30, 2003. Because the pending litigation regarding the California Standards is unlikely to be resolved by September 30, 2003, NASD requests that the effectiveness of the pilot rule be extended through March 31, 2004, in order to prevent NASD from having to suspend administration of cases covered by the pilot rule.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[9] which requires, among other things, that NASD's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that expediting the appointment of arbitrators under the waiver rule, at the request of customers and associated persons with claims against industry respondents will allow those parties to exercise their contractual rights to proceed in arbitration in California, notwithstanding the confusion caused by the disputed California Standards.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

NASD has designated the proposed rule change as one that: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate. Therefore, the foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further the purposes of the Act.

Pursuant to Rule 19b–4(f)(6)(iii) under the Act,[12] the proposal may not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, and the self-regulatory organization must file notice of its intent to file the proposed rule change at least five business days beforehand. NASD has requested that the Commission waive the five-day pre-filing requirement and the 30-day operative delay so that the proposed rule change will become immediately effective upon filing.

The Commission believes that waiving the five-day pre-filing provision and the 30-day operative delay is consistent with the protection of investors and the public interest.[13] Waiving the pre-filing requirement and accelerating the operative date will merely extend a pilot program that is designed to provide investors, and associated persons with claims against industry respondents, with a mechanism to resolve their disputes. During the period of this extension, the Commission and NASD will continue to monitor the status of the previously discussed litigation. For these reasons, the Commission designates the proposed rule change as effective and operative on September 30, 2003.

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 NASD. All submissions should refer to File No. SR–NASD–2003–144 and should be submitted by October 24, 2003.

[6] *See* Motion for Declaratory Judgment, *NASD Dispute Resolution, Inc. and New York Stock Exchange, Inc. v. Judicial Council of California*, filed in the United States District Court for the Northern District of California, No. C 02 3486 SBA (July 22, 2002), available on the NASD Web site at *http://www.nasdadr.com/pdf-text/072202_ca_complaint.pdf*.

[7] Originally, the pilot rule only applied to claims by customers, or by associated persons asserting a statutory employment discrimination claim against a member, and required a written waiver by the industry respondents. In July 2003, NASD expanded the scope of the pilot rule to include all claims by associated persons against another associated person or a member. At the same time, the rule was amended to provide that when a customer, or an associated person with a claim against a member or another associated person, agrees to waive the application of the California Standards, all respondents that are members or associated persons will be deemed to have waived the application of the standards as well. The July 2003 amendment also clarified that the pilot rule applies to terminated members and associated persons. *See* Securities Exchange Act Rel. No. 48187 (July 16, 2003), 68 FR 43553 (July 23, 2003) (File No. SR–NASD–2003–106).

[8] The NYSE has a similar rule; Rule 600(g).

[9] 15 U.S.C. 78o–3(b)(6).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6)(iii).

[13] For purposes of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–25116 Filed 10–2–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48552; File No. SR–NYSE–2003–28]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Arbitration

September 26, 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 September 25, 2003, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NYSE.[3] NYSE filed the proposed rule change pursuant to section 19(b)(3)(A) of the Act[4] and Rule 19b–4(f)(6) thereunder,[5] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of an extension, until March 31, 2004, of Rule 600(g).

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 NYSE 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 is intended to extend until March 31, 2004, Rule 600(g), a pilot program that was initially approved by the Commission on November 12, 2002[6] for a six-month period, and which was then extended until September 30, 2003.[7]

The Exchange's statement of purpose is contained in the Commission's Approval Order. In that Approval Order the Commission stated:

> The Exchange's Director of Arbitration will monitor the progress of the above described litigation [*NASD Dispute Resolution, Inc. and New York Stock Exchange, Inc.* v. *Judicial Council of California,* No. C 02 3485 (N.D. Cal.)] and determine whether there is a continuing need for the waiver option.[8]

The above litigation, in which the Exchange and NASD Dispute Resolution, Inc. sought a declaratory judgment that the Ethics Standards for Neutral Arbitrators in Contractual Arbitrations (the ''California Standards'') are preempted by federal law, has not been concluded. On November 12, 2002, Judge Samuel Conti dismissed the action on Eleventh Amendment grounds.[9] A Notice of Appeal from Judge Conti's decision has been filed with the United States Court of Appeals for the Ninth Circuit.[10] The Exchange's Director of Arbitration has determined that, in the absence of a final judicial determination or legislative resolution of the preemption issue, there is a continuing need for the waiver option.

2. Statutory Basis

The Exchange states that the proposed changes are consistent with section 6(b)(5) of the Act[11] in that they promote just and equitable principles of trade by ensuring that members and member organizations and the public have a fair and impartial forum for the resolution of their disputes.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The NYSE has stated that because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days (or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest), it has become effective pursuant to section 19(b)(3)(A) of the Act[12] and Rule 19b–4(f)(6) thereunder.[13] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that the action is necessary or appropriate in the public

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Commission staff made non-substantive changes to the description of the proposed rule change with the permission of the NYSE. Telephone conversation between Robert Clemente, Director—Arbitration, NYSE, and Andrew Shipe, Special Counsel, Division of Market Regulation, Commission, September 26, 2003.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(6).

[6] Release No. 34–46816 (November 12, 2002), 67 FR 69793 (November 19, 2002) (SR–NYSE–2002–56).

[7] Release No. 34–47836 (May 12, 2003), 68 FR 27608 (May 20, 2003) (SR–NYSE–2003–16).

[8] Release No. 34–46816 (November 12, 2002), 67 FR 69793, 69794 (November 19, 2002) (SR–NYSE–2002–56).

[9] *NASD Dispute Resolution, Inc. and New York Stock Exchange, Inc.* v. *Judicial Council of California,* No. C 02 3485 (N.D. Cal.).

[10] In another district court decision, *Mayo* v. *Dean Witter Reynolds, Inc., Morgan Stanley Dean Witter & Co. dba Morgan Stanley Dean Witter, and Does 1–50,* No. C–01–20336 JF, 2003 WL 1922963 (N.D. Cal., April 22, 2003), Judge Jeremy Fogel held that application of the California Standards to the Exchange and other self-regulatory organizations is preempted by the Act, the comprehensive system of federal regulation of the securities industry established pursuant to the Act, and the Federal Arbitration Act. The *Mayo* decision was not appealed. Since the decision in *Mayo,* the question of the applicability of the California Standards to SROs has been presented in another case in federal court in California, *Credit Suisse First Boston Corp.* v. *Grunwald,* No. C 02–2051 SBA (N.D. Cal. Mar. 31, 2003). The *Grunwald* court concluded that the California Standards cannot apply to SRO-appointed arbitrators because such arbitrators do not fall within the statutory definition of ''neutral arbitrators.'' The appeal in *Grunwald* is fully briefed, and the Ninth Circuit is considering it on an expedited basis. The Commission and the Judicial Council submitted *amicus* briefs in the Ninth Circuit, and NASD Dispute Resolution and NYSE have moved to intervene on appeal. The appeal from Judge Conti's decision in *NASD Dispute Resolution, Inc. and New York Stock Exchange, Inc.* v. *Judicial Council of California* is currently stayed pending a decision in *Grunwald.*

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

interest, for the protection of investors, or would otherwise further the purposes of the Act.

Pursuant to Rule 19b–4(f)(6)(iii) under the Act,[14] the proposal may not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, and the self-regulatory organization must file notice of its intent to file the proposed rule change at least five business days beforehand. The Exchange has requested that the Commission waive the five-day pre-filing requirement and the 30-day operative delay so that the proposed rule change will become immediately effective upon filing.

The Commission believes that waiving the five-day pre-filing provision and the 30-day operative delay is consistent with the protection of investors and the public interest.[15] Waiving the pre-filing requirement and accelerating the operative date will merely extend a pilot program 1 that is designed to provide investors with a mechanism to resolve disputes with broker—dealers. During the period of this extension, the Commission and NYSE will continue to monitor the status of the previously discussed litigation. For these reasons, the Commission designates the proposed rule change as effective and operative immediately.

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 NYSE. All submissions should refer to File No. NYSE–2003–28 and should be submitted by October 24, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–25074 Filed 10–2–03; 8:45 am]

BILLING CODE 8010–01–P

[14] 17 CFR 240.19b–4(f)(6)(iii).

[15] For purposes of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48547; File No. SR–NYSE–2003–24]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the New York Stock Exchange, Inc. to Reduce Initial and Annual Branch Office Registration Fees, Retroactive to January 1, 2003, Charged to Member Organizations With More Than One Thousand Branch Offices

September 25, 2003.

Pursuant to section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Exchange Act'') and Rule 19b–4[2] thereunder, notice is hereby given that on August 21, 2003, the New York Stock Exchange, Inc. (''NYSE'' or the ''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 8, 2003, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Changes

The Exchange proposes to amend its 2003 Price List to reduce its branch office registration fees for member organizations with more than one thousand branch offices.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Darla C. Stuckey, Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated September 5, 2003 (''Amendment No. 1''). In Amendment No. 1, the Exchange replaced the original rule filing in its entirety, converted it from a 19(b)(3)(A) filing to a 19(b)(2) filing, and requested accelerated approval.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange increased its registration and maintenance fees applicable to member organization branch offices, effective January 1, 2003.[4] The Exchange charges an initial fee upon the opening of a new branch office and an annual maintenance fee for each active branch office. A three-tiered fee structure is used for assessment of such fees in which a stepped-down rate is charged based on the applicable tier level. This structure provides an incremental reduction in fees for those branch offices that exceed the level of each breakpoint.

Prior to the January 1, 2003 increases, the following fee schedule was in effect for both initial and annual maintenance fees:

- $250 for each of the first 250 branch offices;
- $150 for each of the next 250 branch offices;
- $125 for each branch office over 500.

The January 1, 2003 fee structure amendments resulted in the following schedule, which is currently in effect:

- $350 for each of the first 1,000 branch offices;
- $250 for each of the next 2,000 branch offices;
- $225 for each branch office over 3,000.

Some member organizations have raised concerns regarding the current branch office fee schedule, contending it is unduly burdensome for certain business models, which have more offices than the average member firm but only one or two persons staffing each office.[5]

[4] *See* Securities Exchange Act Release No. 47174; 68 FR 2606 (January 17, 2003) (SR–NYSE–2002–66).

[5] Telephone call between Leah Mesfin, Attorney, Division of Market Regulation, Commission, and Mary Ann Furlong, Director, Rule and Interpretive Standards, NYSE on September 24, 2003.

In response to these concerns, the Exchange proposes reductions of initial and annual branch office fees, retroactive to January 1, 2003, as follows:

- $350 for each of the first 1,000 branch offices (unchanged);
- $150 for each of the next 2,000 branch offices (reduced from $250);
- $125 for each branch office over 3,000 (reduced from $225).

2. Statutory Basis

The proposed rule change is consistent with the requirement under section 6(b)(4)[6] of the Exchange Act, which require that an exchange have rules that provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposal does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange did not receive or solicit any written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change 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 Exchange. All submissions should refer to File No. SR–NYSE–2003–24 and should be submitted by October 24, 2003.

For the Commission, by the Division of Market Regulation, pursuant to the delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–25075 Filed 10–2–03; 8:45 am]

BILLING CODE 8010–01–P

[6] 15 U.S.C. 78f(b)(4).

[7] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 4504]

30-Day Notice of Proposed Information Collection: Form DSP–122, Supplemental Registration for the Diversity Immigrant Visa Program; OMB Control Number 1405–0098

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995. Comments should be submitted to OMB within 30 days of the publication of this notice.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Revision of Currently Approved Collection.

Originating Office: Bureau of Consular Affairs, Department of State (CA/VO).

Title of Information Collection: Supplemental Registration For The Diversity Immigrant Visa Program.

Frequency: On occasion.

Form Number: DSP–122.

Respondents: Aliens applying for a Diversity Visa.

Estimated Number of Respondents: 47,000 per year.

Average Hours Per Response: .5 hours.

Total Estimated Burden: 23,500 hours per year.

Public comments are being solicited to permit the agency to:

- Evaluate whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR ADDITIONAL INFORMATION: Copies of the proposed information collection and supporting documents may be obtained from Brendan Mullarkey of the Office of Visa Services, U.S. Department of State, 2401 E St., NW., RM L–703, Washington, DC 20520, who may be reached on (202) 663–1166. Public comments and questions should be directed to the State Department Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20530, who may be reached on (202) 395–3897.

Dated: September 26, 2003.

Janice L. Jacobs,

Deputy Assistant Secretary of State for Visa Services, Bureau of Consular Affairs, Department of State.

[FR Doc. 03–25168 Filed 10–2–03; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

Office of Visa Services

[Public Notice 4506]

Notice of Information Collection Under Emergency Review: Form DS–5501, Electronic Diversity Visa Entry Form; OMB Control Number 1405–xxxx

ACTION: Notice.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the emergency review procedures of the Paperwork Reduction Act of 1995. The following summarizes the information collection proposal to be submitted to OMB:

Type of Request: Emergency Review—New Collection.

Originating Office: Bureau of Consular Affairs, Department of State (CA/VO).

Title of Information Collection: Electronic Diversity Visa Entry Form.

Frequency: Once per respondent.

Form Number: DS–5501.

Respondents: Aliens entering the Diversity Visa Lottery.

Estimated Number of Respondents: 8 million per year.

Average Hours Per Response: .5 hours.

Total Estimated Burden: 4 million hours per year.

The proposed information collection is published to obtain comments from the public and affected agencies. Emergency review and approval of this collection by OMB has been requested by October 23, 2003. If granted, the emergency approval is only valid for 180 days.Comments should be directed to the State Department Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20530, who may be reached at 202–395–3897.

During the first 60 days of this same period a regular review of this information collection is also being undertaken. Comments are encouraged and will be accepted until 60 days from the date that this notice is published in the **Federal Register**. The agency requests written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments are being solicited to permit the agency to:

- Evaluate whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER INFORMATION CONTACT: Copies of public comments, or requests for additional information regarding the collection listed in this notice should be directed to Brendan Mullarkey of the Office of Visa Services, U.S. Department of State, 2401 E St., NW., RM L–703, Washington, DC 20520, who may be reached at (202) 663–1166.

Dated: September 26, 2003.

Janice L. Jacobs,

Deputy Assistant Secretary of State for Visa Services, Bureau of Consular Affairs, Department of State.

[FR Doc. 03–25170 Filed 10–2–03; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice 4503]

Bureau of Educational and Cultural Affairs Request for Grant Proposals: Congress-Bundestag Youth Exchange Program

SUMMARY: The Office of Citizen Exchanges, Youth Programs Division (ECA/PE/C/PY), of the Department of State's Bureau of Educational and Cultural Affairs announces an open competition for the Congress-Bundestag Youth Exchange Program (CBYX). Public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3) may submit proposals to facilitate educational exchanges between American and German high school students and young professionals.

Program Information

Overview: The CBYX program supports the exchange of American and German young people in order to sustain and strengthen German-American friendship based on common values of democracy and to convey lasting personal and institutional relationships to the successor generation. The primary objective of the program is to encourage American and German youth to learn about each other's society and culture through educational exchange. Additional goals for this competition include a renewed effort to promote the participants' roles as young ambassadors and the impact they can have on US-German relations, and to strengthen the linkages between US Representatives and their Bundestag counterparts. The program provides a full scholarship for an academic year experience of living and studying in the host country.

The Department of State, Bureau of Educational and Cultural Affairs administers the CBYX program in the U.S. The program is known in Germany as the Parlamentarisches Patenschafts-Programm (PPP), and is administered by the German Bundestag Administrative Office, PB4.

Inaugurated in 1983 through a bilateral agreement between the U.S. Congress and the German Bundestag, each government provides funding to exchange organizations through assistance awards for the costs of participant recruitment and selection, international airfare, orientation and debriefing, and hosting support for the respective exchange participants.

The U.S.-German agreement calls for an open grants competition every four years, and PB4 is holding a simultaneous open competition to select the German counterpart organizations that will manage the program in Germany. Up to five German high school exchange organizations will be partnered with five American high school exchange organizations, and one German vocational and one German young professionals exchange organization will be paired with American exchange organizations.

Organizations that are successful in this competition will be provided assistance awards in FY2005 to administer the recruitment and selection of participants for academic year 2005–06. Organizations for each component will be eligible for renewal awards in FY2006, 2007, 2008 for exchanges through academic year 2008–09. All assistance awards will be subject to availability of funds. (*Please note:* At the time of publication, funds have not been appropriated to support this program. As is the case with all Bureau assistance awards, final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.)

The actual number of participants exchanged each year is dependent on the amount of funding made available by the U.S. Congress and the German Bundestag. Though Congress has not yet determined the budget level for FY2005, the competition for program year 2005–06 will be based on up to 350 American and 350 German participants. Throughout the four-year grant cycle, representatives of both governments will *hold annual discussions to determine the final participant numbers for each academic year.*

Participants are chosen according to procedures and criteria established by each government. In the U.S. the CBYX program has four components.

1. *High School Component:* This component may provide up to 250 scholarships for a one-year educational and cultural homestay experience in Germany to American high school students ages 15–18. (The high school exchange is reciprocal for up to 250 American and 250 German students annually.) High school exchange organizations are invited to bid on conducting merit-based competitions among American high school students

in one or more of five designated regions of the United States, as follows:

Northeast: Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Ohio, Pennsylvania, Washington, DC, Delaware, Maryland.

Southeast: Arkansas, Louisiana, Mississippi, Alabama, Kentucky, Tennessee, Virginia, West Virginia, North Carolina, South Carolina, Georgia, Florida, Puerto Rico.

Central States: Indiana, Illinois, Michigan, Minnesota, Wisconsin, Iowa, Missouri, Nebraska.

Southwest: Kansas, Texas, Oklahoma, Colorado, New Mexico, Utah, Arizona, Southern California* (*the northern border of this region includes the counties of Monterey, San Benito, Fresno, and Inyo).

Pacific/Northwest: Alaska, Hawaii, Washington, Oregon, Idaho, Montana, Wyoming, Nevada, North Dakota, South Dakota, Northern California* (*the southern border of this region includes the counties of Santa Cruz, Santa Clara, Merced, Madera, and Mono).

American high school exchange organizations may bid on more than one region, indicating the most preferred area(s) in priority order for up to 50 American high school students per region. A maximum of five organizations may be selected to conduct all aspects of the competition in one of each of the five regions. In coordination with its German partner organization, high school organizations may host up to 100 German and American students each.

Organizations that are awarded a grant will conduct advertising, recruitment, processing of applications, screening, selection, pre-departure orientations and debriefings, and management of all administrative and logistical matters including domestic and international travel.

In the host country, American and German partner organizations will coordinate arrival and re-entry orientation for the respective exchange students, placement of the students in host families and schools (nationwide), arrange program enrichment activities, conduct the recruitment, screening, selection and orientation of host-families, provide program monitoring, supervision and counseling to students and host families, and manage all administrative and logistical matters including in-country travel and health and accident insurance. Organizations should secure all host family and school placements at least two weeks prior to the German students' arrival in the U.S. Organizations will be required to submit to the program office a list of these placements no later than 30 days after the students' arrival.

2. *Vocational Component:* This component provides scholarships to graduating American high-school seniors with a vocational specialization for a one-year professional study and training experience in their fields of interest in Germany. One organization will be selected to conduct all aspects of the nationwide selection competition in the U.S. for up to 25 American students and programming, including advertising, recruitment, processing of applications, screening, selection, pre-departure orientations and debriefings, and management of all administrative and logistical matters including domestic and international travel. (During the selection process the grantee is encouraged to work with vocational educational offices at the state level, as well as administrators of secondary schools with vocational education curriculum.)

The German partner organization chosen for a grant by the Bundestag Administrative Office (PB4) will coordinate arrival and re-entry orientation for the students and their placement in host families and schools, arrange a practicum in the participants' field of study, arrange program enrichment activities, and conduct the recruitment, screening, selection and orientation of host families, provide program monitoring, supervision and counseling to students and host families, and manage all administrative and logistical matters including in-country travel and health and accident insurance.

3. *Young Professional Component:* This component provides scholarships for a one-year professional study and training experience in the host country in business, technical, vocational, and agricultural fields to young American and German students ages 18–24. One organization will be selected to conduct all aspects of programming for up to 75 American and 100 German Young Professionals including the nationwide competition for the Americans and placement of the German students in American homes and schools as well as advertising, recruitment, processing of applications, screening, selection and pre-departure orientations and debriefings, and management of all administrative and logistical matters including domestic and international travel.

In the host country, the American and German partner organizations will coordinate arrival and re-entry orientation for the students, the placement of the students in host families (or other suitable living quarters) and schools (colleges/universities), arrange a practicum in the participants' field of study, arrange program enrichment activities, and conduct the recruitment, screening, selection and orientation of host families, provide program monitoring, supervision and counseling to students and host families, and manage all administrative and logistical matters including in-country travel and health and accident insurance.

In the U.S., each German young professional participant will be placed in a two- or four-year college for one semester of full-time study or a minimum of 12 credit hours (which may include an English class) throughout the academic year. Each applicant is encouraged to seek tuition waivers and cost sharing with cooperating colleges. The organization will coordinate with each participant to assure that his/her practicum is based on a prospectus of the specific skills and functions that will be mastered and that there is a structured learning component that enables the participant to gain a perspective on the overall operation of the business. The selected organization will also coordinate a six-week Congressional internship on Capitol Hill or in the state office for up to five German young professionals.

A stipend for some meals, incidentals and reasonable local transportation expenses may be included in the budget, but it is anticipated that the stipend would be substantially reduced or eliminated during the second half of the program when the participants receive allowances for living expenses from the firms or agencies hosting their practicum. The current stipend range is $250 to $300 per the regional cost of living. Where possible, hosting arrangements should be found that do not require subsidization.

4. *Administrative Supplemental:* One or more organizations will be awarded administrative funds to produce materials for program advertisement and recruitment for the high school component, maintain the CBYX Scholarship Web site, and to maintain an alumni database for all CBYX participants.

One of the organizations selected for the high school component will produce program specific informational materials for the high school component. Each organization selected for the high school component will distribute the materials to a wide audience within its appointed region, including public and private secondary schools, the media, and key networks such as the American Association of Teachers of German. (Innovative

methods of publicizing the program are welcome, within funding limitations. Organizations are encouraged to utilize their volunteer networks and alumni to promote the program.) The ''administrative'' organization will coordinate data/input from the high school organizations for production of the promotional materials. The organization will set up and maintain a web-based listing of CBYX participants/alumni designed to centrally harness alumni and encourage activities beyond their participation in the program.

Each year all grantee organizations will submit to the Department of State program office, at least 30 days after departure/arrival data lists of all current American and German participants with U.S. addresses and corresponding Congressional representatives/districts, and update the information periodically throughout the year.

Please see the POGI (Project Objectives, Goals, and Implementation) for further details and guidance regarding each of the program components and the administrative supplemental.

Guidelines: Prior German language skills are not required for American participants. The German partner organizations will provide up to two months of intensive language training, which is covered by German Government funds, to American participants upon their arrival in Germany. German participants are expected to be sufficiently proficient in English and therefore will not require (but may elect) an English language course as part of their regular studies. (No Bureau funding will be provided for English training under this program.)

Organizations must provide comprehensive pre-departure preparation and orientations that will thoroughly prepare American students for their year abroad. The pre-departure orientation for American students and the debriefing for German students normally take place in Washington, DC and include CBYX students only. The Washington orientations are designed to introduce the participants to the Federal government and issues in the U.S.-German relationship, and may be subcontracted out by the grantee organizations.

If organizations opt to conduct the American students' pre-departure orientation in another state, the orientations must include materials and activities that will provide the students with a thorough knowledge of the program and role of the scholarship as it relates to U.S.-German relations. The program guidelines are highlighted in the POGI section of the solicitation package.

Applicants may include other program elements such as mid-year enrichment and follow-on activities in their proposals, but should bear in mind that funding is limited. Mid-year enrichment activities may include informal local or regional gatherings, volunteer community projects, and volunteer internships in local congressional offices.

For follow-on activities organizations are encouraged to involve former participants in the organization's alumni activities as well as CBYX-specific activities by volunteering in various capacities such as promoting the program in their communities and/or serving on the selection committees or as local or regional representatives. Organizations should also utilize their individual web sites and newsletters to track and/or keep in touch with alumni.

To be eligible for consideration in this competition an organization must:

1. Be legally incorporated in the U.S. as described in Internal Revenue Code section 26 U.S.C. 501(c)(3), and identify a legally incorporated affiliate in Germany and/or indicate its willingness to be partnered with a German organization approved by PB4 and the Bureau.

2. Have a not-for-profit status 501(c), as determined by the Internal Revenue Service; the German affiliate must also be not-for-profit (gemeinnuetzige).

3. Be financially solvent, have a demonstrated track record of responsible fiscal management and be able to meet the accounting and reporting requirements for Bureau grants.

4. Have a minimum of four years of experience in conducting long-term exchange programs (of at least nine months duration) between the United States and Germany.

5. Have well-established volunteer and host family networks to carry out various aspects of the program; regional representatives must be situated in such a way to handle expeditiously any problems that arise regarding host family accommodations, schooling and language problems, and difficulties concerning internships.

Programs must comply with J–1 visa regulations. Please refer to Solicitation Package for further information.

Budget Guidelines

Applicants must submit a comprehensive budget projection for academic year 2005–06. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification. Costs for U.S. and German students are to be listed separately.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Announcement Title and Number: All correspondence with the Bureau concerning this RFGP should reference the above title and number *ECA/PE/C/PY–04–14.*

FOR FURTHER INFORMATION CONTACT: The Office of Citizen Exchanges, Youth Programs Division, ECA/PE/C/PY, Room 568, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547, (202) 619–6299, fax: 619–5311, *sjones@pd.state.gov,* to request a Solicitation Package. The Solicitation Package contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation. Please specify Bureau Program Officer Shalita Jones on all other inquiries and correspondence.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

To Download a Solicitation Package Via Internet

The entire Solicitation Package may be downloaded from the Bureau's Web-site at *http://exchanges.state.gov/education/RFGPs.* Please read all information before downloading.

New OMB Requirement

An OMB policy directive published in the **Federal Register** on Friday, June 27, 2003, requires that all organizations applying for Federal grants or cooperative agreements must provide a Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS) number when applying for all Federal grants or cooperative agreements on or after October 1, 2003. The complete OMB policy directive can be referenced at *http://www.whitehouse.gov/omb/fedreg/062703_grant_identifier.pdf.* Please also visit the ECA Web site at *http://exchanges.state.gov/education/rfgps/menu.htm* for additional information on how to comply with this new directive.

Deadline for Proposals: All proposal copies must be received at the Bureau of Educational and Cultural Affairs by 5 p.m. Washington, DC time on Friday, November 7, 2003. Faxed documents will not be accepted at any time.

Documents postmarked the due date but received on a later date will not be accepted. Each applicant must ensure that the proposals are received by the above deadline.

Applicants must follow all instructions in the Solicitation Package. The original and 7 copies of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/PE/C/PY–04–14, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

Please also submit the Executive Summary, Proposal Narrative, and Budget sections of the proposal as e-mail attachments in Microsoft Word and Excel to the program officer at *sjones@pd.state.gov.* The Bureau will transmit these files electronically to the American Public Affairs staff in the partner country identified for this program, with the goal of reducing the time it takes to get post comments for the Bureau's grant review process.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

Adherence to All Regulations Governing the J Visa

The Office of Citizen Exchanges of the Bureau of Educational and Cultural Affairs is the official program sponsor of the exchange program covered by this RFGP, and an employee of the Bureau will be the ''Responsible Officer'' for the program under the terms of 22 CFR 62, which covers the administration of the Exchange Visitor Program (J visa program). Under the terms of 22 CFR 62, organizations receiving grants under this RFGP will be third parties ''cooperating with or assisting the sponsor in the conduct of the sponsor's program.'' The actions of grantee program organizations shall be ''imputed to the sponsor in evaluating the sponsor's compliance with'' 22 CFR 62. Therefore, the Bureau expects that any organization receiving a grant under this competition will render all assistance necessary to enable the Bureau to fully comply with 22 CFR 62 *et seq.*

The Bureau of Educational and Cultural Affairs places great emphasis on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by grantee program organizations and program participants to all regulations governing the J visa program status. Therefore, proposals should *explicitly state in writing* that the applicant is prepared to assist the Bureau in meeting all requirements governing the administration of Exchange Visitor Programs as set forth in 22 CFR 62. If the applicant has experience as a designated Exchange Visitor Program Sponsor, the applicant should discuss their record of compliance with 22 CFR 62 *et. seq.,* including the oversight of their Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping-reporting and other requirements.

The Office of Citizen Exchanges of ECA Will Be Responsible for Issuing DS–2019 Forms to Participants in This Program

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from: United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/ECD—SA–44, Room 734, 301 4th Street, SW., Washington, DC 20547, Telephone: (202) 401–9810, FAX: (202) 401–9809.

Review Process

The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to their conformance with the objectives and guidelines stated above and the review criteria stated in the POGI.

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program above is provided through legislation.

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance

with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: September 26, 2003.

C. Miller Crouch,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 03–25167 Filed 10–2–03; 8:45 am]

BILLING CODE 4710–05–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Identification of Countries Under Section 182 of the Trade Act of 1974: Request for Public Comment

AGENCY: Office of the United States Trade Representative.

ACTION: Request for written submissions from the public.

SUMMARY: Section 182 of the Trade Act of 1974 (Trade Act) (19 U.S.C. 2242), requires the United States Trade Representative (USTR) to identify countries that deny adequate and effective protection of intellectual property rights or deny fair and equitable market access to U.S. persons who rely on intellectual property protection. Section 182 is commonly referred to as the ''Special 301'' provisions in the Trade Act. In addition, USTR is required to determine which of those countries should be identified as Priority Foreign Countries. On May 1, 2003, USTR announced the results of the 2003 Special 301 review and stated that an Out-of-Cycle Review (OCR) would be conducted in the fall for the Republic of Korea. USTR requests written comments from the public concerning the acts, policies, and practices relevant for this review under section 182 of the Trade Act.

DATES: Submissions must be received on or before 12 noon on Monday, October 27, 2003.

ADDRESSES: All comments should be sent to Sybia Harrison, Special Assistant to the Section 301 Committee, at the following e-mail address: *FR0100@USTR.GOV,* with ''Special 301 Out-of-Cycle Review'' in the subject line. Please not, only electronic submissions will be accepted.

FOR FURTHER INFORMATION CONTACT: Mark Wu, Director for Intellectual Property, (202) 395–6864; or Victoria Espinel, Associate General Counsel, (202) 395–7305, Office of the United States Trade Representative.

SUPPLEMENTARY INFORMATION: Pursuant to section 182 of the Trade Act, USTR must identify those countries that deny adequate and effective protection for intellectual property rights or deny fair and equitable market access to U.S. persons who rely on intellectual property protection. Those countries that have the most onerous or egregious acts, policies, or practices and whose acts, policies, or practices have the greatest adverse impact (actual or potential) on relevant U.S. products may be identified as Priority Foreign Countries. Acts, policies, or practices that are the basis of a country's designation as a Priority Foreign Country are normally the subject of an investigation under the section 301 provisions of the Trade Act.

On May 1, 2003, USTR announced the results of the 2003 Special 301 review, including an announcement that an Out-of-Cycle Review (OCR) would be conducted in the fall for the Republic of Korea. Additional countries may also be reviewed as a result of the comments received pursuant to this notice, or as warranted by events.

Requirements for Comments: Comments should include a description of the problems experienced and the effect of the acts, policies, and practices on U.S. industry. Comments should be as detailed as possible and should provide all necessary information for assessing the effect of the act, policies, and practice. Any comments that include quantitative loss claims should be accompanied by the methodology used in calculating such estimated losses.

Comments must be in English and sent electronically. No submissions will be accepted via postal service mail. Documents should be submitted as either WordPerfect, MS Word, or text (.TXT) files. Supporting documentation submitted as spreadsheets are acceptable as Quattro Pro or Excel files. A submitter requesting that information contained in a comments be treated as confidential business information must certify that information is business confidential and would not customarily be released to the public by the submitter. A non-confidential information, the file name of the business confidential version should begin with the characters ''BC-'', and the file name of the public version should begin with the character ''P-''. The ''P'' or ''B'' should be followed by the name of the submitter. Submissions should not include separate cover letters; information that might appear in a cover letter should be included in the submission itself. To the extent possible,any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

All comments should be sent to Sybia Harrison, Special Assistant to the section 301 Committee, at the following e-mail address: *FR0100@USTR. GOV,* with ''Special 301 Out-of-Cycle Review'' in the subject line. Please note, only electronic submissions will be accepted.

Public Inspection of Submissions: Within one business day of receipt, non-confidential submissions will be placed in a public file, open for inspection at the USTR reading room, Office of the United States Trade Representative, Annex Building, 1724 F Street, NW., Room 1, Washington, DC. An appointment to review the file must be scheduled at least 48 hours in advance and may be made by calling Harry Simpson at (202) 395–6186. The USTR reading room is open to the public from 10 a.m. to 12 noon and from 1 p.m. to 4 p.m., Monday through Friday.

Mark Wu,

Director for Intellectual Property.

[FR Doc. 03–25057 Filed 10–2–03; 8:45 am]

BILLING CODE 3190–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee; Notice of Availability and Request for Public Comment on Interim Environmental Review of United States-Morocco Free Trade Agreement

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of availability and request for public comment.

SUMMARY: The Office of the U.S. Trade Representative (USTR), on behalf of the Trade Policy Staff Committee (TPSC), seeks comment on the interim environmental review of the proposed U.S.-Morocco Free Trade Agreement (FTA). The interim environmental review is available at *http://www.ustr.gov/environment/environmental.shtml.* Copies of the review will also be sent to interested members of the public by mail upon request.

DATES: Comments on the draft environmental review are requested no later than October 31, 2003 and earlier if possible. Comments received before October 13, 2003 will be used to inform

the next round of negotiations, currently scheduled for October 13–17. Comments received after October 13, 2003 will be used to inform any subsequent rounds of negotiations.

FOR FURTHER INFORMATION CONTACT: For procedural questions concerning public comments, contact Gloria Blue, Executive Secretary, TPSC, Office of the USTR, 1724 F Street, NW., Washington, DC 20508, telephone (202) 395–3475. Questions concerning the environmental review, or requests for copies, should be addressed to Jennifer Prescott or David Brooks, Environment and Natural Resources Section, Office of the USTR, telephone 202–395–7320.

SUPPLEMENTARY INFORMATION: The Trade Act of 2002, signed by the President on August 6, 2002, provides that the President shall conduct environmental reviews of [certain] trade agreements consistent with Executive Order 13121-Environmental Review of Trade Agreements (64 FR 63169, Nov. 18, 1999) and its implementing guidelines (65 FR 79442, Dec. 19, 2000) and report on such reviews to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate. The Order and guidelines are available at *http://www.ustr.gov/environment/environmental.shtml*.

The purpose of environmental reviews is to ensure that policymakers and the public are informed about reasonably foreseeable environmental impacts of trade agreements (both positive and negative), to identify complementarities between trade and environmental objectives, and to help shape appropriate responses if environmental impacts are identified. Reviews are intended to be one tool, among others, for integrating environmental information and analysis into the fluid, dynamic process of trade negotiations. USTR and the Council on Environmental Quality jointly oversee implementation of the Order and Guidelines. USTR, through the Trade Policy Staff Committee (TPSC), is responsible for conducting the individual reviews.

Written Comments

In order to facilitate prompt processing of submissions of comments, the Office of the United States Trade Representative strongly urges and prefers e-mail submissions in response to this notice. Persons submitting comments by e-mail should use the following e-mail address: *FR0054@ustr.gov* with the subject line: ''Morocco Interim Environmental Review.'' Documents should be submitted as either WordPerfect, MSWord, or text (.TXT) files. Persons who make submissions by e-mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. To the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files. If submission by e-mail is impossible, comments should be made by facsimile to (202) 395–6143, attention: Gloria Blue.

Written comments will be placed in a file open to public inspection in the USTR Reading Room at 1724 F Street, NW., Washington DC. An appointment to review the file may be made by calling (202) 395–6186. The Reading Room is open to the public from 10–12 a.m. and from 1–4 p.m., Monday through Friday.

Carmen Suro-Bredie,

Chair, Trade Policy Staff Committee.

[FR Doc. 03–25189 Filed 10–2–03; 8:45 am]

BILLING CODE 3190–W3–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending September 19, 2003

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. Sections 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2003–16202.
Date Filed: September 17, 2003.
Parties: Members of the International Air Transport Association.
Subject:

PTC23 ME–TC3 0184 dated 19 September 2003.

TC23/TC123 Middle East–TC3. Expedited Resolutions r1–r20. Intended effective date: 1 November 2003.

Docket Number: OST–2003–16204.
Date Filed: September 17, 2003.
Parties: Members of the International Air Transport Association.
Subject:

PTC23 EUR–SEA 0170 dated 12 September 2003.

PTC23/123 Europe-South East Asia. Expedited Resolutions 001a, 002bu r1–r8.

PTC23 EUR–SEA 0171 dated 12 September 2003.

PTC23/123 Europe-South East Asia. Expedited Resolution 002bx r9.

Intended effective date: 1 November 2003 and 1 January 2004.

Andrea M. Jenkins,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. 03–25155 Filed 10–2–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2003–57]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption, part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of a certain petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before October 23, 2003.

ADDRESSES: Send comments on the petition to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–15812 at the beginning of your comments. If you wish to receive confirmation that the FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov*. You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Caren Centorelli, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. Tel. (202) 267–8199.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on September 24, 2003.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: FAA–2003–15812.

Petitioner: Airbus.

Section of 14 CFR Affected: 14 CFR 25.562(b)(2).

Description of Relief Sought: Petitioner requests exemption from the floor warpage test requirements of 14 CFR 25.562(b)(2), which requires that ''where floor rails or floor fittings are used to attach the seating devices to the test fixture, the rails or fittings must be misaligned with respect to the adjacent set of rails or fittings by at least 10 degrees (i.e, out of parallel) with one rolled 10 degrees.'' The petitioner requests this relief for flightdeck seats on Model A380 aircraft.

[FR Doc. 03–25048 Filed 10–2–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting on Transport Airplane and Engine Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a public meeting of the FAA's Aviation Rulemaking Advisory Committee (ARAC) to discuss transport airplane and engine (TAE) issues.

DATES: The meeting is scheduled for October 15–16, 2003, beginning at 9 a.m. on October 15. Arrange for oral presentations by October 10.

ADDRESSES: Aerospace Industries Association, 1000 Wilson Boulevard, Suite 1700, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: Effie M. Upshaw, Office of Rulemaking, ARM–209, FAA, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267–7626, FAX (202) 267–5075, or e-mail at *effie.upshaw@faa.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. app. III), notice is given of an ARAC meeting to be held October 15–16, 2002, in Arlington, VA.

The agenda will include:

Wednesday, October 15

- Opening Remarks
- FAA Report
- European Aviation Safety Agency (EASA)/Joint Aviation Authorities (JAA) Report
- Transport Canada Report
- ARAC Tasking Priorities Discussion/Moratorium
- Avionics Harmonization Working Group (HWG) Report
- Ice Protection HWG Report
- Powerplant Installation HWG Report
- Human Factors HWG Report
- Mechanical Systems HWG Report and Approval
- Airworthiness Assurance Report and Approval
- Discussion of tasking on equipment, systems, and installations on transport category airplanes

Thursday, October 16

- General Structures HWG Report and Approval
- 2004 meeting schedule
- Written reports and statuses may be provided for the following HWGs—Engine, Electromagnetic Effects, Flight Test, Seat Test, Flight Control, Flight Guidance, System Design and Analysis, Electrical Systems, Loads and Dynamics, and Design for Security—and the Continued Airworthiness Working Group.

Three working groups will be seeking approval of reports/documents:

1. The Mechanical Systems HWG on ventilation and cabin pressurization;
2. The Airworthiness Assurance Working Group on widespread fatigue damage; and
3. The General Structures HWG on materials, birdstrike, and fatigue and damage tolerance.

Attendance is open to the public, but will be limited to the availability of meeting room space. Please confirm your attendance with the person listed in the **FOR FURTHER INFORMATION CONTACT** section no later than October 10. Please provide the following information: Full legal name, country of citizenship, and name of your industry association, or applicable affiliation. If you are attending as a public citizen, please indicate so.

The telephone number for participating in the teleconference will be available after October 6 by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section or by going to the ARAC calendar at *http://www.faa.gov/avr/arm/araccal.htm.* Callers outside the Washington metropolitan area will be responsible for paying long distance charges.

The public must make arrangements by October 10 to present oral statements at the meeting. Written statements may be presented to the committee at any time by providing 25 copies to the Assistant Executive Director for Transport Airplane and Engine issues or by providing copies at the meeting. Copies of the documents to be presented to ARAC for decision or as recommendations to the FAA may be made available by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

If you are in need of assistance or require a reasonable accommodation for the meeting or meeting documents, please contact the person listed under the heading **FOR FURTHER INFORMATION CONTACT.** Sign and oral interpretation, as well as a listening device, can be made available if requested 10 calendar days before the meeting.

Issued in Washington, DC, on September 26, 2003.

Tony F. Fazio,

Director, Office of Rulemaking.

[FR Doc. 03–25051 Filed 10–2–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Meeting of the National Parks Overflights Advisory Group

ACTION: Notice of meeting, correction.

SUMMARY: The National Park Service (NPS) and Federal Aviation Administration (FAA), in accordance with the National Parks Air Tour Management Act of 2000, announce the next meeting of the National Parks Overflights Advisory Group (NPOAG). The meeting will take place October 20, 2003, in Jackson Hole, Wyoming, not October 21 as previously announced. This notice informs the public of the changed date, location, and agenda for the meeting.

DATES: The NPOAG will meet October 20, 2003, at the Wort Hotel, 50 N. Glenwood Street, Jackson, Wyoming 83001 (telephone (307) 733–2190). The meeting will begin at 8 a.m. on Monday, October 20, 2003.

FOR FURTHER INFORMATION CONTACT: Barry Brayer, Manager, Executive Resource Staff, Western Pacific Region, Federal Aviation Administration, 15000 Aviation Blvd., Hawthorne, CA 90250, telephone: (310) 725–3800, or *Barry.Brayer@faa.gov,* or Howie Thompson, National Park Service, Natural Sounds Program, 12795 W. Alameda Parkway, Denver, CO 80225, telephone: (303) 969–2461, or *Howie_Thompson@nps.gov.*

SUPPLEMENTARY INFORMATION:

Background

The National Parks Air Tour Management Act of 2000, enacted on April 5, 2000, as Public Law 106–181 (Pub. L. 106–181), required the establishment of a National Parks Overflights Advisory Group within 1 year after its enactment. The NPOAG was to be a balanced group representative of general aviation, commercial air tour operations, environmental concerns, and Indian tribes. The duties of the NPOAG included providing advice, information, and recommendations to the Director, NPS, and to the Administrator, FAA, on the implementation of Public Law 106–181, on quiet aircraft technology, on other measures that might accommodate interests to visitors to national parks, and, at the request of the Director and Administrator, on safety, environmental, and other issues related to commercial air tour operations over national parks or tribal lands.

On March 12, 2001, the FAA and NPS announced the establishment of the NPOAG (48 FR 14429). Current members of the NPOAG are Heidi Williams (general aviation), David Kennedy, Richard Larew, and Alan Stephens (commercial air tour operations), Chip Dennerlein, Charles Maynard, Steve Bosak, and Susan Gunn (environmental interests), and Germaine White and Richard Deertrack (Indian tribes).

The first meeting of the advisory group was held August 28–29, 2001, in Las Vegas, Nevada; the second meeting was held October 4–5, 2002, in Tusayan, Arizona.

Agenda for the October 20, 2003 Meeting

The NPOAG will review the status of the AMTP process to date, the data acquisition and analysis process (Hawaii Volcanoes National Park and Zion studies), receive an update on quiet technology, and discuss the status of interim operating authority for air tour operators. A final agenda will be available the day of the meeting.

Attendance at the Meeting

Although this is not a public meeting, interested persons may attend. Because seating is limited, if you plan to attend, please contact one of the persons listed under **FOR FURTHER INFORMATION CONTACT** so that meeting space may accommodate your attendance.

Record of the Meeting

If you cannot attend the meeting, a summary record of the meeting will be made available by the Office of Rulemaking (ARM), 800 Independence Ave., SW., Washington, DC 20591. Contact is Linda Williams, (202) 267–9685, or *linda.l.williams@faa.gov.*

Issued in Washington, DC, on September 26, 2003.

John M. Allen,

Acting Director, Flight Standards Service.

[FR Doc. 03–25052 Filed 10–2–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 03–04–C–00–PIH To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Pocatello Regional Airport, Submitted by the City of Pocatello, Pocatello Regional Airport, Pocatello, ID

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 PFC revenue at Pocatello Regional Airport under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before November 3, 2003.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Mr. J.Wade Bryant, Manager; Seattle Airports District Office, SEA–ADO; Federal Aviation Administration; 1601 Lind Avenue SW, Suite 250, Renton, Washington 98055–4056.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Len Nelson, Airport Manager, at the following address: PO Box 4169, Pocatello, ID 83205.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to Pocatello Regional Airport, under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Ms. Suzanne Lee-Pang, (425) 227–2654, Seattle Airports District Office, SEA–ADO; Federal Aviation Administration; 1601 Lind Avenue SW, Suite 250, Renton, Washington 98055—4056. 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 03–04–C–00–PIH to impose and use PFC revenue at Pocatello Regional Airport, under the provisions of 49 U.S.C. 40117, and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On September 23, 2003, the FAA determined that the application to impose and use the revenue from a PFC submitted by City of Pocatello, Pocatello Regional Airport, Pocatello, Idaho 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 December 23, 2003.

The following is a brief overview of the application.

Level of the proposed PFC: $4.50.

Proposed charge effective date: January 1, 2005.

Proposed charge expiration date: March 1, 2008.

Total requested for approval: $456,500 ($306,500 for use).

Brief description of proposed projects:

Impose and Use Projects: Renovation of Taxiway A and Connectors, Parallel Taxiway for Runway 3/21, Lighting System; Pavement Condition (PCI) Survey Update and Wildlife Hazard Study; Taxiway F, D, and B Widening and Hold Apron for Runway End 3; Snow Removal Equipment Procurement—Plow; Security Enhancement; Wildlife Fencing; Construct New Airport Rescue and Fire Fighting (ARFF) Building.

Impose Only Project: Construction of Midfield Taxiway E.

Alternate Project: Reconstruction of Terminal Building Auto Parking Lots.

Class or classes of air carriers which the public agency has requested not be required to collect PFC's: non-scheduled air taxi/commercial operators, utilizing aircraft having seating capacity of less than 20 passengers.

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 Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue

SW., Suite 315, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Pocatello Regional Airport.

Issued in Renton, Washington on September 23, 2003.

David A. Field,

Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 03–25050 Filed 10–2–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket MARAD–2003–16248]

Notice of Request To Transfer Maritime Security Program Operating Agreements MA/MSP–29 Through MA/MSP–43 to Maersk Line, Limited

By letter dated September 18, 2003 (which incorporates earlier correspondence of July 10, 2003), Maersk Line, Limited (Maersk) has requested approval from the Maritime Administration (MARAD) to transfer Maritime Security Program (MSP) Operating Agreements Nos. MA/MSP–29 through 43 (Agreements) from U.S. Ship Management, Inc. (USSM) to itself. The MSP was established by the Maritime Security Act of 1996, Pub. L. 104–239, and is contained in sections 651 through 656 of the Merchant Marine Act, 1936, as amended, 46 App. U.S.C. 1187—1187e. The MSP serves to maintain an active, privately owned, U.S.-flag and U.S. citizen crewed liner fleet in international trade. At present, MSP provides operating payments to 47 vessels, under single-vessel MSP Operating Agreements.

The vessels at issue here, or their predecessors, were originally operated by Sea-Land Service, Inc. (Sea-Land) as the international liner division of Sea-Land. The transportation assets of the international liner division, other than the MSP Agreements or title to the vessels, were sold to Maersk in 1999. Maersk is a company organized in the United States, but is owned by the A.P. Moller Group, a Danish consortium.

At the time of the sale to Maersk, Sea-Land proposed to transfer the MSP Agreements to USSM, a newly-created U.S. citizen company. On December 8, 1999, the Maritime Administrator authorized transfer of the MSP Agreements from Sea-Land to USSM. In order to maintain the U.S. citizen status of the vessels for MSP purposes, titles to the vessels covered by the Agreements were either transferred to trusts qualified under section 1136(c) of the Coast Guard Authorization Act of 1996, or required to remain in existing U.S. citizen trusts, as applicable. A vessel owned by a qualified section 1136(c) trust and bareboat chartered to a U.S. citizen is deemed to be owned and operated by a U.S. citizen for MSP purposes, notwithstanding foreign beneficial ownership of the trust. Sea-Land assigned the bareboat charters of all 15 vessels to USSM, the MSP contract holder, which, in turn, time chartered the 15 vessels to Maersk, through September 30, 2005, when the current MSP expires.

Maersk claims a right of election under Article 2(b)(vi) of the time charters to become the MSP contractor for the 15 vessels, at any time during the term of the time charters, subject to the qualification that the arrangement is ''permitted under applicable laws and regulations and the terms of the Operating Agreement.'' On November 7, 2002, Maersk requested that MARAD confirm Maersk's eligibility to become the contractor for the vessels as provided in the time charters.

An opinion by MARAD's Chief Counsel, Robert B. Ostrom, issued on April 29, 2003, concluded that, ''Maersk qualifies as an eligible transferee of the MSP Agreements from USSM.'' That opinion stated that it was limited solely to the question of Maersk's eligibility as a transferee under applicable statutes and regulations, ''and in no way addresses whether MARAD would grant approval for such a transfer if an application were filed.'' In addition, that opinion did not address whether the proposed vessel operation and ownership arrangements would be acceptable.

On April 30, 2003, Maersk delivered to USSM a Notice of Election. In accordance with the Notice of Election, USSM was required to respond within five business days or be declared in default of the time charters. On May 9, 2003 Maersk delivered to USSM a Notice of Default, which then triggered a 60 day period for USSM to remedy said default. By letter dated July 3, 2003 USSM rejected Maersk's Notice of Default. By letter dated July 9, 2003, Maersk advised USSM that it had declared USSM in default of the time charters on that date and is unilaterally seeking to act for USSM with regard to transfer of the Agreements. Maersk asserts that it has the right to submit the subject transfer application on behalf of, or in place of, USSM.

USSM filed a complaint in U.S. District Court for the District of Columbia, styled *U.S. Ship Management, Inc.* v. *U.S. Maritime Administration,* No. 1:03–cv–00951–RJL (filed April 29, 2003), contesting the legality of MARAD's legal opinion. That case is ongoing at this time. USSM also vigorously opposes Maersk's application. USSM further asserts that Maersk cannot act as attorney-qqin-fact, because the time charters giving rise to the attorney-in-fact powers contain several conditions which have not been satisfied. One of those conditions, USSM avers, is that the MSP Agreement transfer be approved by MARAD, which has not occurred.

A copy of Maersk's request, and other documents pertinent to this request, will be available for inspection at the Department of Transportation (DOT) Dockets Facility and on the DOT Web site (address information follows). Any person, firm or corporation having an interest in this matter, and who desires to submit comments concerning it, may file such comments as follows. You should mention the docket number that appears at the top of this notice. Written comments should be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Nassif Building, Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590. Comments may also be filed electronically via the Internet at *http://dmses.dot.gov/submit/*. You may call Docket Management at (202) 366–9324. You may visit the docket room to inspect and copy comments at the above address between 10 a.m. and 5 p.m. ET, Monday through Friday, except holidays. An electronic version of this document is available on the World Wide Web at *http://dms.dot.gov*. Comments must be received by the close of business October 24, 2003.

This notice is published as a matter of discretion. Section 652(j) of the Act, as implemented by MARAD's regulations at 46 CFR 295.20(i), permits the transfer of an MSP Operating Agreement by the MSP contractor to a qualified transferee unless MARAD disapproves the transfer within 90 days of receiving a completed application. Due to the unusual nature of this application, wherein the MSP contractor has not itself submitted an application and in fact opposes the submission of an application, no decision has been made on whether MARAD accepts the submission as an application properly submitted under § 295.20(i). Accordingly, no transfer of the MSP Operating Agreements may be consummated unless and until expressly approved by MARAD. Further, MARAD will not permit a transfer of the Agreements unless and until satisfied that the vessels associated

with those Agreements remain available for operation under those Agreements, or other acceptable vessels are available to substitute for the current vessels.

The fact of this publication should in no way be considered a favorable or unfavorable decision on the matter in question, as filed or as it may be amended. As noted above, the MARAD Chief Counsel Opinion of April 29, 2003 did not address whether MARAD would grant approval. MARAD will consider all comments submitted in a timely fashion, and will take such action thereto as may be deemed appropriate.

By Order of the Maritime Administration.

Dated: September 29, 2003.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 03–25077 Filed 10–2–03; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2003–16250]

Certification; Importation of Vehicles and Equipment Subject to Federal Safety and Bumper Standards; Registered Importers of Vehicles Not Originally Manufactured To Conform With the Federal Motor Vehicle Safety Standards; Schedule of Fees Authorized by 49 U.S.C. 30141

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Request for public comment on proposed collection of information.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on the proposed collection of information.

This document describes a proposed collection of information under regulations that pertain to the importation by registered importers (RIs) of motor vehicles that were not manufactured to comply with all applicable Federal motor vehicle safety and bumper standards. NHTSA has proposed certain amendments to those regulations (as found at 49 CFR parts 567, 591, 592, and 594) that would, in part, clarify the requirements applicable to RIs and applicants for RI status, as well as the procedures for suspending or revoking the registrations of RIs that violate the vehicle importation laws. The proposed regulations would require RIs to retain, for a period of ten years, records pertaining to the nonconforming vehicles they import. Under the regulations that are now in effect, RIs are required to retain that information for a period of eight years. The proposed regulations would also require RIs, and applicants for RI status, to submit to NHTSA more information than is currently required to obtain and maintain a registration. The additional information would enhance the agency's ability to ensure that RIs are conducting their business activities in accordance with applicable regulations, thereby protecting the interests of those who utilize the services of an RI to import a nonconforming motor vehicle, or who purchase a motor vehicle imported by an RI.

DATES: Comments must be received on or before December 2, 2003.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590 (docket hours are from 9 a.m. to 5 p.m.). Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78), or you may visit *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA (202–366–3151).

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA), before an agency submits a proposed collection of information to OMB for approval, it must publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulations (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions;

(iii) How to enhance the quality, utility, and clarity of the information to be collected; and

(iv) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Certification; Importation of Vehicles and Equipment Subject to Federal Safety and Bumper Standards; Registered Importers of Vehicles Not Originally Manufactured To Conform with the Federal Motor Vehicle Safety Standards; Schedule of Fees Authorized by 49 U.S.C. 30141

Type of Request— New Collection.

OMB Clearance Number— None.

Requested Expiration Date of Approval—June 30, 2006.

Summary of Collection of Information—Section 30112(a) of Title 49, U.S. Code prohibits, with certain exceptions, the importation into the United States of a motor vehicle manufactured after the date an applicable Federal motor vehicle safety standard (FMVSS) takes effect, unless the motor vehicle was manufactured in compliance with the standard and was so certified by its original manufacturer. Under one of the exceptions to this prohibition, found at 49 U.S.C. 30141, a nonconforming vehicle can be imported into the United States provided: (1) NHTSA decides that it is eligible for importation, based on its capability of being modified to conform to all applicable FMVSS, and (2) it is imported by an RI, or by a person who has a contract with an RI to bring the vehicle into conformity with all applicable standards. Regulations implementing this statute are found at 49 CFR parts 567, 591, 592, and 594. The regulations require a declaration to be filed (on the HS–7 Declaration Form) at the time a vehicle is imported that identifies, among other things, whether the vehicle was originally manufactured to conform to all applicable FMVSS, and if it was not, to state the basis for the importation of the vehicle. The regulations also require an RI, among other things, to furnish a bond (on the HS–474 Conformance Bond Form) at the time of entry for each nonconforming vehicle it imports, to ensure that the vehicle will be brought into conformity with all applicable safety and bumper standards within 120 days of entry or will be exported from or abandoned to

the United States. After modifying the vehicle to conform to all applicable standards, the RI submits a statement of conformity to NHTSA, which issues a letter permitting the bond to be released if it is satisfied that the vehicle has been modified in the manner stated by the RI.

On April 10, 2003, NHTSA submitted to OMB a request for the extension of that agency's approval (assigned OMB No. 2127–0002) of the information collection that is incident to NHTSA's administration of the vehicle importation regulations at 49 CFR Parts 591 and 592, including information collected through the HS–7 Declaration Form and the HS–474 Conformance Bond Form. On June 4, 2003, OMB notified NHTSA that it had approved this extension request through June 30, 2006.

NHTSA published a Notice of Proposed Rulemaking (NPRM) to amend the vehicle import regulations on November 20, 2000 (65 FR 69810–38). If adopted, those amendments would slightly increase the information collection beyond that which was approved by OMB. The proposed amendments are intended, in part, to clarify the requirements applicable to RIs and applicants for RI status, as well as the procedures for suspending or revoking the registrations of RIs that violate the vehicle importation laws.

Record Retention for 10 Years

If the proposed amendments were adopted, RIs would be required to retain, for a period of ten years, records pertaining to the nonconforming vehicles they import (including a copy of the declaration filed for the vehicle at the time of importation, correspondence with the vehicle's owner or purchaser, identifying information on the vehicle, information to substantiate that the vehicle was brought into conformity with all applicable standards and is not subject to any outstanding safety recall campaigns, a copy of the statement certifying the vehicle's conformity that the RI furnished to NHTSA, and information on the service insurance policy procured by the RI to guarantee that it will remedy any safety-related defects or noncompliances that are determined to exist in the vehicle). Under the regulations that are now in effect, RIs are required to retain this information for a period of eight years from the vehicle's date of entry. See 49 CFR 562.6(b).

One-Time Reporting of Information on Company's Business Structure and Key Personnel

In addition, the proposed amendments would require RIs and applicants for RI status to submit, on a one-time basis, information on their form of business organization (*i.e.*, sole proprietorship, partnership, or corporation), and, depending upon that form of organization, identifying information (including the name, address, and social security number of the RI or applicant if the RI or applicant is organized as a sole proprietorship, all partners if the RI or applicant is organized as a partnership, and all officers, directors, managers, and persons authorized to sign documents on behalf of the RI or applicant if the RI or applicant is organized as a corporation). RIs and applicants that are organized in the form of non-public corporations would also be required to submit a statement issued by the Office of the Secretary of State, or other responsible official of the State in which the RI or applicant is incorporated, certifying that the RI or applicant is a corporation in good standing. If the RI or applicant is a public corporation, it would be required to submit a copy of its latest 10–K filing with the Securities and Exchange Commission.

One-Time Reporting of Information on Facility Addresses and Telephone Numbers, Business Licenses, and Agents for Service of Process

The proposed amendments would also require RIs and applicants for RI status to submit to the agency the street address and telephone number in the United States of each of its facilities for the conformance, storage, and repair of motor vehicles and for the maintenance of records which it will use to fulfill its duties as an RI. RIs and applicants for RI status would also be required to furnish the agency with a copy of a business license or other similar document issued by an appropriate State or local authority, authorizing it to do business as an importer, modifier, or seller of motor vehicles, as applicable, or a statement by the RI or applicant that it has made a bona fide inquiry and is not required by such State or local authority to have such a license or document. RIs and applicants for RI status would also be required to submit to the agency the name of each principal of the RI or applicant who is authorized to submit conformity certifications to NHTSA and the street address of the repair, storage, or conformance facility where each such principal will be located. In addition, if the RI or applicant is not a resident of the United States, it would be required to submit to NHTSA its designation of an agent for service of process in the form required by the agency's regulations at 49 CFR 551.45.

Reporting of Information on Recalled Vehicles

The proposed amendments would also require an RI to notify NHTSA within 30 days if it becomes aware that the manufacturer of a vehicle it has imported will not provide a remedy without charge for a defect or noncompliance that has been determined to exist in that vehicle. The agency is unaware of any circumstance to date in which a vehicle manufacturer has refused to remedy a safety-related defect or noncompliance in a vehicle imported by an RI. Should these practices continue, there will therefore be little if any need for RIs to furnish this information to NHTSA. Should a manufacturer refuse to provide a remedy, the RI would also be required to submit to the agency a copy of the notification letter it intends to send to owners of the affected vehicles to fulfill the defect and noncompliance notification requirements of 49 CFR part 577. The proposed amendments would also require an RI that provides owner notification to submit to NHTSA two progress reports on the recall campaign, containing information specified in 49 CFR 573.7(b)(1)–(4). This requirement would not apply, however, in circumstances where the vehicle's original manufacturer conducts a recall campaign that includes the vehicles imported by the RI.

One-Time Reporting of Information on Alternate Facilities

If an RI intends to use a facility not identified in its application for RI status, the proposed amendments would require it to notify NHTSA of that intent no later than 30 days before it begins to use that facility. In addition, the RI would be required to provide a description of the intended use, a sufficient number of photographs of the facility to fully depict the intended use, a copy of the lease or deed evidencing the RI's ownership or tenancy of the facility, and a copy of the license or similar document issued by an appropriate State or municipal authority stating that the RI is licensed to do business at that facility as an importer and/or modifier and/or seller of motor vehicles (or a statement that it has made a bona fide inquiry and is not required by State or local law to have such a license or permission). If an RI intends to change its street address or telephone number or discontinue use of a facility that was identified in its registration application, the proposed amendments would require it to notify NHTSA not less than 10 days before such change or discontinuance of such use, and identify

the facility, if any, that will be used instead.

Deadline for Fulfilling One-Time Reporting Requirements

The proposed amendments would require those already holding RI status to submit the additional information that would have to be submitted by new applicants not later than 30 days after the effective date of the final rule adopting the amendments. However, if an RI has previously provided any of the additional information to NHTSA in its registration application, annual statement, or notification of change, it would not be required to resubmit that information under the proposed amendments. In this circumstance, the RI would be allowed to incorporate the information by reference in its response, provided it clearly indicates the date, page, and entry of the previously provided document.

Description of the Need for the Information and Proposed Use of sthe Information—NHTSA would rely on the information provided under the proposed amendments by RIs and applicants for RI status to better ensure that RIs are meeting their obligations under the statutes and regulations governing the importation of nonconforming vehicles and to make more informed decisions in conferring RI status on applicants and in permitting RI status to be retained by those currently holding registrations. In this manner, those lacking the capability to responsibly provide RI services, or who have committed or are associated with those who have committed past violations of the vehicle importation laws, could be more readily denied registration as an RI, or if they already hold such a registration, have that registration suspended or revoked when circumstances warrant such action.

Description of the Likely Respondents (Including Estimated Number and Proposed Frequency of Responses to the Collection of Information)—Currently 172 RIs are registered with NHTSA. Within 30 days from the date that a final rule adopting the amendments is published, these RIs would be required to submit information updating the information they have previously submitted to the agency, including all new information items that would be required from applicants for RI status. In recent years, NHTSA has received approximately 20 applications per year from individuals and entities seeking to acquire RI status. Over the past year, however, a number of RIs have gone out of business. From reports in the trade press, this development appears to have occurred on account of a reduction in the demand for imported used vehicles caused by currency fluctuations and the availability of incentive programs such as zero-percent financing and rebates on new cars purchased in the United States. For the first five months of this year, the number of nonconforming vehicles imported from Canada is 56 percent lower that the number imported during the first five months of 2002 (50,948 vehicles imported from January 1 through May 31 of 2003 vs. 114,930 imported in the same period of 2002). Given the profound reduction in the volume of Canadian imports, it is reasonable to assume that there will be a concomitant reduction in applications from those seeking to import such vehicles. The additional information that would be required from RIs and applicants for RI status under the proposed regulations would need to be submitted only once.

Estimate of the Total Annual Reporting and Recordkeeping Burden of the Collection of Information in the Amended Regulations—It is estimated that it should take each RI and applicant for RI status approximately two hours to assemble and supply the additional information that would be required under the proposed amendments. There are currently 172 RIs in active status, and the agency receives approximately 20 applications per year from those seeking to become RIs. Based on the agency's estimate that it would take approximately 2 hours to assemble and supply the additional information that would be required under the proposed amendments, the total estimated reporting burden on the entire industry would be approximately 344 hours to comply with the one-time reporting requirement (172 importers × 2 hours = 344 hours). The total estimated reporting burden on those seeking to become RIS would be approximately 40 hours per year (20 applicants × 2 hours = 40 hours). In addition, it should take each RI that is required to conduct a safety recall campaign approximately one hour to compile information for and prepare each of the two reports it would be required to submit to the agency detailing the progress of the recall campaign. Since vehicle manufacturers in most cases include vehicles imported by RIs in their own recall campaigns, it is likely that very few of these reports would have to be prepared or submitted by RIs.

Estimate of the Total Annual Costs of the Collection of Information in the Amended Regulations—Other than the cost of the burden hours, the only additional costs associated with this information collection are those incident to the storage, for a period of an additional two years, of records pertaining to the nonconforming vehicles that each RI imports into the United States. The agency's regulations at 49 CFR 592.6(b) state that those records must consist of ''correspondence and other documents relating to the importation, modification, and substantiation of certification of conformity to the Administrator.'' The regulations further specify that the records to be retained must include: (1) A copy of the HS–7 Declaration Form furnished for the vehicle at the time of importation, (2) all vehicle or equipment purchase or sales orders or agreements, conformance agreements with importers other than RIs, and correspondence between the RI and the owner or purchaser of each vehicle for which the RI furnishes a certificate of conformity to NHTSA, (3) the last known name and address of the owner or purchaser of each vehicle for which the RI furnishes a certificate of conformity, and the vehicle identification number (VIN) of the vehicle, and (4) records, both photographic and documentary, reflecting the modifications made by the RI, which were submitted to NHTSA to obtain release of the conformance bond furnished for the vehicle at the time of importation. See 49 CFR 592.6(b)(1) through (b)(4).

The latter records are referred to as a ''conformity package.'' Most conformity packages submitted to the agency covering vehicles imported from Canada are comprised of approximately six sheets of paper (including a check-off sheet identifying the vehicle and the standards that it was originally manufactured to conform to and those that it was modified to conform to, a statement identifying the recall history of the vehicle, a copy of the HS–474 conformance bond covering the vehicle, and a copy of the mandatory service insurance policy obtained by the RI to cover its recall obligations for the vehicle). In addition, most conformity packages include photographs of the vehicle, components that were modified or replaced to conform the vehicle to applicable standards, and the certification labels affixed to the vehicle. Approximately 120 conformity packages can be stored in a cubic foot of space. Based on projected imports of 100,000 nonconforming vehicles per year, 833 cubic feet of space will be needed on an industry-wide basis to store one year's worth of conformity packages. Assuming an annual cost of $20 per cubic foot to store the information, NHTSA estimates the aggregate cost to industry for storing a

year's worth of conformity packages to be $16,664 per year. Over an eight-year retention period, a member of the industry would be required to retain 36 annual units of records and over a ten-year retention period 55 annual units (assuming that one annual unit were stored in the first year, two annual units in the second year, and so on). The aggregate cost to industry of the proposed two-year increase in the record retention requirement will therefore be $316,616 (55 − 36 = 19; 19 × $16,664 = $316,616).

RIs are also required under 49 CFR 592.6(b) to retain a copy of the HS–7 Declaration Form furnished to Customs at the time of entry for each nonconforming vehicle for which they submit a conformity package to NHTSA. Paper HS–7 Declaration Forms are only filed for a small fraction of the nonconforming vehicles imported into the United States. Customs brokers file entries for most nonconforming vehicles electronically by using the Automated Broker Interface (ABI) system. For example, in Calendar year 2002, 208,942 ABI entries were made for nonconforming vehicles imported into the United States, and only 3,183 paper HS–7 Declaration Forms (representing 1.5 percent of the total) were filed for such vehicles. Because HS–7 Declaration Forms are filed for only a small fraction of the nonconforming vehicles that are imported by RIs, the proposed two-year increase in the retention period for those records will have a negligible cost impact on the industry. Because the remaining records that RIs are required to retain under 49 CFR 592.6(b) may be stored electronically, the agency anticipates that the costs incident to the storage of those records for an additional two years will also be negligible.

Authority: 44 U.S.C. 3506(c); delegation of authority at 49 CFR 1.50 and 501.8(f).

Issued on: September 29, 2003.

Kenneth N. Weinstein,

Associate Administrator for Enforcement.

[FR Doc. 03–25154 Filed 10–2–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34405]

Transportation Agency for Monterey County—Acquisition Exemption—Line of Union Pacific Railroad Company

The Transportation Agency for Monterey County (TAMC),[1] a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire from Union Pacific Railroad Company (UP) the real estate and rail assets of a 13.1-mile line of railroad, known as the Seaside Industrial Lead, extending from Castroville, CA (milepost 110.2), to Seaside, CA (milepost 123.3). TAMC proposes to acquire the line from UP for the purpose of instituting intrastate rail passenger service on the line.[2] TAMC states that it will not provide freight rail service and that UP will retain trackage rights over the line to provide freight service.[3] TAMC certifies that its projected revenues as a result of this transaction will not exceed those that would qualify it as a Class III rail carrier.

According to TAMC, TAMC and UP have concluded a Purchase and Sale Agreement, which was expected to be executed by September 10, 2003, and consummation of the transaction was expected to occur on or about September 12, 2003.

If the notice contains false or misleading information, the exemption is void *ab initio.* A petition 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. 34405, 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 David J. Miller, Hanson, Bridgett, Marcus, Vlahos & Rudy, LLP, 333 Market Street, Suite 2300, San Francisco, CA 94105–2173.

Board decisions and notices are available on our Web site at ''*http://WWW.STB.DOT.GOV.*''

Decided: September 29, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–25098 Filed 10–2–03; 8:45 am]

BILLING CODE 4915–00–P

[1] TAMC is public agency created pursuant to the State of California Government Code Section 67930 *et seq.*

[2] TAMC apparently believes that its operation of the line will not be subject to the Board's jurisdiction. However, the acquisition of an active rail line and the common carrier obligation that goes with it ordinarily requires Board approval under 49 U.S.C. 10901, if the acquiring entity is a noncarrier, including a state. *See Common Carrier Status of States, State Agencies,* 363 I.C.C. 132 (1980), *aff'd sub nom. Simmons* v. *ICC,* 697 F.2d 326 (D.C. Cir. 1982). The Board's authorization is not required, however, when the common carrier rights and obligations that attach to the line will not be transferred. *See Maine, DOT–Acq. Exemption, ME. Central R. Co.,* 8 I.C.C.2d 835, 836–37 (1991).

While TAMC did not attach a copy of the terms of its agreement with UP to this notice of exemption or file a motion to dismiss the notice, it appears on the current record that TAMC acquired a common carrier obligation to provide freight service when it acquired the line. *Compare Los Angeles to Pasadena Blue Line Construction Authority d/b/a Los Angeles to Pasadena Metro Construction Authority-Acquisition Exemption-Los Angeles County Metropolitan Transportation Authority,* STB Finance Docket No. 34076 (STB served Sept. 3, 2003).

[3] TAMC stated in its notice that UP intended to file a petition for exemption to permit UP to abandon its remaining interest in the line. However, on September 22, 2003, UP filed a verified notice of exemption in STB Docket No. AB–33 (Sub-No. 157X) to discontinue trackage rights on the line.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–55 (Sub–No. 641X)]

CSX Transportation, Inc.—Discontinuance Exemption—In Knox County, TN

On September 15, 2003, CSX Transportation, Inc. (CSXT) filed with the Board a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to discontinue service over approximately 1.2 miles of rail line in CSXT's Central Region, Appalachian Division, KD Subdivision, Second Creek Spur, extending from Valuation Station 15304+87 to Valuation Station 15368+89, in Knoxville, Knox County, TN. The line traverses U.S. Postal Service Zip Code 37066, and includes no stations.

The line does not contain federally granted rights-of-way. Any documentation in the petitioner's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979).

By issuing this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by January 2, 2004.

Any offer of financial assistance to subsidize continued rail service under

49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each offer must be accompanied by a $1,100 filing fee. *See* 49 CFR 1002.2(f)(25).

This proceeding is exempt from environmental reporting requirements under 49 CFR 1105.6(c) and from historic reporting requirements under section 1105.8(b).[1]

All filings in response to this notice must refer to STB Docket No. AB–55 (Sub-No. 641X) and must be sent to: (1) Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001; and (2) Natalie S. Rosenberg, 500 Water Street, J150, Jacksonville, FL 32202. Replies to the petition are due on or before October 23, 2003.

Persons seeking further information concerning discontinuance procedures may contact the Board's Office of Public Service at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1539. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: September 25, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–24984 Filed 10–2–03; 8:45 am]

BILLING CODE 4915–00–P

[1] In addition, because this is a discontinuance proceeding and an abandonment is not proposed, trail use/rail banking and public use conditions are not appropriate.

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

September 25, 2003.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

Dates: Written comments should be received on or before November 3, 2003 to be assured of consideration.

Alcohol and Tobacco Tax and Trade Bureau (TTB)

OMB Number: 1513–0052.

Recordkeeping Requirement ID Number: TTB REC 5110/10.

Form Number: TTB F 5110.75.

Type of Review: Extension.

Title: Alcohol Fuel Plants (AFP) Records, Reports and Notices.

Description: Data is necessary (1) to determine that persons are qualified to produce alcohol for fuel purposes and to identify such persons, (2) to account for distilled spirits produced and verify its proper disposition and (3) to keep registrations current and evaluate permissible variations from prescribed procedures.

Respondents: Business of other for-profit, Farms.

Estimated Number of Respondents/Recordkeepers: 871.

Estimated Burden Hours Per Respondent/Recordkeeper: 1 hour.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 871 hours.

OMB Number: 1513–0064.

Recordkeeping Requirement ID Number: TTB REC 5170/1.

Type of Review: Extension.

Title: Importer's Records and Reports.

Description: Importers are required to maintain usual and customary business records and file letter applications or notices related to specific regulatory activities.

Respondents: Federal Government.

Estimated Number of Recordkeepers: 500.

Estimated Burden Hours Per Recordkeeper: 30 minutes.

Frequency of Response: On occasion.

Estimated Total Recordkeeping Burden: 251 hours.

OMB Number: 1513–0070.

Recordkeeping Requirement ID Number: TTB REC 5220/1.

Type of Review: Extension.

Title: Tobacco Export Warehouse—Record of Operations.

Description: Tobacco Export Warehouses store untaxpaid tobacco products until they are exported. Record is used to maintain accountability over these products. Allows TTB to verify that all products have been exported or tax liabilities satisfied. Protects tax revenues.

Respondents: Business or other for-profit.

Estimated Number of Recordkeepers: 221.

Estimated Burden Hours Per Recordkeeper: 1 hour.

Frequency of Response: On occasion.

Estimated Total Recordkeeping Burden: 1 hour.

OMB Number: 1513–0072.

Recordkeeping Requirement ID Number: TTB REC 5530/1.

Type of Review: Extension.

Title: Applications and Notices—Manufacturers of Nonbeverage Products.

Description: Reports (Letterhead Applications and Notices) are submitted by manufacturers of Nonbeverage Products who are using Distilled Spirits on which drawback will be claimed. Reports sensor that operations are in compliance with law: Prevents spirits from diversion to beverage use. Protects the revenue.

Respondents: Business or other for-profit.

Estimated Number of Recordkeepers: 640.

Estimated Burden Hours Per Recordkeeper: 1 hour.

Frequency of Response: On occasion.

Estimated Total Recordkeeping Burden: 640 hours.

OMB Number: 1513–0077.

Recordkeeping Requirement ID Number: TTB REC 5190/1.

Type of Review: Extension.

Title: Applications and Notices—Manufacturers of Nonbeverage Products.

Description: Records of Things of Value to Retailers, and Occasional Letter Reports from Industry Members Regarding Information on Sponsorships, Advertisements, Promotions, *etc.,* Under the Federal Alcohol Administration Act.

Respondents: Business of other for-profit, Individuals or households.

Estimated Number of Recordkeepers: 12,665.

Estimated Burden Hours Per Recordkeeper: 1 hour.

Frequency of Response: On occasion.

Estimated Total Recordkeeping Burden: 51 hours.

OMB Number: 1513–0093.

Form Numbers: TTB F 5600.38.

Type of Review: Extension.

Title: Applicant for Extension of Time for Payment of Tax.

Description: TTB uses the information on the form to determine if a taxpayer is qualified to extend payment based on circumstances beyond the taxpayer's control.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 12.

Estimated Burden Hours Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 3 hours.

OMB Number: 1513–0098.
Form Number: TTB F 5154.2.
Type of Review: Extension.
Title: Supporting Data for Nonbeverage Drawback Claims.
Description: Data required to be submitted by manufacturers of nonbeverage products are used to verify claims for drawback of taxes and hence, protect the revenue. Maintains accountability, allows office (initial) verification of claims.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 590.
Estimated Burden Hours Per Respondent: 1 hour.
Frequency of Response: Monthly, Quarterly.
Estimated Total Reporting Burden: 3,540 hours.
Clearance Officer: Jacqueline White (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue, NW., Washington, DC 20226.
OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Treasury PRA Clearance Officer.
[FR Doc. 03–25151 Filed 10–2–03; 8:45 am]
BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

September 26, 2003.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

Dates: Written comments should be received on or before November 3, 2003 to be assured of consideration.

Departmental Offices/Community Development Financial Institutions (CDFI) Fund

OMB Number: 1559–0006.
Form Number: CDFI–0005.
Type of Review: Extension.
Title: The Community Development Financial Institutions (CDFI) Program—Certification/Re-Certification Application.
Description: The certification/re-certification application will be used to determine whether an entity seeking CDFI certification meets the Fund's requirements for such certification as set forth in 12 CFR 1805.201.
Respondents: Not-for-profit institutions, Business or other for-profit.
Estimated Number of Respondents: 315.
Estimated Burden Hours Per Respondent: 40 hours.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 12,600 hours.
OMB Number: 1559–0013.
Form Number: CDFI–0018.
Type of Review: Reinstatement.
Title: Native American CDFI Development Program.
Description: Provides grants to be used to acquire technical assistance to increase the capacity of community development financial institutions or proposed CDFIs to serve underserved Native American, Alaska Native and Native Hawaiian target markets.
Respondents: Not-for-profit institutions, Business or other for-profit.
Estimated Number of Respondents: 40.
Estimated Burden Hours Per Respondent: 65 hours.
Frequency of Response: Annually.
Estimated Total Reporting Burden: 2,600 hours.
OMB Number: 1559–0021.
Form Number: CDFI–0001.
Type of Review: Extension.
Title: Financial Assistance (FA) Component Application—CDFI Program.
Description: The CDFI Fund provides financial assistance in the form of grants, loans, equity investments and deposits to community development financial institutions providing capital and financial services to underserved markets.
Respondents: Not-for-profit institutions, Business or other for-profit.
Estimated Number of Respondents: 200.
Estimated Burden Hours Per Respondent: 100 hours.
Frequency of Response: Other (application submitted only).
Estimated Total Reporting Burden: 20,000 hours.
Clearance Officer: Lois K. Holland (202) 622–1563, Departmental Offices, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.
OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Treasury PRA Clearance Officer.
[FR Doc. 03–25152 Filed 10–2–03; 8:45 am]
BILLING CODE 4811–16–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

September 24, 2003.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW Washington, DC 20220.

Dates: Written comments should be received on or before November 3, 2003 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0115.
Form Number: IRS Form 1099–MISC.
Type of Review: Extension.
Title: Miscellaneous Income.
Description: Form 1099–MISC is used by payers to report payments of $600 or more of rents, prizes and awards, medical and health care payments, nonemployee compensation, and crop insurance proceeds, $10 or more of royalties, any amount of fishing boat proceeds, certain substitute payments, golden parachute payments and an indication of direct sales of $5,000 or more.
Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions, Farms, Federal Government, State, Local or Tribal Government.
Estimated Number of Respondents: 4,302,217.
Estimated Burden Hours Respondent: 16 minutes.
Frequency of Response: Annually.
Estimated Total Reporting Burden: 21,649,027 hours.
OMB Number: 1545–0984.
Form Number: IRS Form 8586.
Type of Review: Revision.
Title: Low-Income Housing Credit.
Description: The Tax Reform Act of 1986 (Code section 42) permits owners of residential rental projects providing

low-income housing to claim a credit against income tax for part of the cost of constructing or rehabilitating such low-income housing. Form 8586 is used by taxpayers to compute the credit and by IRS to verify that the correct credit has been claimed.

Respondents: Individuals or households, Business or other for-profit.

Estimated Number of Respondents/ Recordkeepers: 168,137.

Estimated Burden Hours Respondent/ Recordkeeper:

Recordkeeping—7 hr., 53 min.

Learning about the law or the form—1 hr., 37 min.

Preparing the form—3 hr., 41 min.

Copying, assembling, and sending the form to the IRS—.32 min.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 2,311,884 hours.

OMB Number: 1545–1282.

Form Number: IRS Form 8830.

Type of Review: Extension.

Title: Enhanced Oil Recovery Credit.

Description: The enhanced oil recovery credit is 15% of qualified costs paid or incurred during the year. The purpose is to get more oil from the wells. The IRS uses the information on the form to ensure that the credit is correctly computed.

Respondents: Business or other for-profit, Individuals or households.

Estimated Number of Respondents/ Recordkeepers: 3,623.

Estimated Burden Hours Respondent/ Recordkeeper:

Recordkeeping—6 hr., 56 min.

Learning about the law or the form—1 hr., 5 min.

Preparing and sending the form to the IRS—1 hr., 15 min.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 33,622 hours.

Clearance Officer: Glenn Kirkland, (202) 622–3428, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Treasury PRA Clearance Officer.

[FR Doc. 03–25153 Filed 10–2–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Capital Asset Realignment for Enhanced Services (CARES) Commission; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Capital Asset Realignment for Enhanced Services (CARES) Commission will hold a meeting on October 14–16, 2003, at the Hotel Washington, Pennsylvania Avenue at 15th Street, NW., Washington, DC 20004. The sessions on October 14 and 15 will begin at 10:30 a.m. and end at 4:30 p.m. and the session on October 16 will begin at 8:30 a.m. and end at 2:30 p.m. These sessions are open to the public.

The purpose of the Commission is to conduct an external assessment of VA's capital asset needs and to assure that stakeholder and beneficiary concerns are fully addressed. The Commission is reviewing recommendations in VA Under Secretary for Health's Draft National CARES Plan. The Commission will also consider recommendations submitted by veterans service organizations, individual veterans, Congress, medical and nursing school affiliates, VA employees, local governments, community groups and others. Following its assessment, the Commission will make specific recommendations to the Secretary of Veterans Affairs regarding the Draft Plan's realignment and allocation of capital assets necessary to meet the demands for and enhance veterans healthcare services over the next 20 years.

The October 14–16 meeting will be the third public meeting held by the Commission since the issuance of the Draft National CARES Plan. The Commission will review the information received from nationwide site visits and public hearings and its regular public meetings. The Commission will begin deliberations regarding the Draft National CARES Plan and its impact in the various markets.

No time will be allocated at these meetings for receiving oral presentations from the public. However, interested persons may either attend or file statements with the Commission. Written statements may be filed either before the meeting or within 10 days after the meeting and addressed to: Department of Veterans Affairs, CARES Commission (OOCARES), 810 Vermont Avenue, NW., Washington, DC 20420. Any member of the public wishing additional information should contact Mr. Richard E. Larson, Executive Director, CARES Commission, at (202) 501–2000.

Dated: September 26, 2003.

By Direction of the Secretary:

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 03–25095 Filed 10–2–03; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Homeless Veterans, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that a meeting of the Advisory Committee on Homeless Veterans will be held on Tuesday, October 21, 2003, and Wednesday, October 22, 2003, at the La Mansion del Rio Hotel, 112 College Street, El Colegio Room, San Antonio, TX 78205. On October 20, from 12 Noon until 3:30 p.m., the Committee will also conduct site visits at various San Antonio locations with programs that provide assistance to homeless persons. Those site visits will be followed with a town hall forum from 4 p.m. until 6 p.m., at the American GI Forum Service Center, 611 N. Flores Street, San Antonio, TX. On 21–22, the meeting will convene at 8:30 a.m. and end at 4:30 p.m. daily in the El Colegio Room. The meeting and town hall forum are open to the public. Members of the public must sign up at the town hall forum in order to speak at that event.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on the effectiveness of the policies, organizational structures, and services of the Department in assisting homeless veterans. The Committee shall assemble and review information relating to the needs of homeless veterans and provide on-going advice on the most appropriate means of providing assistance to homeless veterans. The Committee will make recommendations to the Secretary regarding such activities.

On October 20, the Committee will visit program sites in the San Antonio area that provide housing and supportive services to homeless veterans. The town hall forum will be held to hear comments and concerns from current and formerly homeless veterans, service providers, faith-based organizations and tribal governments. On October 21–22, the Committee will review the recommendations submitted to the Secretary in its first annual report (March 2003). VA officials and others

responsible for implementing those recommendations will make presentations at the meeting. Presenters will include senior managers at the Veterans Benefits Administration, the Veterans Health Administration, as well as the Departments of Health and Human Services, Housing and Urban Development, Labor and Defense.

Those wishing to attend the meeting should contact Mr. Pete Dougherty, Department of Veterans Affairs, at (202) 273–5764. No time will be allocated for receiving oral presentations from the public during the meeting on October 21–22. However, the Committee will accept written comments from interested parties on issues affecting homeless veterans. Such comments should be referred to the Committee at the following address: Advisory Committee on Homeless Veterans, Homeless Veterans Programs Office (075D), U.S. Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

Dated: September 26, 2003.

By Direction of the Secretary:

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 03–25096 Filed 10–2–03; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register

Vol. 67, No. 192

Friday, October 3, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF DEFENSE

Department of the Army

Proposed Mandatory Use of US Bank's PowerTrack System by Department of Defense Personal Property Transportation Service Providers

Correction

In notice document 03–24612 beginning on page 55947 in the issue of Monday, September 29, 2003, make the following correction:

On page 55947, in the second column, in the second to the last paragraph, in the sixth line ''2003'' should read ''2004''.

[FR Doc. C3–24612 Filed 10–2–03; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Friday,
October 3, 2003

Part II

Environmental Protection Agency

40 CFR Part 62

Federal Plan Requirements for Commercial and Industrial Solid Waste Incinerators Constructed On or Before November 30, 1999; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[AD–FRL–7562–1]

RIN 2060–AJ28

Federal Plan Requirements for Commercial and Industrial Solid Waste Incinerators Constructed on or Before November 30, 1999

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On December 1, 2000, the EPA adopted emission guidelines for existing commercial and industrial solid waste incineration (CISWI) units. Sections 111 and 129 of the Clean Air Act (CAA) require States with existing CISWI units subject to the emission guidelines to submit to the EPA plans that implement and enforce the emission guidelines. Indian Tribes may submit, but are not required to submit, Tribal plans to implement and enforce the emission guidelines in Indian country. State plans were due from States with CISWI units subject to the emission guidelines on December 1, 2001. If a State or Tribe with existing CISWI units does not submit an approvable plan, sections 129 and 111 of the CAA require the EPA to develop, implement, and enforce a Federal plan for CISWI units located in that State or Tribal area within 2 years after promulgation of the emission guidelines (December 1, 2002). The EPA proposed a Federal plan for CISWI units on November 25, 2002. This action promulgates a Federal plan to implement emission guidelines for CISWI units located in States and Indian country without effective State or Tribal plans. This Federal plan is an interim action because on the effective date of an approved State or Tribal plan, the Federal plan will no longer apply to CISWI units covered by the State or Tribal plan.

EFFECTIVE DATE: The final rule is effective November 3, 2003.

ADDRESSES: Follow the detailed instructions in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: For further information concerning specific aspects of this Federal plan, contact Mr. David Painter at (919) 541–5515, Program Implementation and Review Group, Information Transfer and Program Integration Division (E143–02), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, email: *painter.david@epa.gov.* For technical information, contact Mr. Fred Porter at (919) 541–5251, Combustion Group, Emission Standards Division (C439–01), U.S. Environmental Protection Agency, Research Triangle Park, N.C. 27711, email: *porter.fred@epa.gov.* For information regarding implementation of this Federal plan, contact the appropriate Regional Office (Table 1) as shown in the **SUPPLEMENTARY INFORMATION.**

SUPPLEMENTARY INFORMATION: *Regulated entities.* The Federal plan affects the following North American Industrial Classification System (NAICS) and Standard Industrial Classification (SIC) codes:

Category	NAICS Code	SIC Code	Examples of potentially regulated entities
Any industry using a solid waste incinerator as defined in the regulations.	325	28	Manufacturers of chemicals and allied products.
	334	34	Manufacturers of electronic equipment.
	421	36	Manufacturers of wholesale trade, durable goods.
	321, 337	24, 25	Manufacturers of lumber and wood furniture.

This list is not intended to be exhaustive, but rather provides a guide for readers regarding entities the EPA expects to be regulated by this rule. This table lists examples of the types of entities that may be affected by this rule. Other types of entities not listed could also be affected. To determine whether your facility, company, business organization, etc., is regulated by this action, carefully examine the applicability criteria in 40 CFR 62.14510 through 62.14531 of subpart III. If you have any questions regarding the applicability of this action to your solid waste incineration unit, refer to the **FOR FURTHER INFORMATION CONTACT** section.

Judicial Review: The EPA proposed this rule for CISWI units on November 25, 2002, (67 FR 70640). This action adopting a rule for CISWI units constitutes final administrative action concerning that proposal. Under section 307(b)(1) of the CAA, judicial review of this final rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by December 2, 2003. Under section 307(d)(7)(B) of the CAA, only an objection to this rule that was raised with reasonable specificity during the period for public comment can be raised during judicial review. Moreover, under section 307(b)(2) of the CAA, the requirements established by today's final action may not be challenged separately in any civil or criminal proceeding brought by the EPA to enforce these requirements.

Docket. Docket Numbers A–2000–52 and A–94–63 contain the supporting information for the CISWI Federal plan and for the EPA's promulgation of EG for existing CISWI units, respectively. Docket A–2000–52 (OAR–2002–0069)incorporates all of the information in Docket A–94–63. The dockets are organized and complete files of all information submitted to or otherwise considered by EPA in the development of this rulemaking. The dockets are available for public inspection and copying between 8:30 a.m. and 4:30 p.m., Monday through Friday, at EPA's Air and Radiation Docket and Information Center, 1301 Constitution Avenue, NW, Room B102, Washington, DC 20460. The mailing address for the Center is Air and Radiation Docket, Mail Code 6102T, 1200 Pennsylvania Avenue, NW, Washington, DC 20460. A reasonable fee may be charged for copying docket materials. The Center may be contacted by calling (202) 566–1742 between the hours of 7:30 a.m. and 5:30 p.m., Monday through Friday. The Center may also be contacted by fax using the fax number (202) 566–1741 and by E-mail using the E-mail address ''*A-and-R-Docket@epa.gov*''.

Electronic Access. Electronic versions of the public dockets are available through EPA's electronic public docket and comment system, EPA Dockets. You may use the EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the indices of the contents of the official public dockets, and to access those documents in the public dockets that are available electronically. Once in the system, select ''search'' and key-in the appropriate docket identification number. Although not all docket materials may be available electronically, you may still access any of the publicly available docket

materials through the docket facility identified in this document.

Worldwide Web (WWW). In addition to being available in the dockets, an electronic copy of today's document also will be available on the World Wide Web site that the EPA has established for CISWI units. The address is *http://www.epa.gov/ttn/atw/129/ciwi/ciwipg.html.* The CISWI Web site references other Web sites for closely related rules, such as large and small municipal waste combustors (MWC), hazardous waste, and hospital/medical/infectious waste incinerators (HMIWI). The large MWC and HMIWI sites contain the respective State plan guidance documents.

EPA Regional Office Contacts. Table 1 lists EPA Regional Offices that can answer questions regarding implementation of this rule.

TABLE 1.—EPA REGIONAL CONTACTS FOR CISWI

Region	Contact	Phone/fax	States and protectorates
I	EPA New England, Director, Air Compliance Program, 1 Congress Street, Suite 1100 (SEA), Boston, MA 02114–2023.	617–918–1650 617–918–1505 (fax)	CT, ME, MA, NH, RI, VT.
II	U.S. EPA—Region 2, Air Compliance Branch, 290 Broadway, New York, New York 10007.	212–637–4080 212–637–3998 (fax)	NJ, NY, Puerto Rico, Virgin Islands.
III	U.S. EPA—Region 3, Chief, Air Enforcement Branch (3AP12), 1650 Arch Street, Philadelphia, PA 19103–2029.	215–814–3438 215–814–2134 (fax)	DE, DC, MD, PA, VA, WV.
IV	U.S. EPA—Region 4, Air and Radiation, Technology Branch, Atlanta Federal Center, 61 Forsyth Street, Atlanta, Georgia 30303–3104.	404–562–9105 404–562–9095 (fax)	AL, FL, GA, KY, MS, NC, SC, TN.
V	U.S. EPA—Region 5, Air Enforcement and Compliance Assurance Branch, (AR–18J), 77 West Jackson Boulevard, Chicago, IL 60604–3590.	312–353–2211 312–886–8289 (fax)	IL, IN, MN, OH, WI.
VI	U.S. EPA—Region 6, Chief, Toxics Enforcement, Section (6EN–AT), 1445 Ross Avenue, Dallas, TX 75202–2733.	214–665–7224 214–665–7446 (fax)	AR, LA, NM, OK, TX.
VII	U.S. EPA—Region 7, 901 N. 5th Street, Kansas City, KS 66101.	913–551–7020 913–551–7844 (fax)	IA, KS, MO, NE.
VIII	U.S. EPA—Region 8, Air Program Technical Unit, (Mail Code 8P–AR), 999 18th Street, Suite 500, Denver, CO 80202.	303–312–6007 303–312–6064 (fax)	CO, MT, ND, SD, UT, WY.
IX	U.S. EPA—Region 9, Air Division, 75 Hawthorne Street, San Francisco, CA 94105.	415–744–1219 415–744–1076 (fax)	AZ, CA, HI, NV, American Samoa, Guam.
X	U.S. EPA—Region 10, Office of Air Quality, 1200 Sixth Avenue, Seattle, WA 98101.	(206) 553–4273 (206) 553–0110 (fax).	

Organization of this document. The following outline is provided to aid in locating information in this preamble.

I. Background Information
- A. What is the Statutory Authority for Today's Action?
- B. What is the Purpose of this Federal Plan?
- C. What Impact Does the U.S. Appeals Court Remand and EPA's Granting of a Request for Reconsideration Have on this Federal Plan?
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- D. Unfunded Mandates Reform Act
- E. Executive Order 13132: Federalism
- F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
- G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks
- H. Executive Order 13211—Actions that Significantly Affect Energy Supply, Distribution, or Use
- I. National Technology Transfer Advancement Act
- J. Congressional Review Act

I. Background Information

A. What Is the Statutory Authority for Today's Action?

Today's action is taken under the authority of Sections 111, 114, 129, and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7411, 7414, 7429, and 7601(a)). Today's action is a rulemaking subject to the provision of Clean Air Act section 307(d). *See* 42 U.S.C. 7606(d)(1).

B. What Is the Purpose of This Federal Plan?

Section 129 of the CAA requires the EPA to develop emission guidelines under the authority of sections 111 and 129 of the CAA for existing ''solid waste incineration units combusting commercial or industrial waste.'' The EPA refers to these units as ''commercial and industrial solid waste incineration'' (CISWI) units. The EPA proposed emission guidelines for CISWI units on November 30, 1999, and promulgated them on December 1, 2000, (65 FR 75338) (to be codified at 40 CFR part 60, subpart DDDD). In writing Section 129 of the CAA, Congress looked first to the States as the preferred implementers of emission guidelines for existing CISWI units. To make these emission guidelines enforceable, States with existing CISWI units must have submitted to the EPA within one year following promulgation of the emission guidelines (by December 1, 2001) State plans that implement and enforce the emission guidelines. For States or Tribes that do not have an EPA-approved and effective plan, the EPA must develop and implement a Federal plan within two years following promulgation of the emission guidelines (by December 1, 2002). The EPA sees this Federal plan as an interim measure to ensure that Congressionally mandated emission standards under authority of sections 111 and 129 of the CAA are implemented until States assume their role as the preferred implementers of the emissions guidelines. Thus, the EPA encourages States to either use the Federal plan as a template to reduce the effort needed to develop their own plans or to simply take delegation to directly implement and enforce the guidelines. States without any existing CISWI units are required to submit to the Administrator a letter of negative declaration certifying that there are no CISWI units in the State. No plan is required for States that do not have any CISWI units.

As discussed in section VII.E of this preamble, Indian Tribes may, but are not required to, submit Tribal plans to cover CISWI units in Indian Country. A Tribe may submit to the Administrator a letter of negative declaration certifying that no CISWI units are located in the Tribal area. No plan is required for tribes that do not have any CISWI units. CISWI units located in States or Tribal areas that mistakenly submit a letter of negative declaration would be subject to the Federal plan until a State or Tribal plan has been approved and becomes effective covering those CISWI units.

Sections 111 and 129 of the CAA and 40 CFR 60.27(c) and (d) require the EPA to develop, implement, and enforce this Federal plan to cover existing CISWI units located in States that do not have an approved plan within two years after promulgation of the emission guidelines (by December 1, 2002, for CISWI units). Today's action promulgates a Federal plan for CISWI units that are not yet covered by an approved State or Tribal plan.

C. What Impact Does the U.S. Appeals Court Remand and the EPA's Granting of a Request for Reconsideration Have on This Federal Plan?

Subsequent to the EPA's promulgation of the final rule establishing the New Source Performance Standards (NSPS and the Emission Guidelines (EG)for CISWI units, two events occurred that potentially could result in substantive changes to these standards. First, in August 2001, the EPA granted a request for reconsideration, pursuant to section 307(d)(7)(B) of the CAA, submitted on behalf of the National Wildlife Federation and the Louisiana Environmental Action Network, related to the definition of ''commercial and industrial solid waste incineration unit'' in the EPA's CISWI rulemaking. In granting this petition for reconsideration, the EPA agreed to undertake further notice and comment proceedings related to this definition. Second, on January 30, 2001, the Sierra Club filed a petition for review in the U.S. Court of Appeals for the D.C. Circuit challenging the EPA's final CISWI rule. On Sept. 6, 2001, the Court entered an order granting the EPA's motion for a voluntary remand of the CISWI rule without vacature. The EPA's request for a voluntary remand of the final CISWI rule was intended to allow the EPA to address concerns related to the EPA's procedures for establishing MACT floors for CISWI units in light of the DC Circuit Court's decision in *Cement Kiln Recycling Coalition* v. *EPA,* 255 F.3d 855 (DC Cir. 2001).

Neither the EPA's granting of the petition for reconsideration, nor the Court's order granting a voluntary remand, stay, vacate or otherwise influence the effectiveness of the currently existing CISWI regulations. Specifically, section 307(d)(7)(B) of the CAA provides that ''reconsideration shall not postpone the effectiveness of the rule,'' except that ''[t]he effectiveness of the rule may be stayed during such reconsideration * * * by the Administrator or the court for a period not to exceed three months.'' In this case, neither the EPA nor the court stayed the effectiveness of the final CISWI regulations in connection with the reconsideration petition. Likewise, the DC Circuit granted the EPA's motion for a remand without vacature. Therefore, the Court's remand order had no impact on the effectiveness of the current CISWI regulations. Because the existing CISWI regulations remain in full effect, the EPA's obligation under section 129(b)(3) of the CAA to promulgate a Federal plan (to implement those regulations for existing units that are not covered by an approved and effective State plan) remains unchanged.[1] Therefore, the EPA is complying with its statutory obligations by promulgating the Federal plan for CISWI units.

To the extent that the EPA might take action in the future that results in changes in the underlying CISWI rule, in response to the petition for reconsideration or in response to the voluntary remand, the EPA will simultaneously amend this Federal plan to reflect any such changes. If such changes become necessary, interested parties, including States and sources, will have the opportunity to provide comments, and the EPA will reasonably accommodate the concerns of commenters as appropriate.

D. Status of State Plan Submittals

Sections 111(d) and 129(b)(2) of the CAA, as amended, 42 U.S.C. 7411(d) and 7429(b)(2), authorize EPA to develop and implement a Federal plan for CISWI located in States with no approved and effective State plan. Table 2 summarizes the current status of State plans. The CISWI covered in EPA-approved State plans are not subject to the CISWI Federal plan, as of the effective date specified in the Federal Register notice announcing the EPA's approval of the State plan. The EPA is not expecting State plans to be submitted by the States that submitted negative declarations. However, in the unlikely event that there are CISWI units located in these States, this Federal plan would automatically apply to such CISWI units.

[1] Similarly, the obligations of States and sources are unaffected by the reconsideration petition and the remand.

TABLE 2.—STATUS OF STATE PLANS

I. States With EPA-Approved State Plans
Alabama, Florida, Indiana, Mississippi, New Hampshire, West Virginia.
II. Negative Declaration Submitted to EPA
Arizona, Albuquerque in New Mexico, Clark County in Nevada, Colorado, Delaware, District of Columbia, Forsyth County in North Carolina, Kansas, Kentucky, Knox County in Tennessee, Maine, Maricopa County in Arizona, Mecklenburg County in North Carolina, Memphis/Shelby County in Tennessee, Missouri, Montana, New York, Nebraska, New Mexico, City of Philadelphia in Pennsylvania, Pima County in Arizona, Pinal County in Arizona, Rhode Island, South Dakota, Utah, Vermont, Virgin Islands, Washoe County in Nevada, Western County in North Carolina, Wyoming.
III. Final State Plan Submitted to EPA
Louisiana, Nashville/Davidson County in Tennessee, North Carolina, South Carolina, Puerto Rico.
IV. Draft State Plan Submitted to EPA
Allegheny County in Pennsylvania, Maryland, North Dakota, Ohio, Oklahoma, Virginia.

The EPA is currently reviewing final and draft State plans submitted by the States listed in parts III and IV of Table 2. The Federal plan covers CISWI in these States until these State plans are approved by the EPA and become effective. Other States are making significant progress on their State plans and we expect many State plans to be approved in the next several months. As our Regional Offices approve State plans, they will also, in the same action, amend the appropriate subpart of 40 CFR part 62 to codify their approvals. The EPA is not aware of any Indian Tribes that are developing Tribal plans.

The EPA will maintain a list of State plan submittals and approvals on our Air Toxics Web site at *http://www.epa.gov/ttn/atw/129/ciwi/ciwipg.html.* The list will help CISWI owners or operators determine whether their CISWI is affected by a State plan, a Tribal plan, or the Federal plan. Owners and operators of CISWI units can also contact the EPA Regional Office for the State in which their CISWI units are located to determine whether there is an approved and effective State plan in place.

II. Affected Facilities

A. What Is a CISWI Unit?

A CISWI unit means any combustion device that combusts commercial and industrial waste, as defined in the final 40 CFR part 62, subpart III. Commercial and industrial waste is defined as solid waste combusted in an enclosed device using controlled flame combustion without energy recovery that is a distinct operating unit of any commercial or industrial facility (including field-erected, modular, and custom built incineration units operating with starved or excess air), or solid waste combusted in an air curtain incinerator without energy recovery that is a distinct operating unit of any commercial or industrial facility. Fifteen types of combustion units, which are listed in section 62.14525 of subpart III are conditionally exempt from the Federal plan.

B. Does the Federal Plan Apply to Me?

The Federal plan applies to you if you are the owner or operator of a combustion device that combusts commercial and industrial waste (as defined in subpart III) and the device is not covered by an approved and effective State or Tribal plan as of December 1, 2002. The Federal plan covers your CISWI unit until the EPA approves a State or Tribal plan that covers your CISWI unit and that plan becomes effective.

If you began the construction of your CISWI unit on or before November 30, 1999, it is considered an existing CISWI unit and could be subject to the Federal plan. If you began the construction of your CISWI unit after November 30, 1999, it is considered a new CISWI unit and is subject to the NSPS. If you began reconstruction or modification of your CISWI unit prior to June 1, 2001, it is considered an existing CISWI unit and could be subject to the Federal plan. Likewise, if you began reconstruction or modification of your CISWI unit on or after June 1, 2001, it is considered a new CISWI unit and is subject to the NSPS.

Your CISWI unit is subject to this Federal plan if on November 3, 2003, the EPA has not approved a State or Tribal plan that covers your unit, or the EPA-approved State or Tribal plan has not become effective. The specific applicability of this plan is described in sections 62.14510 through 62.14531 of subpart III.

Once an approved State or Tribal plan is in effect, the Federal plan no longer applies to a CISWI unit covered by such plan. An approved State or Tribal plan is a plan developed by a State or Tribe that the EPA has reviewed and approved based on the requirements in 40 CFR part 60, subpart B to implement and enforce 40 CFR part 60, subpart DDDD. The State or Tribal plan is effective on the date specified in the notice published in the **Federal Register** announcing the EPA's approval of the plan.

Today's promulgation of the CISWI Federal plan does not preclude States or Tribes from submitting a plan. Once the EPA approves a State or Tribal plan, then the Federal plan will no longer apply to CISWI units covered by the State or Tribal plan as of the effective date of the State or Tribal plan. (See the discussion in ''*Federal Plan Becomes Effective Prior to Approval of a State or Tribal Plan*'' in section VII.C of this preamble.) If a CISWI unit were to be overlooked by a State or Tribe and the State or Tribe submitted a negative declaration letter, or if an individual CISWI unit were not to be covered by an approved and effective State or Tribal plan, the CISWI unit would be subject to this Federal plan.

C. How Do I Determine if My CISWI Unit Is Covered by an Approved and Effective State or Tribal Plan?

Part 62 of Title 40 of the Code of Federal Regulations identifies the approval and promulgation of section 111(d) and section 129 State or Tribal plans for designated facilities in each State or area of Indian Country. However, part 62 is updated only once per year. Thus, if part 62 does not indicate that your State or Tribal area has an approved and effective plan, you

should contact your State environmental agency's air director or your EPA Regional Office (Table 1) to determine if approval occurred since publication of the most recent version of part 62.

III. Elements of the CISWI Federal Plan

Since this Federal plan covers CISWI units located in States and areas of Indian Country where plans are not yet in effect, the EPA has included in the Federal plan the same elements as are required for State plans: (1) Identification of legal authority and mechanisms for implementation, (2) inventory of CISWI units, (3) emissions inventory, (4) emission limitations, (5) compliance schedules, (6) waste management plan, (7) testing, monitoring, inspection, reporting, and recordkeeping, (8) operator training and qualification, (9) public hearing, and (10) progress reporting. *See* 40 CFR part 60 subparts B and C and sections 111 and 129 of the CAA. Each plan element is described below as it relates to this CISWI Federal plan. Table 3 lists each element and identifies where it is located or codified.

TABLE 3.—ELEMENTS OF THE CISWI FEDERAL PLAN

Element of the CISWI federal plan	Location
Legal authority and enforcement mechanism	Sections 129(b)(3) 111(d), 301(a), and 301(d)(4) of the CAA.
Inventory of Affected MWC Units	Docket A–2000–52.
Inventory of Emissions	Docket A–2000–52.
Emission Limits	40 CFR 62.14630–62.14645.
Compliance Schedules	40 CFR 62.14535–62.14575.
Operator Training and Qualification	40 CFR 62.14595–62.14625.
Waste Management Plan	40 CFR 62.14580–62.14590.
Record of Public Hearings	Docket A–2000–52.
Testing, Monitoring, Recordkeeping, and Reporting	40 CFR 62.14670–62.14760.
Progress Reports	Section III.J of this preamble.

A. Legal Authority and Enforcement Mechanism

1. EPA's Legal Authority in States

Section 301(a) of the CAA provides the EPA with broad authority to write regulations that carry out the functions of the CAA. Sections 111(d) and 129(b)(3) of the CAA direct the EPA to develop a Federal plan for States that do not submit approvable State plans. Sections 111 and 129 of the CAA provide the EPA with the authority to implement and enforce the Federal plan in cases where the State fails to submit a satisfactory State plan. Section 129(b)(3) of the CAA requires the EPA to develop, implement, and enforce a Federal plan within two years after the date the relevant emission guidelines are promulgated (by December 1, 2002, for CISWI units). Compliance with the emission guidelines cannot be later than five years after the relevant emission guidelines are promulgated (by December 1, 2005, for CISWI units).

2. EPA's Legal Authority in Indian Country

Section 301 of the CAA provides the EPA with the authority to administer Federal programs in Indian Country. *See* sections 301(a) and (d). Section 301(d)(4) of the CAA authorizes the Administrator to directly administer provisions of the CAA where Tribal implementation of those provisions is not appropriate or administratively not feasible. See section VII.E of this preamble for a more detailed discussion of the EPA's authority to administer the CISWI Federal plan in Indian Country.

This Federal plan is being promulgated under the legal authority of the CAA to implement the emission guidelines in those States and areas of Indian Country not covered by an approved plan. As discussed in section VII of this document, implementation and enforcement of the Federal plan may be delegated to eligible Tribal, State, or local agencies when requested by a State, eligible Tribal, or local agency, and when the EPA determines that such delegation is appropriate.

B. Inventory of Affected CISWI Units

The Federal plan includes an inventory of CISWI units affected by the emission guidelines. (See 40 CFR 60.25(a).) Docket number A–2000–52 contains an inventory of the CISWI units that may potentially be covered by this Federal plan in the absence of State or Tribal plans. This inventory contains 99 CISWI units in 30 States and one protectorate. It is based on information collected from State and Federal databases, information collection request survey responses, and stakeholder meetings during the development of the CISWI emission guidelines. The EPA recognizes that this list may not be complete. Therefore, sources potentially subject to this Federal plan may include, but are not limited to, the CISWI units listed in the inventory memorandum in docket number A–2000–52. Any CISWI unit that meets the applicability criteria in the Federal plan rule is subject to the Federal plan, regardless of whether it is listed in the inventory.

C. Inventory of Emissions

The Federal plan includes an emissions estimate for CISWI units subject to the emission guidelines. (See 40 CFR 60.25(a).) The pollutants to be inventoried are dioxins/furans, cadmium (Cd), lead (Pb), mercury (Hg), particulate matter (PM), hydrogen chloride (HCl), oxides of nitrogen (NO_X), carbon monoxide (CO), and sulfur dioxide (SO_2). The EPA has estimated the emissions from each known CISWI unit that potentially may be covered by the Federal plan for the nine pollutants regulated by the Federal plan.

The emissions inventory is based on available information about the CISWI units, emission factors, and typical emission rates developed for calculating nationwide air impacts of the CISWI emission guidelines and the Federal plan. Refer to the inventory memorandum in docket number A–2000–52, item number II–B–3 for the complete emissions inventory and details on the emissions calculations.

D. Emission Limitations

The Federal plan includes emission limitations. (See 40 CFR 60.24(a).) Section 129(b)(2) of the CAA requires these emission limitations to be ''at least as protective as'' those in the emission guidelines. The emission limitations in this Federal plan are the same as those contained in the emission guidelines. (See Table 1 of subpart III.) Section V. of this preamble discusses the emission limitations and operating limits. Table 2 of subpart III contains operating limits for wet scrubbers.

E. Compliance Schedules

Increments of progress are required for CISWI units that need more than 1 year from State plan approval to comply, or in the case of the Federal plan, more than 1 year after promulgation of the final Federal plan. (See 40 CFR 60.24(e)(1).) Increments of progress are included to ensure that each CISWI unit needing more time to comply is making progress toward meeting the emission limits.

For CISWI units that need more than 1 year to comply, the Federal plan includes in its compliance schedule two increments of progress from 40 CFR 60.21(h), as allowed by 40 CFR 60.24(e)(1) and required by 40 CFR part 60, subpart DDDD (§ 60.2575). The Federal plan includes defined and enforceable dates for completion of each increment. These increments of progress are (1) submit final control plan, and (2) achieve final compliance. The increments of progress are described in section V.E of this preamble.

F. Waste Management Plan Requirements

A waste management plan is a written plan that identifies both the feasibility and the methods used to reduce or separate certain components of solid waste from the waste stream to reduce or eliminate toxic emissions from incinerated waste. The waste management plan must be submitted no later than April 5, 2004. Sections 62.14580 through 62.14590 of subpart III contain the waste management plan requirements.

G. Testing, Monitoring, Recordkeeping, and Reporting

The Federal plan includes testing, monitoring, recordkeeping, and reporting requirements. (See 40 CFR 60.25.) Testing, monitoring, recordkeeping, and reporting requirements are consistent with subpart DDDD, and assure initial and ongoing compliance.

H. Operator Training and Qualification Requirements

The owner or operator must qualify operators or their supervisors (at least one per facility) by ensuring that they complete an operator training course and annual review or refresher course. Sections 62.14595 through 62.14625 of subpart III contain the operator training and qualification requirements.

I. Record of Public Hearings

The proposed Federal plan provided opportunity for public participation in adopting the plan. No requests for a public hearing were received by the EPA.

J. Progress Reports

Under the Federal plan, the EPA's Regional Offices will prepare annual progress reports to show progress of CISWI units in the Region toward implementation of the emission guidelines. (See 40 CFR 60.25(e).) States or Tribes that have been delegated the authority to implement and enforce this Federal plan are also required to submit annual progress reports to the appropriate EPA Regional Office.

Each progress report must include the following items: (1) Status of enforcement actions; (2) status of increments of progress; (3) identification of sources that have shut down or started operation; (4) emission inventory data for sources that were not in operation at the time of plan development, but that began operation during the reporting period; (5) additional data as necessary to update previously submitted source and emission information; and (6) copies of technical reports on any performance testing and monitoring.

IV. Significant Issues and Changes Since Proposal

A. Applicability of the Standards

A commenter (IV–D–05) representing electric utilities providing service to more than 95% of the nation's consumers of electricity commented in support of proposed rules. In particular, the commenter endorsed the EPA's proposed definitions of ''commercial and industrial solid waste incineration unit'' and the corresponding definition of ''commercial and industrial waste.'' The commenter said that, taken together, these two definitions will ensure that the proposed Federal plan requirements do not inadvertently encompass combustion units, including electric utility boilers, that burn materials for energy recovery. The commenter amplified this endorsement noting his organization's opinion that the proposed rules clarify that the section 129 program was not intended by Congress to encompass electric utility boiler combustion practices, including those circumstances where electric utility boilers co-combust non-hazardous solid waste with fossil fuels during normal production operations. According to the commenter, it was clear from the legislative history of section 129 that Congress meant only for the EPA to regulate units whose primary function is to incinerate nonhazardous solid waste, not electric utility boilers that co-combust small amounts of nonhazardous waste with fuel during the production of electric power. The commenter sought to underscore that, for purposes of this rulemaking, the EPA correctly adopted the same definitions of CISWI and commercial and industrial waste incorporated in the EG, thereby excluding from the CISWI Federal plan combustion units, including electric utility boilers, that engage in energy recovery.

The EPA notes that a comment letter endorsing a proposed action typically requires no response on our part. Here, we remind the reader that after promulgating the final rule establishing the NSPS and the EG for the CISWI category, the EPA received and granted a petition for reconsideration related specifically to the definition of ''commercial and industrial solid waste incineration unit''. Thus, the EPA will undertake additional notice and comment proceedings related to this definition. Additionally, as discussed above, the EPA accepted a voluntary remand (without vacature) on the underlying NSPS and EG in connection with a petition for review filed in the Federal Court of Appeals for the D.C. Circuit. We clearly acknowledged this fact also in the proposal for this Federal plan. The EPA intends to take final action on this definitional issue in conjunction with the EPA's response to the remand. As we noted at proposal, however, since the current EG remain in effect, we have proceeded to develop a Federal plan as required by section 129(b)(3) of the CAA.

Since the Federal plan must mirror the substantive requirements of the EG, we will promulgate a Federal plan which includes the definitions endorsed by the commenter. To the extent that we might take action in the future that results in changes to the definitions in the underlying CISWI EG, we will simultaneously propose amendments to the Federal plan to reflect any such changes. If changes become necessary, interested parties, including the commenter, will have the opportunity to provide comments. We will reasonably accommodate concerns of commenters as appropriate.

One commenter (IV–D–01) representing a State air pollution control agency noted a discrepancy between the proposed Federal plan and EG requirements for air curtain incinerators (ACI) regarding the types of wastes qualifying for the exemption of ACI from CISWI emission limits. The commenter observed that the proposed plan specifies certain requirements if the ACI's burn only 100 percent wood waste and clean lumber. By contrast, the EG and NSPS specify certain

requirements if the ACI burn 100 percent wood waste, 100 percent clean lumber, or 100 percent wood waste, clean lumber, and/or yard waste. The commenter asked that the EPA explain and correct the discrepancy as appropriate.

We agree that the commenter's observation was correct. The proposed regulatory language has been amended to duplicate the applicability of the EG. Further, a definition of yard waste has been included to provide clarity on the meaning of the term ''yard wastes'' for the purposes of this Federal plan. The term ''yard wastes'' as defined in the final rule for the CISWI Federal plan includes the excluded wastes listed in paragraph (1) of the definition of ''wood waste'' in § 62.14840 of the rule. This definition of ''yard wastes'' is consistent with the one previously promulgated in the NSPS for large municipal waste combustors (40 CFR Part 60 Subpart Eb). Overall, these changes will make the final rule better comport to the language in section 129(g)(1) of the CAA.

One commenter (IV–G–01) supports the rationale behind the exemption in §§ 62.14525(n)(7) and 62.2555(n)(7) which exempts ''Units burning only photographic film to recover silver.'' However, the commenter believes that for this exemption to be effective, it should be broadened to cover photographic materials, since there is a broad range of photographic materials that are burned together to recover silver. These materials include, not only film, but paper, filters, sludges and other photosensitive materials. Accordingly, the commenter recommended changing the wording of § 62.14525(n)(7) to read as follows: ''(7) Units burning only photographic materials to recover silver.''

Another commenter (IV–G–04) requested a similar change to the draft rules to formalize an exemption for carbon regeneration furnaces used in the corn wet milling industry. He asked for the proposed rule to be amended to reflect the EPA's granting of a petition for exemption of these sources on September 24, 2002. To accomplish this purpose, we were asked to add language to § 62.14525(n) reading as follows: ''Units burning contaminants adsorbed by spent activated carbon when the spent carbon is being regenerated for reuse in manufacturing processes.''

While EPA understands the basis for both comments, in light of section 129(g) of the CAA, we do not believe that adopting additional specific exemptions in the Federal Plan is the appropriate approach. First, the appropriate mechanism for requesting exemptions beyond those expressly provided for in the EG is the petition process described in § 60.2025 of the NSPS and § 60.2558 of the EG. Second, we do not believe that it is appropriate to list in the Federal plan each exemption that EPA approves under these provisions. We are concerned that making the requested changes would cause a discrepancy between the express applicability of the EG and the Federal plan. To avoid such discrepancies, the EPA would need to simultaneously amend the Federal plan and the EG each time we approve a new exemption under § 60.2558. However, each change in the Federal plan for new exemptions would cause the Federal plan to differ from State plans.

To appropriately account for exemptions approved under §§ 60.2025 and 60.2558, while ensuring that the Federal plan is consistent with the requirements of the EG, we have amended the final rule to include a new paragraph 62.14525(n)(8). This provision exempts from the Federal plan sources which are granted exemptions from the NSPS and EG through the petition process. Thus, in order to secure an exemption from the Federal plan requirements based on a facility's status as a chemical recovery unit, the facility need only apply for and receive an exemption under the appropriate provision of the NSPS or the EG. Accordingly, we have also re-drafted § 62.14530 to advise owners/operators of chemical recovery units not listed in paragraph 62.14525(n) of the appropriate method to request exemptions.

We received comment (IV–D–03) from an operator of CISWI units in Alaska who requested changes to the proposed rules to fit circumstances deemed unique to operation of the Alaskan pipeline. The commenter suggested that a lower size cutoff should be added to the final rule to reflect the economic impacts of installing emission controls in very remote locations. The commenter further requested outright exemption of emergency-use CISWI. The primary concern given was elimination of non-hazardous debris from the cleanup of large oil spills. The commenter noted that for large oil spill response operations, incinerators would be a valuable form of equipment to environmentally and safely dispose of large amounts of boom, sorbent pads, and personal protective equipment employed in a clean-up. He said that land-filling such materials is not a viable option because of the remote locations. He considered bagging and shipping such waste away from the locale of a spill infeasible and was not aware of any Alaskan facilities that could handle the large volumes of oily waste they'd receive. While requesting that the EPA include in the final Federal plan an exemption for emergency use CISWI, the commenter would not object to establishment of minimal standards such as unit capacity limitations in such an exemption.

We see section 129(a) of the CAA providing discretion to consider cost, non-air health and environmental impacts and energy requirements in the establishment of emission standards for CISWI. However, the EPA may not consider such factors in establishing the minimum stringency for controls under section 129(a)(2). Moreover, Section 129 does not permit the EPA to exclude incinerators from coverage under the regulations based on the size of the incinerator unit. Finally, the emission limits for CISWI units were established in the manner prescribed by law for determining that minimal level during development of the EG. The function of this Federal plan is not to make substantive changes to those requirement, but to implement those requirements in States that do not adopt State plans. Section 129(b) requires us to include in the Federal plan all provisions of the guidelines. Thus, it would be inappropriate to change this Federal plan in the manner requested by the commenter.

B. Compliance Schedule

Two commenters (IV–D–02, IV–G–02) asked us to revise the compliance schedule for existing CISWI units subject to Federal plan to be consistent with the compliance schedule provided in the EG. Both cited section 60.2535 of the CISWI EG, wherein the regulation requires compliance ''as expeditiously as practicable,'' or by the earlier of two dates: three years after the effective date of State plan approval or by December 1, 2005. Both noted, however, that section 62.14535 of the proposed Federal plan provides only one year after promulgation of the CISWI Federal plan for final compliance. One writer asked us to synchronize the compliance dates for CISWI units, whether they are regulated under a State plan or the Federal plan. The other expressed concern that similar units in different States may have different compliance dates. We were asked to revise the Federal plan to require compliance as expeditiously as practicable, but not later than the earlier date of December 1, 2005, or three years after promulgation of the Federal plan.

In reply, we note our expectation that schedules for combustion units subject to section 129 requirements should differ. Because compliance schedules

are often tied to the time of State plan approval, most State plans will have differing compliance dates. Hence, State plans and Federal plans are not expected to have the same compliance dates for a given category of sources. Furthermore, State plans and the Federal plan have the obligation to require compliance ''as expeditiously as practicable.'' This is specifically required in section 129(f)(2) of the CAA as well as in 40 CFR 60.24(c) and may be sooner than the worst case dates identified in the emission guidelines.

State plans were due on December 1, 2002. If a State or Tribe with existing CISWI units did not submit an approvable plan by December 1, 2002, sections 129 and 111 of the CAA require the EPA to develop, implement, and enforce a Federal plan for units located in that State or Tribal area. By developing the Federal plan, we assumed the burden of implementing the EG for CISWI units not covered by an approved and effective State or Tribal plan. In the Federal plan, as in a State plan, the implementing agency has the discretion to apply an appropriate compliance schedule to the source category. In the case of the Federal plan, we developed our schedule to achieve compliance with provisions of the EG as expeditiously as practicable, based on the feasibility of owners or operators to retrofit combustion units with air pollution control devices.

Mindful of the requirements of section 129(f)(2), we examined the feasibility for owners or operators to retrofit combustion units with air pollution control devices prior to proposal. Based upon similarities in size and upon examination of eight case studies (Docket No. A–98–24, II–A–1) of hospital medical infectious waste incineration (HMIWI) units that completed retrofits of types of controls needed to meet the HMIWI Federal plan, we chose to require compliance within one year after publication of the final CISWI Federal plan. Our rationale for the compliance schedule is discussed fully in the proposal preamble at 67 FR 70646. Implementation of the EG and Federal plans for HMIWI have shown that our expectations were well-founded. We concluded that CISWI owners and operators could meet the final compliance date just as promptly and efficiently. Also, we noted that in addition to the one year extension provision of the Federal plan, owner/operators could have used the time between promulgation of the final CISWI EG (or proposal of the Federal plan) and promulgation of this Federal plan to plan and begin retrofits. However, the EPA expects that some CISWI units could need more than one year to comply, as did some HMIWI units, due to site-specific circumstances. For units that may have more complex retrofits or constraints that prevent them from complying within one year, the Federal plan establishes increments of progress and those units must comply within two years.

Thus, we will retain the proposed compliance schedule in the final CISWI Federal plan. Existing CISWI units must comply within one year after publication of the final rule in the **Federal Register** or meet increments of progress and comply within two years after publication of the final rule in the **Federal Register**.

We received a request (IV–G–02) to clarify the compliance schedule for CISWI units that may lose the rule exemption provided in § 62.14525(n)(4) after the effective date of the rule. Section 62.14525(n)(4) exempts chemical recovery units burning only manufacturing byproduct streams/residues containing catalyst metals which are reclaimed and reused as catalysts or used to produce commercial grade catalysts. The commenter owns an operating site which he believes qualifies for an exemption from the requirements of the CISWI Federal plan because catalyst metals in incinerator fly ash are reclaimed off site or used in making commercial grade catalysts. The commenter is concerned about the potential unavailability of an off-site reclamation facility and requested that we provide at least three years after the loss of his expected rule exemption for final compliance with the rule requirements.

As outlined above and in the preamble to the proposed rule, we respond by stating our expectation that most CISWI units will reach final compliance promptly and efficiently. Those CISWI units that become exempt through §§ 62.14525 and 62.14530 of the Federal plan, but lose that exemption after the compliance date of the Federal plan, must begin complying with the requirements of the Federal plan immediately upon loss of the exemption. Moreover, section 129(b)(3) requires that all CISWI units must be in compliance with the requirements of a State or Federal plan no later than five years after promulgation of the emission guidelines, which is December 1, 2005. Therefore, we would not have the authority to allow a compliance date three years after loss of an exemption, as suggested by the commenter.

If owners or operators of affected CISWI units anticipate that they will not be exempt in the future, we encourage them to begin plans for installation of any controls needed to meet the CISWI emission limits. According to this final Federal plan, owners or operators are required to either: (1) Reach final compliance by the date one year after publication of this final rule in the **Federal Register**; or (2) meet increments of progress and reach final compliance by the date two years after publication of this final rule in the **Federal Register**. The final compliance schedule and increments of progress are contained in §§ 62.14535 through 62.14575 of the final CISWI Federal plan. Therefore, any unit that loses its exemption after the applicable compliance date (one year from publication of this final Federal plan, or if a facility has met all the requirements related to increments of progress, two years after the publication of this final Federal Plan) must meet the applicable standards as of the date that it loses its exemption. Similarly, if a facility loses an exemption prior to the applicable compliance date, the facility must meet the required standards as of the compliance date.

The same commenter (IV–G–02) opined that the proposed petition requirements in § 62.14536 for one year compliance extensions are unnecessary. He said that the CISWI EG include no corresponding requirement for compliance extensions beyond meeting the two increments of progress. The commenter believes the increment of progress requirements in proposed § 62.14540 are sufficient and requested that EPA remove the proposed requirements in § 62.14536.

We disagree. To develop the CISWI Federal plan, we must determine how to fill in implementation details not spelled out in the EG or subpart B, including how and when to grant compliance extensions (as must States when developing State plans). The EG provide a framework for implementation, but some details need to be developed through implementation plans. Paragraph 129(f)(2) requires that the EG be applied as expeditiously as practicable. Our prior experience with similar sources shows that requiring compliance within 12 months of promulgation of the final rule is generally achievable and this is reflected in the proposed rule. Prior experience also shows that, in some instances, site-specific concerns can make a one year compliance schedule impracticable and that is also reflected in the proposed one year extension of the compliance date. Some criteria are needed to guide the EPA and the regulated community as to when it would be appropriate to allow extra time for sources to achieve final

compliance and how to accomplish this procedurally. The Federal plan is being implemented under the legal authority of section 111 as well as section 129. For plans to implement EG under section 111 of the CAA, the broad procedural approach to be followed is given in the Code of Federal Regulations at 40 CFR part 60, subpart B. Specifically, paragraphs 60.24(f)(1) to (3) provide criteria for resolving the question of how to decide when it is appropriate to allow affected facilities additional time to achieve compliance. In particular, there must be a determination that meeting the initial compliance date would be unreasonably costly, physically impossible, or otherwise unreasonable. The petition requirements in § 62.14536 for sources to request one-year compliance extensions were included in the proposed rule for the express purpose of addressing these requirements.

We have consistently advised States developing State plans to look to the HMIWI Federal plan for guidance regarding a detailed process for addressing compliance extensions. Similarly, we are following the general procedural approach of the HMIWI Federal plan for the CISWI Federal plan. Our decision to take this path was based upon the knowledge that the HMIWI Federal plan approach had previously undergone notice and comment and that its efficacy had been tested in practice through implementation of the HMIWI Federal plan. Thus, we believe that the proposed criteria for compliance extensions constitute a reasonable and appropriate solution to a known problem and are leaving those criteria in the final rule.

The same commenter (IV–G–02) asked us to revise the performance test timing requirements in § 62.14665 to allow at least 180 days after final compliance date for the initial performance test. He claimed that 90 days after the final compliance date would be insufficient time to coordinate the operations and emissions test schedules and complete the final performance test. He noted that § 60.2705 of the CISWI emissions guidelines allows CISWI units subject to a State plan up to 180 days after the final compliance date for conducting an initial performance test. The commenter believes the performance test timing requirements for the CISWI units subject to Federal plan should be consistent with the performance test timing requirements for the CISWI units subject to a State plan. The commenter noted that such a change would make the CISWI Federal plan consistent with the CISWI emission guidelines.

The 180-day time period to conduct compliance testing originated in the 1970s, when industry commented that there were not enough qualified testers to perform the surge of testing that was expected as the original major rules took effect. At the time, there was enough credibility to the argument that rule writers allowed a full 180 days (6 months) to conduct compliance testing. This then became a common allowance in subsequent NSPS and EG. Under this Federal plan, there are relatively few CISWI units to be tested, qualified testers are abundant, and there is sufficient lead time for CISWI owners and operators to coordinate operations and emissions testing.

While, as the commenter observes, the EG allow States to give sources up to 180 days after the final compliance date to complete performance testing, 180 days is the maximum amount of time that may be allowed. Implementing authorities may require performance testing more quickly. As discussed above, sufficient test equipment and personnel are available. In this case, the EPA expects that 90 days is appropriate and sufficient time to coordinate the operations and emissions test schedules and complete the final performance test.

This approach has the advantage of reducing the duration of the period of uncertainty about compliance status between the actual compliance date and the time that a final test report has been submitted and approved. While sources are liable for their compliance, or lack thereof, from the compliance date onward, there exists a time of uncertainty until testing has been completed and approved by all relevant parties. Since the proposed plan allows sources two months following the initial performance test to submit test reports, the actual period of uncertainty over compliance status is potentially eight months with a 180 day testing delay. Should a source fail its performance test, it is immediately subject to enforcement consequences for its actions dating from the compliance date until such time as a performance test is successfully passed. However, the task of the agency responsible for enforcement is complicated by forced reliance upon a combination of data obtained at an unsuccessful performance test and data obtained from continuous monitoring systems. In developing the Federal plan, we have sought to reduce the potential negative impacts associated with this period of uncertainty. At the same time, we are not entirely satisfied that the complete elimination of a delay in performance testing after the compliance date is appropriate and, hence, we proposed a three month period. In this specific case, some sources may receive compliance extensions allowing up to two years from the date of publication of the this final rule. It seems reasonable that such sources would have more than enough time to arrange and complete performance testing ahead of their extended compliance date. For most sources, which will spend the next year planning and installing emission control systems, we concluded that some additional time after the compliance date may be needed to complete performance testing. Thus, we have retained the requirement to conduct the initial performance test no later than 90 days after the final compliance date. In doing so, we have balanced the need for timely assurance of compliance with the practicalities of scheduling and completing performance testing.

C. Air Curtain Incinerators

We received two statements of opinion arguing against requiring title V operating permits for air curtain incinerators (ACI). One commenter (IV–D–01) representing a State air pollution control agency noted that the proposed rules were clearly written to specify that ACI would be required to obtain title V operating permits. He correctly observed that the EG and the NSPS do not specify that ACI should obtain a title V permit and requested that we change the final rule language in the Federal plan to read the same as EG and NSPS. He went on to express his opinion that doing so would result in ACI not being permitted under title V. This would be acceptable to the commenter who expressed his belief that the CAA does not require existing ACI (which burn only the particular wastes specified under the CAA) to operate under a title V permit. He presented a rationale for this belief. He first noted that section 129 of the CAA provides for State plans (and Federal plans) for CISWI under the combined authority of sections 129 and 111 of the CAA. His rationale first quotes section 129(g) of the CAA which states that the term ''solid waste incineration unit'' does not include, among other things, ''air curtain incinerators provided that such incinerators only burn wood wastes, yard wastes and clean lumber and that such air curtain incinerators comply with opacity limitations to be established by the Administrator by rule.''

His next step is to focus upon the language specific to title V operating permits in section 129(e) wherein the CAA states ''Beginning (1) 36 months after the promulgation of a performance standard under subsection (a) and

section 111 *applicable to a category of solid waste incineration units,* or (2) the effective date of a permit program under title V in the State in which the unit is located, whichever is later, *each unit in the category shall operate pursuant to a permit issued under this subsection and title V.*'' (Emphasis added by commenter) He then combines the two passages cited to conclude that, ''by definition, ACIs are not solid waste incineration units as long as they burn only the wastes which are narrowly defined in the Act. Therefore, ACIs are not required to operate under a title V permit.''

A second State pollution control agency (IV–G–03) echoed the preceding rationale and conclusions.

We respond by first saying that we were specific in the proposal about the need for title V permits for ACI subject to the Federal plan for the purpose of clarifying that need. We did so in order to clearly present the Agency's view of these sources' title V obligations, and to answer questions such as those voiced by the commenter resulting from the absence of such specific language in the EG and NSPS. The Agency has consistently maintained that operating permits are needed for ACI subject to the NSPS and to State plans drafted pursuant to the EG. However, communications we have received since promulgation of the EG and NSPS pointed to the advisability of specifically clarifying the matter in the preamble to the Federal plan and in the rule itself. Thus, to facilitate the application of title V to these sources, we have specifically included in this Federal plan language describing the need for title V operating permits.

We disagree with the commenters' conclusion that ACI subject to the CISWI Federal plan need not obtain title V operating permits. As noted by the commenters, section 129 directs the Agency to develop requirements for ACI under the authority of section 111, as well as section 129. Thus, there are two potential origins of title V obligations: Section 129(e) and section 502(a). Accordingly, even if section 129(e) were not applicable, sources would clearly still be subject to title V, based on the general obligation for all sources subject to rules written under the authority of section 111 to have operating permits. Thus, all ACI subject to State plans, Federal plans, or NSPS must obtain title V operating permits.

With regard to the question of when such permit applications are due, we believe that the Act provides sufficient discretion for the Agency to require title V permit applications for ACI in a manner that is consistent with the obligations of other sources regulated under section 129 and 111. While paragraph 129(g) clearly contemplates exempting certain ACI from the substantive emission standards under paragraphs 129(a) and (b), it is less clear what impact this limited exemption has on such sources' obligations under title V. In general, it is clear that section 129 is meant to apply to ACI; either in full for those ACI that do not meet the limited criteria of the section 129(g) exemption, or in a more limited fashion (including opacity standards) for those ACIs that qualify for the section 129(g) exemption. For ACIs subject to the opacity standards that EPA adopts under this section, the applicability of the 129(e) title V requirements are made somewhat ambiguous by the wording of paragraph 129(g). However, having established that title V operating permits for ACI are required as a matter of law (under either 129(e) or 502(a)), we believe that it is a reasonable exercise of the Agency's discretion to require all covered ACI (including those subject to the section 129/111 opacity standards) to apply for title V permits within the period of time permitted by section 129(e). We believe that the intent of section 129 is best served by maintaining consistency in the title V obligations among the universe of sources regulated under this section, thereby ensuring that the contemplated emissions reductions are achieved expeditiously for each category of sources regulated under this section. Moreover, for ACIs subject only to section 129/111 opacity standards, permit applications should be simpler to prepare than for sources subject to full regulation under the section 129 emission standards. Thus, the EPA is retaining the requirement for all sources regulated under section 129/111 (including ACI) to submit title V operating permit applications within the time frame described in section 129(e). Consistent with this requirement, a detailed explanation of when sources regulated under section 129/111 (again, including ACI) must apply for a title V permit, whether subject to a State plan, Federal plan, or NSPS, can be found in Table 6 included in section VIII. of the preamble (titled ''Title V Operating Permits'').

One of the State agency commenters (IV–G–03) also questioned the utility of requiring title V operating permits for ACI. He said that if ACI are operated properly, the opacity requirement is easily achieved and the Federal plan and the CISWI EG/NSPS rules appear to require nothing more than for the units to operate normally. If such were the case, he would see requiring ACI to obtain title V operating permits to be a very protracted administrative effort that would achieve no air quality benefits.

As we discussed above, we have concluded that ACI need to obtain title V permits. However, we do not believe that the process for ACI to obtain title V operating permits needs to be as burdensome as suggested by the commenter. In terms of the burden of permitting, it is worth noting that there are only a minimal number of requirements in the Federal plan which apply to those ACI which burn 100% wood wastes, clean lumber, and/or yard waste. And, as noted by the commenter, these requirements are straightforward. Therefore, these requirements should not be difficult to incorporate into a title V application or permit.

In terms of air quality benefits, we believe that title V permits provide air quality benefits by helping to ensure that sources comply with the requirements to which they are subject. Title V requirements help ensure compliance with applicable requirements in a number of ways. For example, title V regulations at 40 CFR part 70 and 71 require sources to self-certify compliance with applicable requirements initially and annually, require sources to promptly report deviations from a permit, and require that title V permits contain monitoring sufficient to assure compliance. This last requirement may necessitate that additional monitoring be added to a permit to supplement the monitoring required by the relevant applicable requirement. In short, title V operating permit requirements can enhance the effectiveness of rules such as this Federal plan. In terms of this particular rule, a title V permit will help ensure that an ACI operates within the parameters established by the Federal plan whether it burns 100% wood wastes, clean lumber, and/or yard waste, or whether it burns other wastes and becomes subject to all of the requirements in the Federal plan.

The commenter also noted the number of exemptions resulting in negative declarations for CISWI and the similarly structured small municipal waste combustors (small MWC) rule. He was of the opinion that since both the CISWI rule and the small MWC rule have numerous exemptions for a wide variety of sources, most states have few if any sources covered by them. As an example, he said his State submitted negative declarations for the small MWC rule and many more States submitted negative declarations for the CISWI rule. In his State, out of hundreds of potential

sources, due to the number of exemptions, they found just nine units affected by the combined rules, all of which were ACI. Since, in his opinion, the Federal plan will simply require these units to operate normally, he questioned the efficacy of expending so much effort on these series of rules.

The significance of the commenter's observations regarding negative declarations is unclear. Although the number of sources ultimately regulated by these rules may be less than expected in some States, significant emissions reductions are being achieved throughout the country through the implementation of these rules.

D. Delegation of Authority

A State air pollution control agency (IV–D–04) expressed concerns about the EPA's general approach to delegating authority and about specific aspects of the proposed plan. The commenter pointed to perceived inconsistencies in a number of NSPS and Federal plans and suggested the proposed plan would contribute to a pattern of inconsistency. Specific to the proposed CISWI Federal plan, the commenter observed that an inspector would need to carry around a copy of the proposal preamble in addition to the Code of Federal Regulations (CFR) because the delegation of authority provisions were placed in the preamble instead of following the previously established practice of including them in the CFR. In addition, the commenter listed specific questions about the differences in retained authorities in the CISWI NSPS and the proposed CISWI Federal plan. He posited that the EPA's general inconsistency combined with the specifics of the proposal impede the efforts of compliance inspectors. The commenter recommended an approach for the EPA to use in promulgating this Federal plan and other regulations concerning the section 129 and section 111 programs. He asked that the provisions concerning delegation of authority should be promulgated as part of the regulation and published in the CFR. They should be written so as to use the same words to express the same meaning and be based upon a consistent policy as to the provisions that are not allowed to be delegated.

Our overall response is that we delegate as much authority as possible, consistent with Congress' intent that States, Tribes, and local agencies take the primary responsibility for ensuring that the emission limitations and other requirements in the emission guidelines are achieved (as discussed at 67 FR 70647). We do withhold delegation of authorities that may have an effect on the stringency of a standard. The EPA permits delegation to a State or local agency of all the Administrator's authorities under 40 CFR part 60, except those that require rulemaking to implement, that affect the stringency of the standard, or where national oversight is the only way to ensure national consistency. In the CISWI source category, as well as the other categories cited by the commenter, authorities that could affect the stringency of the standard include approval of alternative emission standards and operating limits; alternatives to test methods; and alternatives to monitoring, recordkeeping, and reporting. For section 111 rules, these authorities are specifically listed in the general provisions of 40 CFR part 60 as authorities not to be delegated. Because each source category is different, many individual sections of 40 CFR part 60 specifically indicate that certain authorities may not be delegated. Thus, although we generally withhold delegation of these same authorities (such as approval of test methods, alternative emission standards) in the Federal plans, we customize the list for each source category to ensure that the stringency of the standard for that category is not jeopardized.

In response to the commenter's specific concern about our proposed rule, we revised the rule to assure that the provisions concerning delegation of authority will be codified in the CFR. In addition to including the delegation of authority provisions in the regulation, we revised the delegation of authority language to more closely match the equivalent sections in the NSPS. By using parallel language within the CISWI source category, we expect the requirements of the CISWI Federal plan to be more clear to State compliance inspectors. In addition, using the same language promotes consistent application of requirements for new CISWI units affected by the NSPS and existing CISWI units affected by the Federal plan.

V. Summary of CISWI Federal Plan

A. What Emission Limitations Must I Meet?

As the owner or operator of an existing CISWI unit, you will be required to meet the emission limitations specified in Table 4. See section V.E of this preamble for a discussion of the compliance schedule.

TABLE 4.—EMISSION LIMITATIONS FOR EXISTING CISWI UNITS

For these pollutants	You must meet these emission limitations [a]	And determine compliance using these methods [b]
Cadmium	0.004 mg/dscm	EPA Method 29.
Carbon Monoxide	157 ppm	EPA Methods 10, 10A, or 10B.
Dioxins/Furans, toxic equivalent (TEQ) basis	0.41 ng/dscm	EPA Method 23.
Hydrogen Chloride	62 ppm by dry volume	EPA Method 29.
Lead	0.04 mg.dscm	EPA Method 29.
Mercury	0.47 mg/dscm	EPA Method 29.
Opacity	10 percent	EPA Method 29.
Oxides of Nitrogen	388 ppm by dry volume	EPA Method 7, 7A, 7C, 7D, or 7E.
Particulate Matter	70 mg/dscm	EPA Method 5 or 29.
Sulfur Dioxide	20 ppm by dry volume	EPA Method 6 or 6c.

[a] All emission limitations (except opacity) are measured at 7 percent oxygen, dry basis at standard conditions.
[b] These methods are in 40 CFR part 60, appendix A.

B. What Operating Limits Must I Meet?

If you are using a wet scrubber to comply with the emission limitations, you must establish the maximum and minimum site-specific operating limits indicated in Table 5. You must operate the CISWI unit and wet scrubber so that the operating parameters do not deviate from the established operating limits.

TABLE 5.—OPERATING LIMITS OR EXISTING CISWI UNITS USING WET SCRUBBERS

For these operating parameters	You must establish these operating limits	And monitor continuously using these recording times
Charge rate	Maximum charge rate	Every hour.
Pressure drop across the wet scrubber, or amperage to the wet scrubber.	Minimum pressure drop or amperage	Every 15 minutes.
Scrubber liquor flow rate	Minimum flow rate	Every 15 minutes.
Scrubber liquor pH	Minimum pH	Every 15 minutes.

Note: Compliance is determined on a 3-hour rolling average basis, except charge rate for batch incinerators, which is determined on a daily basis.

If you are using an air pollution control device other than a wet scrubber to comply with the emission limitations, you must petition the Administrator for other site-specific operating limits to be established during the initial performance test and continuously monitored thereafter. The required components of the petition are described in § 62.14640 of subpart III.

If you are using a fabric filter to comply with the emission limitations, in addition to other operating limits as approved by the Administrator, you must operate the fabric filter system such that the bag leak detection system alarm does not sound more than 5 percent of the operating time during any 6-month period.

C. What Are the Requirements for Air Curtain Incinerators?

The Federal plan establishes opacity limitations for air curtain CISWI units burning 100 percent wood wastes, clean lumber, and/or yard wastes. This opacity limitation is 10 percent, except 35 percent opacity is allowed during start-up periods that are within the first 30 minutes of operation.

D. What Are the Testing, Monitoring, Inspection, Recordkeeping, and Reporting Requirements?

The owner or operator of a CISWI unit subject to the CISWI Federal plan must conduct initial performance tests for cadmium, dioxins/furans, hydrogen chloride, lead, mercury, opacity, particulate matter, and sulfur dioxide and establish operating limits (*i.e.*, maximum or minimum values for operating parameters). The initial performance test must be conducted within 90 days after the date the facility is required to achieve final compliance.

The owner or operator must conduct annual performance tests for particulate matter, hydrogen chloride, and opacity. (An owner or operator may conduct less frequent testing if the facility demonstrates that it is in compliance with the emission limitations for 3 consecutive years.)

To assure ongoing achievement of the Federal plan's provisions, an owner or operator using a wet scrubber to comply with the emission limitations will continuously monitor the following operating parameters: Charge rate, pressure drop across the wet scrubber (or amperage), and scrubber liquid flow rate and pH. If something other than a wet scrubber is used to comply with the emission limitations, the owner or operator must monitor other operating parameters, as approved by the Administrator.

If the owner or operator is using a fabric filter to comply with the emission limitations, in addition to other operating limits as approved by the Administrator, the owner or operator must install and continuously operate a bag leak detection system. The owner or operator must keep records of periods when the alarm sounds and calculate whether these periods are more than 5 percent of the operating time for each 6-month period. The owner or operator must submit information documenting compliance with these requirements as part of an annual report; and report deviations semi-annually.

In addition, the Federal plan requires CISWI unit owners and operators to maintain for five years records of the initial performance tests and all subsequent performance tests, operating parameters, any maintenance, and operator training and qualification. The owner or operator must submit the results of the initial performance tests and all subsequent performance tests and values for the operating parameters in annual reports.

E. What Is the Compliance Schedule?

Each CISWI unit must either: (1) Reach final compliance by October 4, 2004, or (2) meet increments of progress and reach final compliance by October 3, 2005. In addition, the owner or operator must comply with the operator training and qualification requirements and inspection requirements by October 4, 2004, regardless of when the CISWI unit reaches final compliance.

Each owner or operator that takes more than 1 year to reach final compliance must submit a final control plan (increment 1) by April 5, 2004 and reach final compliance (increment 2) by October 3, 2005. To ensure timely progress toward implementation, the Federal plan includes a requirement for owners or operators of CISWI units seeking to take an additional year to reach final compliance to submit a request to the Administrator that documents the need for an extension.

To meet the increment 1 requirement, the owner or operator of each CISWI unit must submit a final control plan that includes five items: (1) A description of the air pollution control devices and/or process changes that will be employed so that each CISWI unit complies with the emission limits and other requirements, (2) a list of the types of waste burned, (3) the maximum design waste burning capacity, (4) the anticipated maximum charge rate, and, (5) if applicable, the petition for site-specific operating limits. A final control plan is not required for units that will be shut down, but those units must close by October 4, 2004 or must submit a closure agreement by April 5, 2004, close no later than October 3, 2005, and meet other requirements as described in section VI.A. of this preamble.

To meet the second increment of progress, the owner or operator of each CISWI unit must incorporate all process changes or complete retrofit construction in accordance with the final control plan. The owner or operator must connect the air pollution control equipment or process changes such that when the CISWI unit is brought on line all necessary process changes or air pollution control equipment will operate as designed.

F. How Did EPA Determine the Compliance Schedule?

The EPA determined the compliance schedule based on the requirements of 40 CFR part 60, subpart B and the feasibility of owners or operators to retrofit combustion units with air pollution control devices. CISWI units must comply within 1 year after publication of the final Federal plan or meet increments of progress. The

requirement to reach final compliance within one year is consistent with 40 CFR 60.24(c) of subpart B. Subpart B requires final compliance to be ''as expeditiously as practicable * * *'' and requires increments of progress if the compliance schedule is longer than one year.

The EPA believes that many CISWI units can reach final compliance within 1 year after promulgation of the Federal plan based on their similarity to hospital medical and infectious waste incinerator (HMIWI) units. In addition, units could have used the time between the proposed rule and this promulgation of the final Federal plan to plan and begin retrofits.

The compliance schedule for CISWI units is similar to the compliance schedule for HMIWI units. Most CISWI units are similar in size to HMIWI units. In addition, CISWI units require similar controls to meet the CISWI Federal plan emission limits as HMIWI units would need to meet the HMIWI Federal plan emission limits. To determine the compliance schedule for HMIWI units, the EPA conducted case studies of eight HMIWI units that completed retrofits of the types of controls needed to meet the HMIWI Federal plan (64 FR 36430, July 6, 1999). Based on these case studies (Docket No. A–98–24, II–A–1), the EPA found that many HMIWI units can meet the requirements of the HMIWI Federal plan within 1 year. Similarly, many CISWI units could meet a 1-year schedule.

The EPA expects that some CISWI units could need more than 1 year to comply, as did some HMIWI units, due to site-specific circumstances. For units that cannot comply within 1 year, the Federal plan establishes increments of progress, as required by subpart B. The date for the first increment of progress, submittal of a final control plan, is April 5, 2004. The date for the second increment of progress, final compliance, is October 3, 2005. These increments are derived from the findings of the case studies performed to characterize the retrofit of control systems for HMIWI (Docket A–98–24, Item II–A–1). The size and design of CISWI are similar to the smaller HMIWI that were the subjects of the case studies. In particular, most units are small and controls will be ordered ''off-the-shelf'' as assembled packages. Thus, the EPA did not see a need for increments to address details of on-site construction and installation of control systems. Also, CISWI sites are not thought to have the problems with space and access that were concerns for HMIWI retrofits. In addition, CISWI units had the time between publication of the proposed rule and today's publication of the final rule to begin developing the final control plan and to initiate retrofit activities.

The Federal plan does not include increments of progress for air curtain incinerators. Air curtain incinerators must comply with the requirements of the Federal plan one year after today's date. Delaying implementation for ACI would not be appropriate because there will be little or no need for the installation of control equipment on these units (primarily because control equipment is typically infeasible for ACI). Compliance with the opacity limits applicable to this class of units would primarily be achieved by good operation and maintenance practices. This approach is consistent with the requirement for completion of CISWI operator training by October 4, 2004.

VI. CISWI That Have or Will Shut Down

A. Units That Plan To Close Rather Than Comply

If you plan to permanently close your currently operating CISWI unit, you must do one of the following: (a) close by October 4, 2004, or (b) submit a legally binding closure agreement, including the date of closure, to the Administrator by April 5, 2004. The closure agreement must specify the date by which operation will cease. The closure date cannot be later than the final compliance date of the CISWI Federal plan (October 3, 2005). If you close your CISWI unit after October 4, 2004, but before October 3, 2005, then you must comply with the operator training and qualification requirements by October 4, 2004. In addition, while still in operation, your CISWI unit(s) is subject to the same requirement to apply for and obtain a title V operating permit that applies to a CISWI unit that will not be permanently closing.

B. Inoperable Units

In cases where a CISWI unit has already shut down, has been rendered inoperable, and does not intend to restart, the CISWI unit may be left off the source inventory in a State, Tribal, or this Federal plan. A CISWI unit that has been rendered inoperable would not be covered by the Federal plan. The CISWI owner or operator may do the following to render a CISWI unit inoperable: (1) Weld the waste charge door shut, (2) remove stack (and by-pass stack, if applicable), (3) remove combustion air blowers, or (4) remove burners or fuel supply appurtenances.

C. CISWI Units That Have Shut Down

CISWI units that are known to have already shut down (but are not known to be inoperable) must be included in the source inventory and identified in any State or Tribal plan submitted to the EPA.

1. Restarting Before the Final Compliance Date

If the owner or operator of an inactive CISWI unit plans to restart before the final compliance date, the owner or operator must submit a control plan for the CISWI unit and meet the applicable compliance schedule. Final compliance is required for all pollutants and all CISWI units no later than the final compliance date. (See section V.E for the discussion on compliance schedules and increments of progress.)

2. Restarting After the Final Compliance Date

Under this Federal plan, a control plan would not be needed for inactive CISWI units that restart after the final compliance date. However, before restarting, operators of CISWI units would have to complete the operator training and qualification requirements and inspection requirements (if applicable) and complete retrofit or process modifications before restarting the unit. Performance testing to demonstrate compliance would be required within 90 days after restarting. There is no need to show that the increments of progress have been met since these steps would have occurred before restart while the CISWI unit was shut down and not generating emissions. A CISWI unit operating out of compliance after the final compliance date would be in violation of the Federal plan and subject to enforcement action.

VII. Implementation of the Federal Plan and Delegation

A. Background of Authority

Under sections 111(d) and 129(b) of the CAA, the EPA is required to adopt emission guidelines that are applicable to existing solid waste incineration sources. These emission guidelines are not enforceable until the EPA approves a State or Tribal plan or adopts a Federal plan that implements and enforces them, and the State, Tribal, or Federal plan has become effective. As discussed above, the Federal plan regulates CISWI units in a State or Tribal area that does not have an EPA-approved plan in effect.

Congress has determined that the primary responsibility for air pollution prevention and control rests with State

and local agencies. *See* section 101(a)(3) of the CAA. Consistent with that overall determination, Congress established sections 111 and 129 of the CAA with the intent that the States would assume primary responsibility for ensuring that the emission limitations and other requirements in the emission guidelines would be achieved. Also, in section 111(d) of the CAA, Congress explicitly required the EPA to establish procedures similar to those under section 110(c) for State implementation plans. Although Congress required the EPA to propose and promulgate a Federal plan for States that fail to submit approvable State plans on time, States and Tribes may submit approvable plans after today's promulgation of the CISWI Federal plan. The EPA strongly encourages States that are unable to submit approvable plans to request delegation of the Federal plan so that they can have primary responsibility for implementing the emission guidelines, consistent with Congress' intent.

Approved and effective State plans or delegation of the Federal plan is the EPA's preferred outcome since we believe that State agencies not only have the responsibility to carry out the emission guidelines, but also have the practical knowledge and enforcement resources critical to achieving the highest rate of compliance. For these reasons, the EPA will do all that it can to expedite delegation of the Federal plan to State agencies, whenever possible.

The EPA also believes that Indian Tribes should be the primary parties responsible for regulating air quality within Indian Country, if they desire to do so. See the EPA's Indian Policy (''Policy for Administration of Environmental Programs on Indian Reservations,'' signed by William D. Ruckelshaus, Administrator of EPA, dated November 4, 1984), reaffirmed in a 2001 memorandum (''EPA Indian Policy,'' signed by Christine Todd Whitman, Administrator of EPA, dated July 11, 2001).

B. Delegation of the Federal Plan and Retained Authorities

If a State or Indian Tribe intends to take delegation of the Federal plan, the State or Indian Tribe must submit to the appropriate EPA Regional Office a written request for delegation of authority. The State or Indian Tribe must explain how it meets the criteria for delegation. *See* generally ''Good Practices Manual for Delegation of NSPS and NESHAP'' (EPA, February 1983). In order to obtain delegation, an Indian Tribe must also establish its eligibility to be treated in the same manner as a State (see section VII.E.1 of this preamble). The letter requesting delegation of authority to implement the Federal plan must demonstrate that the State or Tribe has adequate resources, as well as the legal and enforcement authority to administer and enforce the program. A memorandum of agreement between the State or Tribe and the EPA would set forth the terms and conditions of the delegation, the effective date of the agreement, and would also serve as the mechanism to transfer authority. Upon signature of the agreement, the appropriate EPA Regional Office would publish an approval notice in the **Federal Register**, thereby incorporating the delegation authority into the appropriate subpart of 40 CFR part 62.

If authority is not delegated to a State or Indian Tribe, the EPA will implement the Federal plan. Also, if a State or Tribe fails to properly implement a delegated portion of the Federal plan, the EPA will assume direct implementation and enforcement of that portion. The EPA will continue to hold enforcement authority along with the State or Tribe even when a State or Tribe has received delegation of the Federal plan. In all cases where the Federal plan is delegated, the EPA will withhold and will not transfer to a State or Tribe authority to perform several specific actions. We typically do not delegate authority to devise alternative requirements that could change the stringency of the underlying standard, which are likely to be nationally significant, or which may require a national rulemaking and subsequent **Federal Register** notice. The following authorities may not be delegated to the State, Tribal or local agencies: Approval of alternative non-opacity emission standards, approval of alternative opacity standards, approval of major alternatives to test methods, approval of major alternatives to monitoring, and waiver of recordkeeping and reporting. For this Federal plan we are also maintaining the following authorities:

(1) Alternative site-specific operating parameters established by facilities using CISWI controls other than a wet scrubber (§ 62.14640 of subpart III),

(2) Petitions to the Administrator under section 62.14530 to add a chemical recovery unit to section 62.14525(n) of subpart III, and

(3) Alternative methods of demonstrating compliance.

CISWI owners or operators who wish to establish alternative operating parameters or alternative methods of demonstrating compliance should submit a request to the Regional Office Administrator with a copy to the appropriate State or Tribe.

C. Mechanisms for Transferring Authority

There are two mechanisms for transferring implementation authority to State or Tribal agencies: (1) EPA approval of a State or Tribal plan after the Federal plan is in effect; and (2) if a State or Tribe does not submit or obtain approval of its own plan, EPA delegation to a State or Tribe of the authority to implement certain portions of this Federal plan to the extent appropriate and if allowed by State or Tribal law. Both of these options are described in more detail below.

1. Federal Plan Becomes Effective Prior to Approval of a State or Tribal Plan

After CISWI units in a State or Tribal area become subject to the Federal plan, the State or Tribal agency may still adopt and submit a plan to the EPA. If the EPA determines that the State or Tribal plan is as protective as the emission guidelines, we will approve the State or Tribal plan. If the EPA determines that the plan is not as protective as the emission guidelines, we will disapprove the plan and the CISWI units covered in the State or Tribal plan will remain subject to the Federal plan until a State or Tribal plan covering those CISWI units is approved and effective.

Upon the effective date of an approved State or Tribal plan, the Federal plan will no longer apply to CISWI units covered by such a plan, and the State or Tribal agency will implement and enforce the State or Tribal plan in lieu of the Federal plan. When an EPA Regional Office approves a State or Tribal plan, it will amend the appropriate subpart of 40 CFR part 62 to indicate such approval.

2. State or Tribe Takes Delegation of the Federal Plan

The EPA, in its discretion, may delegate to State or eligible Tribal agencies the authority to implement this Federal plan. As discussed above, we believe that it is advantageous and the best use of resources for State or Tribal agencies to agree to undertake, on the EPA's behalf, the administrative and substantive roles in implementing the Federal plan to the extent appropriate and where authorized by State or Tribal law. If a State requests delegation, we will generally delegate the entire Federal plan to the State agency. These functions include administration and oversight of compliance reporting and recordkeeping requirements, CISWI

inspections, and preparation of draft notices of violation.

The EPA also believes that it is the best use of resources for Tribal agencies to undertake a role in the implementation of the Federal plan. The Tribal Authority Rule issued on February 12, 1998 (63 FR 7254) provides Tribes the opportunity to develop and implement Clean Air Act programs. However, due to resource constraints and other factors unique to Tribal governments, it leaves to the discretion of the Tribe whether to develop these programs and which elements of the program they will adopt. Consistent with the approach of the Tribal Authority Rule, we may choose to delegate a partial Federal plan (*i.e.*, to delegate authority for some functions needed to carry out the plan) in appropriate circumstances and where consistent with Tribal law.

Both States and Tribal agencies, that have taken delegation, as well as the EPA, will have responsibility for bringing enforcement actions against sources violating Federal plan provisions. However, the EPA recognizes that Tribes have limited criminal enforcement authority, and will address in the delegation agreement with the Tribe how criminal enforcement issues are referred to the EPA.

D. Implementing Authority

The EPA will delegate authority within the EPA to the EPA Regional Administrators to implement the CISWI Federal plan. All reports required by this Federal plan should be submitted to the appropriate Regional Office Administrator. Table 1 under **SUPPLEMENTARY INFORMATION** lists the contact information for the EPA Regional Offices and the States that they cover.

E. CISWI Federal Plan and Indian Country

The term ''Indian country,'' as used in this preamble, means (1) all land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation; (2) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State; and (3) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

The CISWI Federal plan will apply throughout Indian country to ensure that there is not a regulatory gap for existing CISWI units in Indian Country. However, eligible Indian Tribes now have the authority under the CAA to develop Tribal plans in the same manner that States develop State plans. On February 12, 1998, EPA promulgated regulations that outline provisions of the CAA for which it is appropriate to treat Tribes in the same manner as States. *See* 63 FR 7254 (Final Rule for Indian Tribes: Air Quality Planning and Management, (Tribal Authority Rule)) (codified at 40 CFR part 49). As of March 16, 1998, the effective date of the Tribal Authority Rule, the EPA has had authority under the CAA to approve Tribal programs such as Tribal plans to implement and enforce the CISWI emission guidelines.

1. Tribal Implementation

Section 301(d) of the CAA authorizes the Administrator to treat an Indian tribe as a State under certain circumstances. The Tribal Authority Rule, which implements section 301(d) of the CAA, identifies provisions of the CAA for which it is appropriate to treat a Tribe as a State. (*See* 40 CFR 49.3 and 49.4.) Under the Tribal Authority Rule, a Tribe may be treated as a State for purposes of this Federal plan. If a Tribe meets the criteria below, the EPA can delegate to an Indian tribe authority to implement the Federal plan in the same way it can delegate authority to a State:

(1) The applicant is an Indian tribe recognized by the Secretary of the Interior;

(2) The Indian tribe has a governing body carrying out substantial governmental duties and functions;

(3) The functions to be exercised by the Indian tribe pertain to the management and protection of air resources within the exterior boundaries of the reservation or other areas within the tribe's jurisdiction; and

(4) The Indian tribe is reasonably expected to be capable, in the EPA Regional Administrator's judgment, of carrying out the functions to be exercised in a manner consistent with the terms and purposes of the CAA and all applicable regulations. (*See* 40 CFR 49.6.)

2. EPA Implementation

The CAA also provides the EPA with the authority to administer Federal programs in Indian Country. This authority is based in part on the general purpose of the CAA, which is national in scope. Section 301(a) of the CAA provides the EPA broad authority to issue regulations that are necessary to carry out the functions of the CAA. Congress intended for the EPA to have the authority to operate a Federal program when Tribes choose not to develop a program, do not adopt an approvable program, or fail to adequately implement an air program authorized under section 301(d) of the CAA.

Section 301(d)(4) of the CAA authorizes the Administrator to directly administer provisions of the CAA to achieve the appropriate purpose where Tribal implementation is not appropriate or administratively not feasible. The EPA's interpretation of its authority to directly implement CAA programs in Indian country is discussed in more detail in the Tribal Authority Rule. *See* 63 FR 7262–7263. As mentioned previously, Tribes may, but are not required to, submit a CISWI plan under section 111(d) of the CAA.

3. Applicability in Indian Country

The Federal plan applies throughout Indian Country except where an EPA-approved plan already covers an area of Indian country. This approach is consistent with the EPA's implementation of the Federal Operating Permits program in Indian Country (*see* 64 FR 8247 (February 19, 1999)).

VIII. Title V Operating Permits

Except for the sources specified in section 62.14830 of the Federal plan, sources subject to this CISWI Federal plan must obtain title V operating permits. These title V operating permits must assure compliance with all applicable requirements for these sources, including all applicable requirements of this Federal plan. *See* 40 CFR 70.6(a)(1), 70.2, 71.6(a)(1) and 71.2.

Owners or operators of section 129 sources (including CISWI units) subject to standards or regulations under sections 111 and 129 must operate pursuant to a title V permit not later than 36 months after promulgation of emission guidelines under sections 111 and 129 or by the effective date of the State, Tribal, or Federal title V operating permits program that covers the area in which the unit is located, whichever is later. The EPA has interpreted section 129(e) to be consistent with section 503(d) of the CAA and 40 CFR 70.7(b) and 71.7(b). (*See, e.g.*, the final Federal Plan for Hospital/Medical/Infectious Waste Incinerators, August 15, 2000 (65 FR 49868, 49878)). Section 503(d) of the CAA and 40 CFR 70.7(b) and 71.7(b) allow a source to operate without being in violation of title V once the source has submitted a timely and complete

permit application, even if the source has not yet received a final title V operating permit from the permitting authority.[2] As a result, the EPA interprets the dates in section 129(e) to be the dates by which complete title V applications need to be submitted. In the absence of such an interpretation, a section 129 source may be required to prepare and submit a complete title V application and the permitting authority would have to issue a permit to this source in a very short period of time.[3]

As a result of the EPA's interpretation, existing CISWI units must submit complete title V applications by the later of the following dates: Not later than 36 months after the promulgation of 40 CFR part 60, subpart DDDD or by the effective date of the State, Tribal, or Federal title V operating permits program that covers the area in which the unit is located. As of today's action, all areas of the country are covered by effective title V programs. As a result, the relevant section 129(e) date for existing CISWI units is 36 months following promulgation of 40 CFR part 60, subpart DDDD, *i.e.*, December 1, 2003. Therefore, December 1, 2003, is the latest possible date by which complete applications for existing CISWI units can be submitted and still be considered timely. This date applies regardless of when the CISWI Federal plan becomes effective or when an EPA approved section 111(d)/129 plan for existing CISWI units becomes effective. If, however, an earlier application deadline applies to an existing CISWI unit, then this deadline must be met in order for the unit to be in compliance with section 502(a) of the CAA. To determine when an application is due for an existing CISWI unit, section 129(e) of the CAA must be read in conjunction with section 503(c) of the CAA.

As stated in section 503(c), a source has up to 12 months to apply for a title V permit once it becomes subject to a title V permitting program.[4] For example, if an existing CISWI unit becomes subject to a title V permitting program for the first time on the effective date of this Federal plan, then the source must apply for a title V permit within 12 months of the effective date of this Federal plan in order to operate after this date in compliance with Federal law.

An application deadline earlier than either of the two dates noted above, *i.e.*, December 1, 2003, or not later than 12 months after the effective date of this Federal plan, may apply to an existing CISWI unit if it is subject to title V for more than one reason. For example, an existing CISWI unit may already be subject to title V as a result of being a major source under one or more of three major source definitions in title V—section 112, section 302, or part D of title I of the CAA. *See* 40 CFR 70.3(a)(1) and 71.3(a)(1) (subjecting major sources to title V permitting) and 40 CFR 70.2 and 71.2 (defining major source for purposes of title V). *See also* 40 CFR 70.3(a) and (b) and 71.3(a) and (b) for a list of the applicability criteria which trigger the requirement to apply for a title V permit.

If an owner or operator is already subject to title V by virtue of some requirement other than this Federal plan and has submitted a timely and complete permit application, but the draft title V permit has not yet been released by the permitting authority, then the owner or operator must supplement the title V application by including the applicable requirements of this Federal plan in accordance with 40 CFR 70.5(b) or 71.5(b). If an existing CISWI unit is a major source or is part of a major source, is subject to this Federal plan, and is already covered by a title V permit with a remaining permit term of three or more years on the effective date of this Federal plan, then the owner or operator will receive from his permitting authority a notice of intent to reopen his source's title V permit to include the requirements of this Federal plan. Reopenings required for such CISWI units must be completed not later than 18 months after the effective date of this Federal plan in accordance with the procedures established in 40 CFR 70.7(f)(1)(i) or 71.7(f)(1)(i). If an existing CISWI unit subject to this Federal plan does not meet the above criteria, *e.g.*, the unit is part of a nonmajor source or is covered by a permit which has a remaining term of less than 3 years on the effective date of this Federal plan, then the permitting authority does not need to reopen the source's permit, as a matter of Federal law, to include the requirements of this Federal plan.[5] However, the owner or operator of a source subject to a section 111/129 Federal plan remains subject to, and must act in compliance with, section 111/129 requirements and all other applicable requirements to which the source is subject regardless of whether these requirements are included in a title V permit. *See* 40 CFR 70.6(a)(1), 70.2, 71.6(a)(1) and 71.2.

The EPA has recently become aware that there has been some confusion regarding the title V obligations of section 129 sources that are subject to standards or regulations under sections 111 and 129. We are therefore including Table 6 to help clarify when CISWI units (even those not subject to this Federal plan) must apply for a title V permit. While Table 6 provides specific information relative to CISWI units, the same title V obligations apply to all section 129 sources subject to standards or regulations under sections 111 and 129. Of course, specific deadlines will vary for other section 129 sources depending on when the relevant NSPS is promulgated, when the relevant State or Tribal section 111(d)/129 plan is approved by the EPA and becomes effective, etc. Lastly, Table 6 takes into account that as of the promulgation date, *i.e.*, December 1, 2000, for the NSPS (subpart CCCC of part 60) and emission guidelines (subpart DDDD of part 60) for CISWI units, every area of the country was covered by a title V permits program under 40 CFR part 70 or part 71. This point is relevant because a section 111/129 standard cannot trigger the requirement for a source to apply for a title V permit unless a title V permits program is in

[2] A title V application should be submitted early enough for the permitting authority to find the application either complete or incomplete before the title V application deadline. In the event the application is found incomplete by the permitting authority, the source must submit the information needed to make the application complete by the application deadline in order to obtain the application shield. *See* 40 CFR 62.14835(b) and 40 CFR 70.5(a)(2) and 71.5(a)(2).

[3] For example, in the absence of such an interpretation, if a final Federal plan were to become effective more than 24 months after the promulgation of emission guidelines promulgated under sections 111 and 129, a source, if subject to the Federal plan, would have less than 12 months to prepare and submit a complete title V permit application and to have the permit issued. The EPA's interpretation allows section 129(e) to be read consistently with section 503(d) of the CAA and 40 CFR 70.7(b) and 71.7(b). The EPA's interpretation is also consistent with section 503(c) of the CAA which requires sources to submit title V applications not later than 12 months after becoming subject to a title V permits program. If a permit, as opposed to a title V application, were required by the later of the two deadlines specified in section 129(e), some section 129 sources would be required to have been issued final title V permits in potentially much less time than allotted for non-section 129 sources to submit their title V applications.

[4] If a source is subject to title V for more than one reason, the 12-month time frame for submitting a title V application is triggered by the requirement which first causes the source to become subject to title V. As provided in section 503(c) of the CAA, permitting authorities may establish permit application deadlines earlier than the 12-month deadline.

[5] *See* The CAA section 502(b)(9); 40 CFR 70.7(f)(1)(i) and 71.7(f)(1)(i). Owners or operators of CISWI units, which have been permitted and are subject to this Federal plan, may wish to consult their operating permits program regulations or permitting authorities to determine whether their permits must be reopened to incorporate the requirements of this Federal plan.

effect in the area in which the source is located.

TABLE 6.—DEADLINES FOR TITLE V SOURCES

Submitting Title V Permit Applications	
If a CISWI unit is a major source or is part of a major source, and had commenced operation as of the effective date of the relevant title V permits program.	Then a complete title V application which covers the entire source[6] is due not later than 12 months (or earlier if required by the title V permitting authority) after the effective date of the relevant title V permits source, and had program. *See* CAA section 503(c) and 40 CFR 70.4(b)(11)(i), 71.4(i)(1), 70.5(a)(1)(i) and 71.5(a)(1)(i).
If a CISWI unit is a major source or is part of a major source but did not commence operation until after the relevant title V premits program became effective.	Then a complete title V application which covers the entire source is due not later than 12 months (or earlier if required by the title V permitting authority) after the date the source commences operation. *See* CAA section 503(c) and 40 CFR 70.5(a)(1)(i) and 71.5(a)(1)(i).
If a CISWI unit is a nonmajor source or is part of a nonmajor source, is subject to the CISWI NSPS (subpart CCCC of 40 CFR part 60), and had commenced operation as of December 1, 2000.	Then a complete title V application[7] is due not later than 12 months after subpart CCCC was promulgated, *i.e.*, December 1, 2001 (or earlier if required by the title V permitting authority). *See* CAA section 503(c) and 40 CFR 70.5(a)(1)(i) and 71.5(a)(1)(i).
If a CISWI unit is a nonmajor source or is part of a nonmajor source, is subject to the CISWI NSPS (subpart CCCC of 40 CFR part 60), but did not commence operation until after December 1, 2000.	Then a complete title V application is due not later than 12 months (or earlier if required by the title V permitting authority) after the date the source commences operation. *See* CAA section 503(c) and 40 CFR 70.5(a)(1)(i) and 71.5(a)(1)(i).
If a CISWI unit is a nonmajor source or is part of a nonmajor source, and is subject to an EPA approved and effective State or Tribal section 111(d)/129 plan.	Then a complete title V application is due not later than 12 months (or earlier if required by the title V permitting authority) after the effective date of the EPA approved State or Tribal section 111(d)/129 plan.[8] *See* CAA section 503(c) and 40 CFR 70.5(a)(1)(i) and 71.5(a)(1)(i). In no event, however, can such an existing CISWI unit submit a complete title V application after December 1, 2003, and have it be considered timely. *See* CAA section 129(e) and 40 CFR 62.14835 of subpart III.
If a CISWI unit is a nonmajor source or is part of a nonmajor source, and is subject to the CISWI Federal plan (subpart III of 40 CFR part 62).	Then a complete title V application is due not later than 12 months (or earlier if required by the title V permitting authority) after the effective date of 40 CFR part 62, subpart III. *See* CAA section 503(c) and 40 CFR 70.5(a)(1)(i) and 71.5(a)(1)(i). In no event, however, can such an existing CISWI unit submit a complete title V application after December 1, 2003 and have it be considered timely. *See* CAA section 129(e) and 40 CFR 62.14835 of subpart III.
If a CISWI unit is required to obtain a title V permit due to triggering more than one of the applicability criteria listed above or in 40 CFR 70.3(a) or 71.3(a).	
Then a complete title V application is due not later than 12 months (or earlier if required by the title V permitting authority) after the unit triggers the criterion which first causes the unit to be subject to title V. *See* CAA section 503(c) and 40 CFR 70.3(a) and (b), 70.5(a)(1), 71.3(a) and (b) and 71.5(a)(1). In no event, however, can an existing CISWI unit submit a complete title V application after December 1, 2003 and have it be considered timely. *See* CAA section 129(e) and 40 CFR 62.14835 of subpart III..	
Reopening Title V Permits	
If a CISWI unit is a major source or is part of a major source, is subject to the CISWI NSPS (subpart CCCC of 40 CFR part 60), and is covered by a title V permit with a remaining permit term of 3 or more years on December 1, 2000.	Then the title V permitting authority must complete a reopening of the source's title V permit to incorporate the requirements of 40 CFR part 60, subpart CCCC not later than June 1, 2002. *See* CAA section 502(b)(9); 40 CFR 70.7(f)(1)(i) and 71.7(f)(1)(i).
If a CISWI unit is a major source or is part of a major source, is subject to an EPA approved and effective State or Tribal section 111(d)/129 plan for CISWI units, and is covered by a title V permit with a remaining permit term of 3 or more years on the effective date of the EPA approved section 111(d)/129 plan.	Then the title V permitting authority must complete a reopening of the source's title V permit to incorporate the requirements of this EPA approved and effective section 111(d)/129 plan not later than 18 months after the effective date of this plan. *See* CAA section 502(b)(9); 40 CFR 70.7(f)(1)(i) and 71.7(f)(1)(i).

[6] A title V application from a major source must address all emissions units at the title V source, not just the section 129 emissions unit. *See* 40 CFR 70.3(c)(1) and 71.3(c)(1). (For information on aggregating emissions units to determine what is a source under title V, see the definition of major source in 40 CFR 70.2, 71.2, and 63.2.)

[7] Consistent with 40 CFR 70.3(c)(2) and 71.3(c)(2), a permit application from a nonmajor title V source is only required to address the emissions units which caused the source to be subject to title V. The applicability criteria which determine the need for the owner or operator of a nonmajor source to apply for a title V permit are found in 40 CFR 70.3(a) and (b) and 71.3(a) and (b). Permits issued to these nonmajor sources must include *all* of the applicable requirements that apply to the triggering units, *e.g.*, State Implementation Plan requirements, section 111 or 112 requirements, etc. *See* footnote #2 in Change to Definition of Major Source rule, November 27, 2001 (66 FR 59161, 59163).

[8] If a CISWI unit becomes subject to an approved and effective State or Tribal section 111(d)/129 plan after being subject to an effective Federal plan, the CISWI unit is still required to file a complete title V application consistent with the application deadlines for units subject to the CISWI Federal plan.

TABLE 6.—DEADLINES FOR TITLE V SOURCES—Continued

If a CISWI unit is a major source or is part of a major source, is subject to the CISWI Federal plan (subpart III of 40 CFR part 62), and is covered by a title V permit with a remaining permit term of 3 or more years on the effective date of this Federal plan.	Then the title V permitting authority must complete a reopening of the source's title V permit to incorporate the requirements of subpart III of 40 CFR part 62 not later than 18 months after the effective date of the CISWI Federal plan. *See* CAA section 502(b)(9); 40 CFR 70.7(f)(1)(i) and 71.7(f)(1)(i).
Updating Existing Title V Permit Applications	
If a CISWI unit is subject to the CISWI NSPS (subpart CCCC of 40 CFR part 60), but first became subject to title V permitting prior to the promulgation of the NSPS, and the owner or operator of the unit has submitted a timely and complete title V permit application, but the draft title V permit has not yet been released by the permitting authority.	Then the owner or operator must supplement the title V application by including the applicable requirements of 40 CFR part 60, subpart CCCC in accordance with 40 CFR 70.5(b) or 71.5(b).
If a CISWI unit is subject to an EPA approved and effective State or Tribal section 111(d)/129 plan for CISWI units, but first became subject to title V permitting prior to the effective date of the section 111(d)/129 plan, and the owner or operator of the unit has submitted a timely and complete title V permit application, but the draft title V permit has not yet been released by the permitting authority.	Then the owner or operator must supplement the title V application by including the applicable requirements of the approved and effective section 111(d)/129 plan in accordance with 40 CFR 70.5(b) or 71.5(b).
If a CISWI unit is subject to the CISWI Federal plan (subpart III of 40 CFR part 62), but first became subject to title V permitting prior to the effective date of this Federal plan, and the owner or operator of the unit has submitted a timely and complete title V permit application, but the draft title V permit has not yet been released by the permitting authority.	Then the owner or operator must supplement the title V application by including the applicable requirements of 40 CFR part 62, subpart III in accordance with 40 CFR 70.5(b) or 71.5(b).

Title V and Delegation of a Federal Plan

For the sake of brevity, the discussion from the proposed Federal plan regarding title V and delegation of a Federal plan is not being repeated. *See* ''Title V and Delegation of a Federal Plan'' section of the proposed Federal plan for CISWI, November 25, 2002 (67 FR 70640, 70652). Nevertheless, the preamble language from this section in the proposed rule is hereby reaffirmed in this final rule.

IX. Statutory and Executive Order Reviews

This section addresses the following statutory and executive order administrative requirements: Executive Orders 12866, 13132, 13175, 13045 and 13211; Paperwork Reduction Act; Regulatory Flexibility Act/Small Business Regulatory Enforcement Fairness Act; Unfunded Mandates Reform Act; National Technology Transfer and Advancement Act; and the Congressional Review Act. Since today's action implements the CISWI emission guidelines (40 CFR part 60, subpart DDDD) as promulgated on December 1, 2000, and does not impose any new requirements, much of the following discussion refers to the documentation of applicable requirements as discussed in the preamble to the rule promulgating the emission guidelines (65 FR 75338, December 1, 2000).

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866, 58 FR 51735 (October 4, 1993), the EPA must determine whether the regulatory action is ''significant'' and, therefore, subject to OMB review and the requirements of the Executive Order. The order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The EPA considered the 2000 emission guidelines to be significant and the rules were reviewed by OMB in 2000. *See* 65 FR 75338, December 1, 2000. The Federal plan promulgated today would simply implement the 2000 emission guidelines and does not result in any additional control requirements or impose any additional costs above those previously considered during promulgation of the 2000 emission guidelines. Therefore, this regulatory action is considered ''not significant'' under Executive Order 12866.

B. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0451. (ICR 1927.02)

This ICR reflects the burden estimate for the emission guidelines which were promulgated in the **Federal Register** on December 1, 2000. The burden estimate includes the burden associated with State or Tribal plans as well as the burden associated with the Federal plan. Consequently, the burden estimates described below overstate the information collection burden associated with the Federal plan. However, upon approval by the EPA, a State or Tribal plan becomes federally enforceable. Therefore, it is important to estimate the full burden associated with the State or Tribal plans and the Federal plan. As State or Tribal plans are approved, the Federal plan burden will decrease, but the overall burden of the State or Tribal plans and the Federal plan will remain the same.

The Federal plan contains monitoring, reporting, and recordkeeping requirements. The information will be used to ensure that the Federal plan requirements are met on a continuous basis. Records and reports will be necessary to enable us to identify waste incineration units that may not be in compliance with the Federal plan requirements. Based on reported information, the EPA would decide

which units and what records or processes should be inspected. The records that owners and operators of existing CISWI units maintain will indicate to us whether personnel are operating and maintaining control equipment property.

These recordkeeping and reporting requirements are specifically authorized by section 114 of the CAA (42 U.S.C. 7414). All information submitted to the EPA for which a claim of confidentiality is made will be safeguarded according to EPA policies in 40 CFR part 2, subpart B, Confidentiality of Business Information.

The estimated average annual burden for the first 3 years after promulgation of the emission guidelines for industry and the implementing agency is outlined below.

Affected entity	Total hours	Labor costs	Capital costs	O&M costs	Total costs
Industry	9,145	$407,067	0	0	$407,067
Implementing agency	1,817	48,386	0	0	48,386

The EPA expects the Federal plan to affect a maximum of 116 units over the first three years. (**Note:** This assumes that no State plans are in effect.) The EPA assumes that 6 existing units will be replaced by 6 new units each year. There are no capital, start-up, or operation and maintenance costs for existing units during the first three years. The implementing agency would not incur any capital or start-up costs. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose, or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this final rule and for the emissions guidelines is 2060–0451. The OMB control numbers for EPA regulations are listed in 40 CFR part 9. In addition, EPA is amending the table in 40 CFR part 9 of currently approved OMB control numbers for information requirements contained in this final rule.

C. Regulatory Flexibility Act (RFA)/ Small Business Regulatory Enforcement Fairness Act (SBREFA)

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business that has less than 500 employees; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field. The SBA guidelines define a small business based on number of employees or annual revenues and the size standards vary from industry to industry. Generally, businesses covered by the North American Industrial Classification System (NAICS) codes affected by this rule are considered small if they have less than 500 employees or less than $5 million in annual sales.

During the 2000 CISWI emission guidelines rulemaking, the EPA determined that based on the low number of affected small entities in each individual market, the alternative method of waste disposal available, and the relatively low control cost, the CISWI emission guidelines should not generate a significant small business impact on a substantial number of small entities in the commercial and industrial sectors. The EPA determined that it was not necessary to prepare a regulatory flexibility analysis in connection with the final emission guidelines. The EPA has also determined that the final emission guidelines would not have a significant economic impact on a substantial number of small entities (65 FR 75348). This Federal plan does not establish any new requirements. Therefore, pursuant to the provisions of 5 U.S.C. 605(b), the EPA has determined that this Federal plan will not have a significant impact on a substantial number of small entities, and thus a regulatory flexibility analysis is not required.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year.

Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires us to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows us to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted.

Before establishing any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, the EPA must develop under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, thereby enabling officials of affected small governments to have meaningful and timely input in the development of the regulatory proposal with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100

million of more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. The environmental impact analysis for the emission guidelines estimates the total national annualized cost impact of this regulatory action at $11.6 million per year (Docket A–94–63). This Federal plan will apply to only a subset of the units considered in the environmental impacts analysis for the emission guidelines. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA. Additionally, the EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments, because commercial and industrial units are not likely to be owned by small governments.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires the EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' are defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This final rule does not have Federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule establishes emission limits and other requirements for solid waste incineration units that are not covered by an EPA-approved and effective State or Tribal plan. The EPA is required by section 129 of the CAA, 42 U.S.C. 7429, to establish the standards for such units. This regulation primarily affects private industry and does not impose significant economic costs on State or local governments. The standards established by this rule apply to facilities that operate commercial or industrial solid waste incineration units located in States that do not have EPA-approved plans covering such units by the effective date of the Federal plan (and the owners or operators of such facilities). The regulation does not include an express provision preempting State or local regulations. However, once this Federal plan is in effect, covered facilities would be subject to the standards established by this rule, regardless of any less protective State or local regulations that contain emission limitations for the pollutants addressed by this rule. To the extent that this might preempt State or local regulations, it does not significantly affect the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Thus, the requirements of section 6 of the Executive Order do not apply to this rule; and the EPA has complied with the requirements of section 4(e), to the extent that they may be applicable to the regulations, by providing notice to potentially affected State and local officials through publication of this rule.

Although section 6 of Executive Order 13132 does not apply to this rule, the EPA consulted with representatives of State and local governments to enable them to provide meaningful and timely input into the development of the CISWI emission guidelines. This consultation took place during the Industrial Combustion Coordinated Rulemaking Federal Advisory Committee Act committee meetings, where members representing State and local governments participated in developing recommendations for our combustion-related rulemakings, including the CISWI emission guidelines. Additionally, the EPA sponsored the Small Communities Outreach Project, which involved meetings with elected officials and other government representative to provide them with information about the CISWI emission guidelines and to solicit their comments. The concerns raised by representatives of State and local governments were considered during the development of the CISWI emission guidelines.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires the EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and the Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes.''

This Federal plan does not have tribal implications. It will not have substantial direct effects on tribal governments, 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 in Executive Order 13175.

The EPA knows of no CISWI units presently owned by Indian tribal governments. However, if any exist now or in the future, the rule would not have tribal implications on these tribal governments as defined by the Executive Order. This Federal plan simply implements the emission guidelines. It does not result in any additional control requirements nor imposes any additional costs above those previously considered during promulgation of the emission guidelines. Thus, the requirements of Executive Order 13175 do not apply.

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

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, (2) concerns an environmental health or safety risk that the EPA has reason to believe may disproportionately affect children. If the regulatory action meets these criteria, the EPA must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives the EPA considered.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This Federal plan is not subject to Executive Order 13045 because it is based on technology performance and not on health or safety risks. Additionally, this Federal plan is not economically significant as defined by Executive Order 12866.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is

not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Pub. L. No. 104–113; 15 U.S.C. 272) directs the EPA to use voluntary consensus standards in regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA directs the EPA to provide Congress, through annual reports to the Office of Management and Budget (OMB), with explanations when an agency does not use available and applicable voluntary consensus standards.

This Federal plan involves technical standards. The EPA includes in this plan EPA Methods 1, 3A, 3B, 5, 6, 6C, 7, 7A, 7C, 7D, 7E, 9, 10, 10A, 10B, 23, 26A, and 29. Consistent with the NTTAA, the EPA conducted searches to identify voluntary consensus standards in addition to these EPA methods. No applicable voluntary consensus standards were identified for EPA Methods 7A, 7D, 9, and 10B. The search and review results have been documented and are placed in the Docket No. A–2000–52 for this Federal plan.

This search for emission measurement procedures identified 24 voluntary consensus standards. The EPA determined that 20 of these 24 standards were impractical alternatives to EPA test methods for the purposes of this Federal plan. Therefore, the EPA is not adopting these standards today. The reasons for this determination for the 20 methods are discussed below.

The standard, ASTM D3162 (1994) ''Standard Test Method for Carbon Monoxide in the Atmosphere (Continuous Measurement by Nondispersive Infrared Spectrometry),'' is impractical as an alternative to EPA Method 10 in the Federal plan because this ASTM standard, which is stated to be applicable in the range of 0.5–100 ppm CO, does not cover the potential range in the plan (up to 157 ppm). Whereas EPA Method 10 has a range from 20–1000 ppm CO. Also, ASTM D3162 does not provide a procedure to remove carbon dioxide interference. Therefore, this ASTM standard is not appropriate for combustion source conditions. In terms of NDIR instrument performance specifications, ASTM D3162 has much higher maximum allowable rise and fall times (5 minutes) than EPA Method 10 (which has 30 second). However, it should be noted that ASTM D3162 has more quality control requirements than EPA Method 10 in terms of instrument calibration procedures, span gas cylinder validation procedures, and operational checks.

The standard ASTM E1979–98 (1998), ''Standard Practice for Ultrasonic Extraction of Paint, Dust, Soil, and Air Samples for Subsequent Determination of Lead,'' is impractical as an alternative to EPA Method 29 in this Federal plan. This ASTM standard does not require the use of hydrogen fluoride (HF) as in EPA Method 29 and, therefore, it cannot be used for the preparation, digestion, and analysis of Method 29 samples. Additionally, Method 29 requires the use of a glass fiber filter, whereas this ASTM standard requires cellulose filters and other probable nonglass fiber media, which cannot be considered equivalent to EPA Method 29.

The European standard EN 1911–1,2,3 (1998), ''Stationary Source Emissions-Manual Method of Determination of HCl—Part 1: Sampling of Gases Ratified European Text—Part 2: Gaseous Compounds Absorption Ratified European Text—Part 3: Adsorption Solutions Analysis and Calculation Ratified European Text,'' is impractical as an alternative to EPA Method 26A. Part 3 of this standard cannot be considered equivalent to EPA Method 26A because the sample absorbing solution (water) would be expected to capture both HCl and chlorine gas, if present, without the ability to distinguish between the two. The EPA Method 26A uses an acidified absorbing solution to first separate HCl and chlorine gas so that they can be selectively absorbed, analyzed, and reported separately. In addition, in EN 1911 the absorption efficiency for chlorine gas would be expected to vary as the pH of the water changed during sampling.

The following ten methods are impractical alternatives to EPA test methods for the purposes of this plan because they are too general, too broad, or not sufficiently detailed to assure compliance with EPA regulatory requirements: ASTM D3154–91 (1995), ''Standard Method for Average Velocity in a Duct (Pitot Tube Method),'' for EPA Methods 1 and 3B; ASTM D5835–95, ''Standard Practice for Sampling Stationary Source Emissions, for Automated Determination of Gas Concentration,'' for EPA Method 3A; ISO 10396:1993, ''Stationary Source Emissions: Sampling for the Automated Determination of Gas Concentrations,'' for EPA Method 3A; CAN/CSA Z223.2–M86(1986), ''Method for the Continuous Measurement of Oxygen, Carbon Dioxide, Carbon Monoxide, Sulphur Dioxide, and Oxides of Nitrogen in Enclosed Combustion Flue Gas Streams,'' for EPA Method 3A; ASME C00031 or PTC 19–10–1981—Part 10, ''Flue and Exhaust Gas Analyses,'' for EPA Methods 6 and 7; ASTM D1608–98, ''Test Method for Oxides of Nitrogen in Gaseous Combustion Products (Pheno-Disulfonic Acid Procedures),'' for EPA Method 7; ISO 7934:1998, ''Stationary Source Emissions—Determination of the Mass Concentration of Sulfur Dioxide—Hydrogen Peroxide/Barium Perchlorate/Thorin Method,'' for EPA Method 6; ISO 11564:1998, ''Stationary Source Emissions—Determination of the Mass Concentration of Nitrogen Oxides—NEDA (naphthylethylenediamine)/Photometric Method,'' for EPA Methods 7 and 7C; CAN/CSA Z223.21–M1978, ''Method for the Measurement of Carbon Monoxide: 3—Method of Analysis by Non-Dispersive Infrared Spectrometry,'' for EPA Methods 10 and 10A; and European Committee for Standardization (CEN) EN 1948–3 (1997), ''Determination of the Mass Concentration of PCDD'S/PCDF'S—Part 3: Identification and Quantification,'' for EPA Method 23.

The following seven methods are impractical alternatives to EPA test methods for the purposes of this Federal plan because they lacked sufficient quality assurance and quality control requirements necessary for EPA compliance assurance requirements: ASME PTC–38–80 R85 or C00049, ''Determination of the Concentration of Particulate Matter in Gas Streams,'' for EPA Method 5; ASTM D3685/D3685M–98, ''Test Methods for Sampling and Determination of Particulate Matter in Stack Gases,'' for EPA Method 5; ISO 9096:1992, ''Determination of Concentration and Mass Flow Rate of Particulate Matter in Gas Carrying Ducts—Manual Gravimetric Method,'' for EPA Method 5; CAN/CSA Z223.1–M1977, ''Method for the Determination of Particulate Mass Flows in Enclosed Gas Streams,'' for EPA Method 5; ISO 11632:1998, ''Stationary Source Emissions—Determination of the Mass Concentration of Sulfur Dioxide—Ion Chromatography,'' for EPA Method 6; CAN/CSA Z223.24–M1983, ''Method for the Measurement of Nitric Oxide and Nitrogen Dioxide in Air,'' for EPA Method 7; and CAN/CSA Z223.26–M1987, ''Measurement of Total Mercury in Air Cold Vapour Atomic Absorption

Spectrophotometeric Method,'' for EPA Method 29.

The following four of the 24 voluntary consensus standards identified in this search were not available at the time the review was conducted for the purposes of this Federal plan because they are under development by a voluntary consensus body: ISO/DIS 12039, ''Stationary Source Emissions—Determination of Carbon Monoxide, Carbon Dioxide, and Oxygen—Automated Methods,'' for EPA Method 3A; ASTM Z6449Z, ''Standard Method for the Determination of Sulfur Dioxide in Stationary Sources,'' for EPA Method 6; ASTM Z6590Z, ''Manual Method for Both Speciated and Elemental Mercury,'' for EPA Method 29 (portion for mercury only); prEN 13211 (1998), ''Air Quality—Stationary Source Emissions—Determination of the Concentration of Total Mercury,'' for EPA Method 29 (portion for mercury only).

Table 1 of Subpart III lists the EPA testing methods included in the Federal plan emission requirements for commercial and industrial solid waste incinerators. Under 40 CFR 63.8(f) of Subpart A of the General Provisions, a source may apply to the EPA for permission to use alternative monitoring in place of any of the EPA testing methods.

J. 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 adopting 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. The 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 this rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 62

Environmental protection, Air pollution control, Carbon monoxide, Metals, Nitrogen dioxide, Particulate matter, Sulfur oxides, Waste treatment and disposal.

Dated: September 12, 2003.

Marianne Lamont Horinko,

Acting Administrator.

■ 40 CFR part 62 is amended as follows:

PART 62—[AMENDED]

■ 1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

■ 2. Amend § 62.13 by adding paragraph (d) to read as follows:

§ 62.13 Federal plans.

* * * * *

(d) The substantive requirements of the commercial and industrial solid waste incineration units Federal plan are contained in subpart III of this part. These requirements include emission limits, compliance schedules, testing, monitoring, and reporting and recordkeeping requirements.

■ 3. Amend part 62 by adding subpart III to read as follows:

Subpart III—Federal Plan Requirements for Commercial and Industrial Solid Waste Incineration Units That Commenced Construction On or Before November 30, 1999

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Compliance Schedule and Increments of Progress

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Introduction

§ 62.14500 What is the purpose of this subpart?

(a) This subpart establishes emission requirements and compliance schedules for the control of emissions from commercial and industrial solid waste incineration (CISWI) units that are not covered by an EPA approved and currently effective State or Tribal plan. The pollutants addressed by these emission requirements are listed in Table 1 of this subpart. These emission requirements are developed in accordance with sections 111 and 129 of the Clean Air Act and subpart B of 40 CFR part 60.

(b) In this subpart, ''you'' means the owner or operator of a CISWI unit.

§ 62.14505 What are the principal components of this subpart?

This subpart contains the eleven major components listed in paragraphs (a) through (k) of this section.

(a) Increments of progress toward compliance.

(b) Waste management plan.

(c) Operator training and qualification.

(d) Emission limitations and operating limits.

(e) Performance testing.

(f) Initial compliance requirements.

(g) Continuous compliance requirements.

(h) Monitoring.

(i) Recordkeeping and reporting.

(j) Definitions.

(k) Tables.

Applicability

§ 62.14510 Am I subject to this subpart?

(a) You are subject to this subpart if you own or operate a CISWI unit as defined in § 62.14840 and the CISWI unit meets the criteria described in paragraphs (a)(1) through (a)(3) of this section.

(1) Construction of your CISWI unit commenced on or before November 30, 1999.

(2) Your CISWI unit is not exempt under § 62.14525.

(3) Your CISWI unit is not regulated by an EPA approved and currently effective State or Tribal plan, or your CISWI unit is located in any State whose approved State or Tribal plan is subsequently vacated in whole or in part.

(b) If you made changes after June 1, 2001 that meet the definition of modification or reconstruction after promulgation of the final 40 CFR part 60 subpart CCCC (New Source Performance Standards for Commercial and Industrial Solid Waste Incineration Units), your CISWI unit is subject to subpart CCCC of 40 CFR part 60 and this subpart no longer applies to that unit.

(c) If you make physical or operational changes to your existing CISWI unit primarily to comply with this subpart, then such changes do not qualify as modifications or reconstructions under subpart CCCC of 40 CFR part 60.

§ 62.14515 Can my CISWI unit be covered by both a State plan and this subpart?

(a) If your CISWI unit is located in a State that does not have an EPA-approved State plan or your State's plan has not become effective, this subpart applies to your CISWI unit until the EPA approves a State plan that covers your CISWI unit and that State plan becomes effective. However, a State may enforce the requirements of a State regulation while your CISWI unit is still subject to this subpart.

(b) After the EPA approves a State plan covering your CISWI unit, and after that State plan becomes effective, you will no longer be subject to this subpart and will only be subject to the approved and effective State plan.

§ 62.14520 How do I determine if my CISWI unit is covered by an approved and effective State or Tribal plan?

This part (40 CFR part 62) contains a list of State and Tribal areas with approved Clean Air Act section 111(d) and section 129 plans along with the effective dates for such plans. The list is published annually. If this part does not indicate that your State or Tribal area has an approved and effective plan, you should contact your State environmental agency's air director or your EPA Regional Office to determine if the EPA has approved a State plan covering your unit since publication of the most recent version of this subpart.

§ 62.14521 If my CISWI unit is not listed in the Federal plan inventory, am I exempt from this subpart?

If a CISWI unit is not listed in the Federal plan inventory, it is not necessarily exempt from this subpart. Sources subject to this subpart are not limited to the inventory of sources listed in Docket A–2000–52 for the Federal plan. If your CISWI units meets the applicability criteria in § 62.14510, this subpart applies to you whether or not your unit is listed in the Federal plan inventory in the docket.

§ 62.14525 Can my combustion unit be exempt from this subpart?

This subpart exempts 15 types of units described in paragraphs (a) through (o) of this section from complying with the requirements of this subpart except for the requirements specified in this section and in § 62.14531.

(a) *Pathological waste incineration units.* Incineration units burning 90 percent or more by weight (on a calendar quarter basis and excluding the weight of auxiliary fuel and combustion air) of pathological waste, low-level radioactive waste, and/or chemotherapeutic waste as defined in § 62.14840 are not subject to this subpart if you meet the two requirements specified in paragraphs (a)(1) and (2) of this section.

(1) Notify the Administrator that the unit meets these criteria.

(2) Keep records on a calendar quarter basis of the weight of pathological waste, low-level radioactive waste, and/or chemotherapeutic waste burned, and the weight of all other fuels and wastes burned in the unit.

(b) *Agricultural waste incineration units.* Incineration units burning 90 percent or more by weight (on a calendar quarter basis and excluding the weight of auxiliary fuel and combustion air) of agricultural wastes as defined in § 62.14840 are not subject to this subpart if you meet the two requirements specified in paragraphs (b)(1) and (2) of this section.

(1) Notify the Administrator that the unit meets these criteria.

(2) Keep records on a calendar quarter basis of the weight of agricultural waste burned, and the weight of all other fuels and wastes burned in the unit.

(c) *Municipal waste combustion units.* Incineration units that meet either of the two criteria specified in paragraphs (c)(1) or (2) of this section.

(1) Units that are regulated under subpart Ea of 40 CFR part 60 (Standards of Performance for Municipal Waste Combustors); subpart Eb of 40 CFR part 60 (Standards of Performance for Municipal Waste Combustors for Which Construction is Commenced After September 20, 1994); subpart Cb of 40 CFR part 60 (Emission Guidelines and Compliance Times for Large Municipal Waste Combustors Constructed on or Before September 20, 1994); subpart AAAA of 40 CFR part 60 (Standards of Performance for New Stationary Sources: Small Municipal Waste Combustion Units); subpart BBBB of 40 CFR part 60 (Emission Guidelines for Existing Stationary Sources: Small Municipal Waste Combustion Units); or subpart JJJ of 40 CFR part 62 (Federal Plan Requirements for Small Municipal Waste Combustion Units Constructed on or Before August 30, 1999).

(2) Units that burn greater than 30 percent municipal solid waste or refuse-derived fuel, as defined in 40 CFR part 60 subpart Ea, subpart Eb, subpart AAAA, and subpart BBBB, and that have the capacity to burn less than 35 tons (32 megagrams) per day of municipal solid waste or refuse-derived fuel, if you meet the two requirements in paragraphs (c)(2)(i) and (ii) of this section.

(i) Notify the Administrator that the unit meets these criteria.

(ii) Keep records on a calendar quarter basis of the weight of municipal solid waste burned, and the weight of all other fuels and wastes burned in the unit.

(d) *Medical waste incineration units.* Incineration units regulated under subpart Ec of 40 CFR part 60 (Standards of Performance for Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996); 40 CFR part 60 subpart Ce (Emission Guidelines and Compliance Times for Hospital/Medical/Infectious Waste Incinerators); and 40 CFR part 62 subpart HHH (Federal Plan Requirements for Hospital/Medical/Infectious Waste Incinerators Constructed on or before June 20, 1996).

(e) *Small power production facilities.* Units that meet the three requirements specified in paragraphs (e)(1) through (3) of this section.

(1) The unit qualifies as a small power-production facility under section 3(17)(C) of the Federal Power Act (16 U.S.C. 796(17)(C)).

(2) The unit burns homogeneous waste (not including refuse-derived fuel) to produce electricity.

(3) You notify the Administrator that the unit meets all of these criteria.

(f) *Cogeneration facilities.* Units that meet the three requirements specified in paragraphs (f)(1) through (3) of this section.

(1) The unit qualifies as a cogeneration facility under section 3(18)(B) of the Federal Power Act (16 U.S.C. 796(18)(B)).

(2) The unit burns homogeneous waste (not including refuse-derived fuel) to produce electricity and steam or other forms of energy used for industrial, commercial, heating, or cooling purposes.

(3) You notify the Administrator that the unit meets all of these criteria.

(g) *Hazardous waste combustion units.* Units regulated under subpart EEE of part 63 (National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors).

(h) *Materials recovery units.* Units that combust waste for the primary purpose of recovering metals, such as primary and secondary smelters.

(i) *Air curtain incinerators.* Air curtain incinerators that burn 100 percent wood waste; 100 percent clean lumber; or a 100 percent mixture of only wood waste, clean lumber, and/or yard waste; are required to meet only the requirements under ''Air Curtain Incinerators That Burn 100 Percent Wood Wastes, Clean Lumber and/or Yard Waste'' (§§ 62.14765 through 62.14825) and the title V operating permit requirements (§§ 62.14830 and 62.14835).

(j) *Cyclonic barrel burners.*

(k) *Rack, part, and drum reclamation units.*

(l) *Cement kilns.*

(m) *Sewage sludge incinerators.* Incineration units regulated under subpart O of 40 CFR part 60 (Standards of Performance for Sewage Treatment Plants).

(n) *Chemical recovery units.* Combustion units burning materials to recover chemical constituents or to produce chemical compounds where there is an existing commercial market for such recovered chemical constituents or compounds. The eight types of units described in paragraphs (n)(1) through (8) of this section are considered chemical recovery units.

(1) Units burning only pulping liquors (*i.e.*, black liquor) that are reclaimed in a pulping liquor recovery process and reused in the pulping process.

(2) Units burning only spent sulfuric acid used to produce virgin sulfuric acid.

(3) Units burning only wood or coal feedstock for the production of charcoal.

(4) Units burning only manufacturing byproduct streams/residues containing catalyst metals which are reclaimed and reused as catalysts or used to produce commercial grade catalysts.

(5) Units burning only coke to produce purified carbon monoxide that is used as an intermediate in the production of other chemical compounds.

(6) Units burning only hydrocarbon liquids or solids to produce hydrogen, carbon monoxide, synthesis gas, or other gases for use in other manufacturing processes.

(7) Units burning only photographic film to recover silver.

(8) Units granted exemptions resulting from petitions submitted under the provisions of either § 60.2025 or § 60.2558.

(o) *Laboratory units.* Units that burn samples of materials for the purpose of chemical or physical analysis.

§ 62.14530 What if I have a chemical recovery unit that is not listed in § 62.14525(n)?

If you have a recovery unit that is not listed in § 62.14525(n), you can petition the Administrator to add the unit to the list of exempted units in 40 CFR 60.2020(n) or 60.2555(n) pursuant to the requirements of 40 CFR 60.2025 or 60.2558. Units granted exemptions under 40 CFR 60.2025 or 60.2558 are exempt from the requirement of this Federal plan under § 62.14525(n)(8).

§ 62.14531 When must I submit any records required pursuant to an exemption allowed under § 62.14525?

Owners or operators of sources that qualify for the exemptions in § 62.14525(a) through (o) must submit any records required to support their claims of exemption to the EPA Administrator (or delegated enforcement authority) upon request. Upon request by any person under the regulation at part 2 of this chapter (or a comparable law or regulation governing a delegated enforcement authority), the EPA Administrator (or delegated enforcement authority) must request the records in § 62.14525(a) through (o) from an owner or operator and make such records available to the requestor to the extent required by part 2 of this chapter (or a comparable law governing a delegated enforcement authority). Any records required under § 62.14525(a) through (o) must be maintained by the source for a period of at least 5 years. Notifications of exemption claims required under § 62.14525(a) through (o) of this section must be maintained by the EPA or delegated enforcement authority for a period of at least 5 years. Any information obtained from an owner or operator of a source accompanied by a claim of confidentiality will be treated in accordance with the regulations in part 2 of this chapter (or a comparable law governing a delegated enforcement authority).

Compliance Schedule and Increments of Progress

§ 62.14535 When must I comply with this subpart if I plan to continue operation of my CISWI unit?

If you plan to continue operation of your CISWI unit, then you must follow the requirements in paragraph (a) or (b) of this section depending on when you plan to come into compliance with the requirements of this subpart.

(a) If you plan to continue operation and come into compliance with the requirements of this subpart by October 4, 2004, then you must complete the requirements of paragraphs (a)(1) through (a)(5) of this section.

(1) You must comply with the operator training and qualification requirements and inspection requirements (if applicable) of this subpart by October 4, 2004.

(2) You must submit a waste management plan no later than April 5, 2004.

(3) You must achieve final compliance by October 4, 2004. To achieve final compliance, you must incorporate all process changes and complete retrofit construction of control devices, as specified in the final control plan, so that, if the affected CISWI unit is brought online, all necessary process changes and air pollution control devices would operate as designed.

(4) You must conduct the initial performance test within 90 days after the date when you are required to achieve final compliance under paragraph (a)(3) of this section.

(5) You must submit an initial report including the results of the initial performance test no later than 60 days following the initial performance test (see §§ 62.14700 through 62.14760 for complete reporting and recordkeeping requirements).

(b) If you plan to continue operation and come into compliance with the requirements of this subpart after October 4, 2004, but before October 3, 2005 you must petition for and be granted an extension of the final compliance date specified § 62.14535(a)(3) by meeting the requirements of § 62.14536 and you must meet the requirements for increments of progress specified in § 62.14540 through § 62.14565. To achieve the final compliance increment of progress, you must complete the requirements of paragraphs (b)(1) through (b)(5) of this section.

(1) You must comply with the operator training and qualification requirements and inspection requirements (if applicable) of this subpart by October 4, 2004.

(2) You must submit a waste management plan no later than April 5, 2004.

(3) You must achieve final compliance by October 3, 2005. For the final compliance increment of progress, you must incorporate all process changes and complete retrofit construction of control devices, as specified in the final control plan, so that, when the affected CISWI unit is brought online, all necessary process changes and air pollution control devices operate as designed.

(4) You must conduct the initial performance test within 90 days after the date when you are required to achieve final compliance under paragraph (b)(3) of this section.

(5) You must submit an initial report including the result of the initial performance no later than 60 days following the initial performance test (see §§ 62.14700 through 62.14760 for complete reporting and recordkeeping requirements).

§ 62.14536 What steps are required to request an extension of the initial compliance date if I plan to continue operation of my CISWI unit?

If you plan to continue operation and want to come into compliance with the requirements of this subpart after October 4, 2004, but before October 3, 2005, then you must you must petition to the Administrator to grant you an extension by following the procedures outlined in paragraphs (a) and (b) of this section.

(a) You must submit your request for an extension to the EPA Administrator (or delegated enforcement authority) on or before December 3, 2003.

(b) Your request must include documentation of the analyses undertaken to support your need for an extension, including an explanation of why you are unable to meet the final compliance date specified in § 62.14535(a)(3) and why your requested extension date is needed to provide sufficient time for you to design, fabricate, and install the emissions control systems necessary to meet the requirements of this Subpart. A request based upon the avoidance of costs of meeting provisions of this Subpart is not acceptable and will be denied.

§ 62.14540 When must I complete each increment of progress?

If you plan to come into compliance after October 4, 2004, you must meet the two increments of progress specified in paragraphs (a) and (b) of this section.

(a) Increment 1. Submit a final control plan by April 5, 2004.

(b) Increment 2. Reach final compliance by October 3, 2005.

§ 62.14545 What must I include in each notification of achievement of an increment of progress?

Your notification of achievement of an increment of progress must include the four items specified in paragraphs (a) through (d) of this section.

(a) Notification of the date that the increment of progress has been achieved.

(b) Any items required to be submitted with each increment of progress.

(c) Signature of the owner or operator of the CISWI unit.

(d) The date you were required to complete the increment of progress.

§ 62.14550 When must I submit a notification of achievement of the first increment of progress?

Your notification for achieving the first increment of progress must be postmarked no later than April 15, 2004.

§ 62.14555 What if I do not meet an increment of progress?

Failure to meet an increment of progress is a violation of the standards under this subpart. If you fail to meet an increment of progress, you must submit a notification to the Administrator postmarked within 10 business days after the due date for that increment of progress. You must inform the Administrator that you did not meet the increment, and you must continue to submit reports each subsequent calendar month until the increment of progress is met.

§ 62.14560 How do I comply with the increment of progress for submittal of a control plan?

For your control plan increment of progress, you must satisfy the two requirements specified in paragraphs (a) and (b) of this section.

(a) Submit the final control plan that includes the six items described in paragraphs (a)(1) through (6) of this section.

(1) A description of the devices for air pollution control and process changes that you will use to comply with the emission limitations and other requirements of this subpart.

(2) The type(s) of waste to be burned.

(3) The maximum design waste burning capacity.

(4) The anticipated maximum charge rate.

(5) If applicable, the petition for site-specific operating limits under § 62.14640.

(6) A schedule that includes the date by which you will award the contracts to procure emission control equipment or related materials, initiate on-site construction, initiate on-site installation of emission control equipment, and/or incorporate process changes, and the date by which you will initiate on-site construction.

(b) Maintain an on-site copy of the final control plan.

§ 62.14565 How do I comply with the increment of progress for achieving final compliance?

For the final compliance increment of progress, you must incorporate all process changes and complete retrofit construction of control devices, as specified in the final control plan, so that, when the affected CISWI unit is brought online, all necessary process changes and air pollution control devices operate as designed.

§ 62.14570 What must I do if I plan to permanently close my CISWI unit?

If you plan to permanently close your CISWI unit, then you must follow the requirements in either paragraph (a) or (b) of this section depending on when you plan to shut down.

(a) If you plan to shut down by October 4, 2004, rather that come into compliance with the complete set of requirements in this subpart, then you must shut down by October 4, 2004. In addition, while still in operation, your CISWI unit is subject to the same requirement to apply for and obtain a title V operating permit that applies to a CISWI unit that will not be permanently closing. *See* §§ 62.14830 and 62.14835.

(b) If you plan to shut down rather than come into compliance with the complete set of requirements of this subpart, but are unable to shut down by October 4, 2004, then you must petition EPA for and be granted an extension by following the procedures outlined in paragraphs (b)(1) through (5) of this section.

(1) You must submit your request for an extension to the EPA Administrator (or delegated enforcement authority) by December 3, 2003. Your request must include:

(i) Documentation of the analyses undertaken to support your need for an extension, including an explanation of why your requested extension date is sufficient time for you to shut down while October 4, 2004 does not provide sufficient time for shut down. A request based upon the avoidance of costs of meeting provisions of this subpart is not acceptable and will be denied. Your documentation must include an evaluation of the option to transport your waste offsite to a commercial or municipal waste treatment and/or disposal facility on a temporary or permanent basis; and

(ii) Documentation of incremental steps of progress, including dates for completing the increments of progress, that you will take towards shutting down. Some suggested incremental steps of progress towards shut down are provided as follows:

If you . . .	Then your increments of progress could be . . .
(A) Need an extension so you can install an onsite alternative waste treatment technology before you shut down your CISWI.	*(1)* Date when you will enter into a contract with an alternative treatment technology vendor, *(2)* Date for initiating onsite construction or installation of the alternative technology, *(3)* Date for completing onsite construction or installation of the alternative technology, and *(4)* Date for shutting down the CISWI.
(B) Need an extension so you can acquire the services of a commercial waste disposal company before you shut down your CISWI.	*(1)* Date when price quotes will be obtained from commercial disposal companies, *(2)* Date when you will enter into a contract with a commercial disposal company, and *(3)* Date for shutting down the CISWI.

(2) You must shut down no later than by October 3, 2005.

(3) You must comply with the operator training and qualification requirements and inspection requirements (if applicable) of this subpart by October 4, 2004.

(4) You must submit a legally binding closure agreement to the Administrator by April 5, 2004. The closure agreement must specify the date by which operation will cease. The closure date cannot be later than October 3, 2005.

(5) While still in operation, your CISWI unit is subject to the same requirement to apply for and obtain a title V operating permit that applies to a CISWI unit that will not be permanently closing. *See* §§ 62.14830 and 62.14835.

§ 62.14575 What must I do if I close my CISWI unit and then restart it?

If you temporarily close your CISWI unit and restart the unit for the purpose of continuing operation of your CISWI unit, then you must follow the

requirements in paragraphs (a), (b), or (c) of this section depending on when you plan to come into compliance with the requirements of this subpart. You are subject to the operating permit requirements of title V of the CAA and 40 CFR part 70 or 71 until you close your CISWI unit and at the time you restart it.

(a) If you plan to continue operation and come into compliance with the requirements of this subpart by October 4, 2004, then you must complete the requirements of § 62.14535(a).

(b) If you plan to continue operation and come into compliance with the requirements of this subpart on or before October 3, 2005, then you must complete the requirements of § 62.14535(b). You must have first requested and been granted an extension from the initial compliance date by following the requirements of § 62.14536.

(c) If you restart your CISWI unit after the October 4, 2004 and resume operation, but have not previously requested an extension by meeting all of the requirements of § 62.14536, you must meet all of the requirements of § 62.14535(a)(1) through (a)(5) at the time you restart your CISWI unit. Upon restarting your CISWI unit, you must have incorporated all process changes and completed retrofit construction of control devices so that when the affected CISWI unit is brought online, all necessary process changes and air pollution control devices operate as designed.

Waste Management Plan

§ 62.14580 What is a waste management plan?

A waste management plan is a written plan that identifies both the feasibility and the methods used to reduce or separate certain components of solid waste from the waste stream in order to reduce or eliminate toxic emissions from incinerated waste.

§ 62.14585 When must I submit my waste management plan?

You must submit a waste management plan no later than April 5, 2004.

§ 62.14590 What should I include in my waste management plan?

A waste management plan must include consideration of the reduction or separation of waste-stream elements such as paper, cardboard, plastics, glass, batteries, or metals; or the use of recyclable materials. The plan must identify any additional waste management measures, and the source must implement those measures considered practical and feasible, based on the effectiveness of waste management measures already in place, the costs of additional measures, the emissions reductions expected to be achieved, and any other environmental or energy impacts they might have.

Operator Training and Qualification

§ 62.14595 What are the operator training and qualification requirements?

(a) You must have a fully trained and qualified CISWI unit operator accessible at all times when the unit is in operation, either at your facility or able to be at your facility within one hour. The trained and qualified CISWI unit operator may operate the CISWI unit directly or be the direct supervisor of one or more other plant personnel who operate the unit. If all qualified CISWI unit operators are temporarily not accessible, you must follow the procedures in § 62.14625.

(b) Operator training and qualification must be obtained through a State-approved program or by completing the requirements included in paragraph (c) of this section.

(c) Training must be obtained by completing an incinerator operator training course that includes, at a minimum, the three elements described in paragraphs (c)(1) through (3) of this section.

(1) Training on the thirteen subjects listed in paragraphs (c)(1)(i) through (xiii) of this section.

(i) Environmental concerns, including types of emissions.

(ii) Basic combustion principles, including products of combustion.

(iii) Operation of the specific type of incinerator to be used by the operator, including proper startup, waste charging, and shutdown procedures.

(iv) Combustion controls and monitoring.

(v) Operation of air pollution control equipment and factors affecting performance (where applicable).

(vi) Inspection and maintenance of the incinerator and air pollution control devices.

(vii) Actions to correct malfunctions or conditions that may lead to malfunction.

(viii) Bottom and fly ash characteristics and handling procedures.

(ix) Applicable Federal, State, and local regulations, including Occupational Safety and Health Administration workplace standards.

(x) Pollution prevention.

(xi) Waste management practices.

(xii) Recordkeeping requirements.

(xiii) Methods to continuously monitor CISWI unit and air pollution control device operating parameters and monitoring equipment calibration procedures (where applicable).

(2) An examination designed and administered by the instructor.

(3) Written material covering the training course topics that can serve as reference material following completion of the course.

§ 62.14600 When must the operator training course be completed?

(a) The operator training course must be completed by the later of the two dates specified in paragraphs (a)(1) and (2) of this section.

(1) October 4, 2004.

(2) Six months after an employee assumes responsibility for operating the CISWI unit or assumes responsibility for supervising the operation of the CISWI unit.

(b) You must follow the requirements in § 63.14625 if all qualified operators are temporarily not accessible.

§ 62.14605 How do I obtain my operator qualification?

(a) You must obtain operator qualification by completing a training course that satisfies the criteria under § 62.14595(b) or (c).

(b) Qualification is valid from the date on which the training course is completed and the operator successfully passes the examination required under § 62.14595(c)(2).

§ 62.14610 How do I maintain my operator qualification?

To maintain qualification, you must complete an annual review or refresher course of at least 4 hours covering, at a minimum, the five topics described in paragraphs (a) through (e) of this section.

(a) Update of regulations.

(b) Incinerator operation, including startup and shutdown procedures, waste charging, and ash handling.

(c) Inspection and maintenance.

(d) Responses to malfunctions or conditions that may lead to malfunction.

(e) Discussion of operating problems encountered by attendees.

§ 62.14615 How do I renew my lapsed operator qualification?

You must renew a lapsed operator qualification by one of the two methods specified in paragraphs (a) and (b) of this section.

(a) For a lapse of less than 3 years, you must complete a standard annual refresher course described in § 62.14610.

(b) For a lapse of 3 years or more, you must repeat the initial qualification requirements in § 62.14605(a).

§ 62.14620 What site-specific documentation is required?

(a) Documentation must be available at the facility and readily accessible for all CISWI unit operators that addresses the ten topics described in paragraphs (a)(1) through (10) of this section. You must maintain this information and the training records required by paragraph (c) of this section in a manner that they can be readily accessed and are suitable for inspection upon request.

(1) Summary of the applicable standards under this subpart.

(2) Procedures for receiving, handling, and charging waste.

(3) Incinerator startup, shutdown, and malfunction procedures.

(4) Procedures for maintaining proper combustion air supply levels.

(5) Procedures for operating the incinerator and associated air pollution control systems within the standards established under this subpart.

(6) Monitoring procedures for demonstrating compliance with the incinerator operating limits.

(7) Reporting and recordkeeping procedures.

(8) The waste management plan required under §§ 62.14580 through 62.14590.

(9) Procedures for handling ash.

(10) A list of the wastes burned during the performance test.

(b) You must establish a program for reviewing the information listed in paragraph (a) of this section with each employee who operates your incinerator.

(1) The initial review of the information listed in paragraph (a) of this section must be conducted by the later of the two dates specified in paragraphs (b)(1)(i) through (ii) of this section.

(i) October 4, 2004.

(ii) Two months after being assigned to operate the CISWI unit.

(2) Subsequent annual reviews of the information listed in paragraph (a) of this section must be conducted no later than 12 months following the previous review.

(c) You must also maintain the information specified in paragraphs (c)(1) through (3) of this section.

(1) Records showing the names of all plant personnel who operate your CISWI unit who have completed review of the information in § 62.14620(a) as required by § 62.14620(b), including the date of the initial review and all subsequent annual reviews.

(2) Records showing the names of all plant personnel who operate your CISWI unit who have completed the operator training requirements under § 62.14595, met the criteria for qualification under § 62.14605, and maintained or renewed their qualification under § 62.14610 or § 62.14615. Records must include documentation of training, the dates of the initial refresher training, and the dates of their qualification and all subsequent renewals of such qualifications.

(3) For each qualified operator, the phone and/or pager number at which they can be reached during operating hours.

§ 62.14625 What if all the qualified operators are temporarily not accessible?

If all qualified operators are temporarily not accessible (*i.e.*, not at the facility and not able to be at the facility within 1 hour), you must meet one of the two criteria specified in paragraphs (a) and (b) of this section, depending on the length of time that a qualified operator is not accessible.

(a) When all qualified operators are not accessible for more than 8 hours, but less than 2 weeks, the CISWI unit may be operated by other plant personnel familiar with the operation of the CISWI unit who have completed a review of the information specified in § 62.14620(a) within the past 12 months. However, you must record the period when all qualified operators were not accessible and include this deviation in the annual report as specified under § 62.14730.

(b) When all qualified operators are not accessible for 2 weeks or more, you must take the two actions that are described in paragraphs (b)(1) and (2) of this section.

(1) Notify the Administrator of this deviation in writing within 10 days. In the notice, state what caused this deviation, what you are doing to ensure that a qualified operator is accessible, and when you anticipate that a qualified operator will be accessible.

(2) Submit a status report to the Administrator every 4 weeks outlining what you are doing to ensure that a qualified operator is accessible, stating when you anticipate that a qualified operator will be accessible and requesting approval from the Administrator to continue operation of the CISWI unit. You must submit the first status report 4 weeks after you notify the Administrator of the deviation under paragraph (b)(1) of this section. If the Administrator notifies you that your request to continue operation of the CISWI unit is disapproved, the CISWI unit may continue operation for 90 days, then must cease operation. Operation of the unit may resume if you meet the two requirements in paragraphs (b)(2)(i) and (ii) of this section.

(i) A qualified operator is accessible as required under § 62.14595(a).

(ii) You notify the Administrator that a qualified operator is accessible and that you are resuming operation.

Emission Limitations and Operating Limits

§ 62.14630 What emission limitations must I meet and by when?

You must meet the emission limitations specified in table 1 of this subpart by the applicable final compliance date for your CISWI unit.

§ 62.14635 What operating limits must I meet and by when?

(a) If you use a wet scrubber to comply with the emission limitations, you must establish operating limits for four operating parameters (as specified in table 2 of this subpart) as described in paragraphs (a)(1) through (4) of this section during the initial performance test.

(1) Maximum charge rate, calculated using one of the two different procedures in paragraph (a)(1)(i) or (ii) of this section, as appropriate.

(i) For continuous and intermittent units, maximum charge rate is 110 percent of the average charge rate measured during the most recent performance test demonstrating compliance with all applicable emission limitations.

(ii) For batch units, maximum charge rate is 110 percent of the daily charge rate measured during the most recent performance test demonstrating compliance with all applicable emission limitations.

(2) Minimum pressure drop across the wet scrubber, which is calculated as 90 percent of the average pressure drop across the wet scrubber measured during the most recent performance test demonstrating compliance with the particulate matter emission limitations; or minimum amperage to the wet scrubber, which is calculated as 90 percent of the average amperage to the wet scrubber measured during the most recent performance test demonstrating compliance with the particulate matter emission limitations.

(3) Minimum scrubber liquor flow rate, which is calculated as 90 percent of the average liquor flow rate at the inlet to the wet scrubber measured during the most recent performance test demonstrating compliance with all applicable emission limitations.

(4) Minimum scrubber liquor pH, which is calculated as 90 percent of the average liquor pH at the inlet to the wet scrubber measured during the most

recent performance test demonstrating compliance with the hydrogen chloride emission limitation.

(b) You must meet the operating limits established during the initial performance test on the date the initial performance test is required or completed (whichever is earlier).

(c) If you use a fabric filter to comply with the emission limitations, you must operate each fabric filter system such that the bag leak detection system alarm does not sound more than 5 percent of the operating time during any 6-month period. In calculating this operating time percentage, if inspection of the fabric filter demonstrates that no corrective action is required, no alarm time is counted. If corrective action is required, each alarm shall be counted as a minimum of 1 hour. If you take longer than 1 hour to initiate corrective action, the alarm time shall be counted as the actual amount of time taken by you to initiate corrective action.

§ 62.14640 What if I do not use a wet scrubber to comply with the emission limitations?

If you use an air pollution control device other than a wet scrubber, or limit emissions in some other manner, to comply with the emission limitations under § 62.14630, you must petition the Administrator for specific operating limits to be established during the initial performance test and continuously monitored thereafter. You must not conduct the initial performance test until after the petition has been approved by the Administrator. Your petition must include the five items listed in paragraphs (a) through (e) of this section.

(a) Identification of the specific parameters you propose to use as additional operating limits.

(b) A discussion of the relationship between these parameters and emissions of regulated pollutants, identifying how emissions of regulated pollutants change with changes in these parameters, and how limits on these parameters will serve to limit emissions of regulated pollutants.

(c) A discussion of how you will establish the upper and/or lower values for these parameters which will establish the operating limits on these parameters.

(d) A discussion identifying the methods you will use to measure and the instruments you will use to monitor these parameters, as well as the relative accuracy and precision of these methods and instruments.

(e) A discussion identifying the frequency and methods for recalibrating the instruments you will use for monitoring these parameters.

§ 62.14645 What happens during periods of startup, shutdown, and malfunction?

(a) The emission limitations and operating limits apply at all times except during periods of CISWI unit startup, shutdown, or malfunction as defined in § 62.14840.

(b) Each malfunction must last no longer than 3 hours.

Performance Testing

§ 62.14650 How do I conduct the initial and annual performance test?

(a) All performance tests must consist of a minimum of three test runs conducted under conditions representative of normal operations.

(b) You must document that the waste burned during the performance test is representative of the waste burned under normal operating conditions by maintaining a log of the quantity of waste burned (as required in § 62.14700(b)(1)) and the types of waste burned during the performance test.

(c) All performance tests must be conducted using the minimum run duration specified in Table 1 of this subpart.

(d) Method 1 of 40 CFR part 60, Appendix A must be used to select the sampling location and number of traverse points.

(e) Method 3A or 3B of 40 CFR part 60, Appendix A must be used for gas composition analysis, including measurement of oxygen concentration. Method 3A or 3B of 40 CFR part 60, Appendix A must be used simultaneously with each method.

(f) All pollutant concentrations, except for opacity, must be adjusted to 7 percent oxygen using Equation 1 of this section:

$$C_{adj} = C_{meas} (20.9 - 7)/(20.9 - \%O_2) \quad \text{(Eq. 1)}$$

Where:

C_{adj} = pollutant concentration adjusted to 7 percent oxygen;

C_{meas} = pollutant concentration measured on a dry basis;

$(20.9 - 7)$ = 20.9 percent oxygen − 7 percent oxygen (defined oxygen correction basis);

20.9 = oxygen concentration in air, percent; and

$\%O_2$ = oxygen concentration measured on a dry basis, percent.

(g) You must determine dioxins/furans toxic equivalency by following the procedures in paragraphs (g)(1) through (3) of this section.

(1) Measure the concentration of each dioxin/furan tetra- through octa-congener emitted using EPA Method 23.

(2) For each dioxin/furan congener measured in accordance with paragraph (g)(1) of this section, multiply the congener concentration by its corresponding toxic equivalency factor specified in Table 3 of this subpart.

(3) Sum the products calculated in accordance with paragraph (g)(2) of this section to obtain the total concentration of dioxins/furans emitted in terms of toxic equivalency.

§ 62.14655 How are the performance test data used?

You use results of performance tests to demonstrate compliance with the emission limitations in Table 1 of this subpart.

Initial Compliance Requirements

§ 62.14660 How do I demonstrate initial compliance with the emission limitations and establish the operating limits?

You must conduct an initial performance test, as required under 40 CFR 60.8, to determine compliance with the emission limitations in Table 1 of this subpart and to establish operating limits using the procedure in § 62.14635 or § 62.14640. The initial performance test must be conducted using the test methods listed in table 1 of this subpart and the procedures in § 62.14650.

§ 62.14665 By what date must I conduct the initial performance test?

The initial performance test must be conducted no later than 90 days after your final compliance date.

Continuous Compliance Requirements

§ 62.14670 How do I demonstrate continuous compliance with the emission limitations and the operating limits?

(a) You must conduct an annual performance test for particulate matter, hydrogen chloride, and opacity for each CISWI unit as required under 40 CFR 60.8 to determine compliance with the emission limitations. The annual performance test must be conducted using the test methods listed in table 1 of this subpart and the procedures in § 62.14650.

(b) You must continuously monitor the operating parameters specified in § 62.14635 or established under § 62.14640. Operation above the established maximum or below the established minimum operating limits constitutes a deviation from the established operating limits. Three-hour rolling average values are used to determine compliance (except for baghouse leak detection system alarms) unless a different averaging period is established under § 62.14640. Operating limits do not apply during performance tests.

(c) You must only burn the same types of waste used to establish operating limits during the performance test.

§ 62.14675 By what date must I conduct the annual performance test?

You must conduct annual performance tests for particulate matter, hydrogen chloride, and opacity within 12 months following the initial performance test. Conduct subsequent annual performance tests within 12 months following the previous one.

§ 62.14680 May I conduct performance testing less often?

(a) You can test less often for a given pollutant if you have test data for at least 3 years, and all performance tests for the pollutant (particulate matter, hydrogen chloride, or opacity) over 3 consecutive years show that you comply with the emission limitation. In this case, you do not have to conduct a performance test for that pollutant for the next 2 years. You must conduct a performance test during the third year and no later than 36 months following the previous performance test.

(b) If your CISWI unit continues to meet the emission limitation for particulate matter, hydrogen chloride, or opacity, you may choose to conduct performance tests for these pollutants every third year, but each test must be within 36 months of the previous performance test.

(c) If a performance test shows a deviation from an emission limitation for particulate matter, hydrogen chloride, or opacity, you must conduct annual performance tests for that pollutant until all performance tests over a 3-year period show compliance.

§ 62.14685 May I conduct a repeat performance test to establish new operating limits?

(a) Yes. You may conduct a repeat performance test at any time to establish new values for the operating limits. The Administrator may request a repeat performance test at any time.

(b) You must repeat the performance test if your feed stream is different than the feed streams used during any performance test used to demonstrate compliance.

Monitoring

§ 62.14690 What monitoring equipment must I install and what parameters must I monitor?

(a) If you are using a wet scrubber to comply with the emission limitation under § 62.14630, you must install, calibrate (to manufacturers' specifications), maintain, and operate devices (or establish methods) for monitoring the value of the operating parameters used to determine compliance with the operating limits listed in table 2 of this subpart. These devices (or methods) must measure and record the values for these operating parameters at the frequencies indicated in table 2 of this subpart at all times except as specified in § 62.14695(a).

(b) If you use a fabric filter to comply with the requirements of this subpart, you must install, calibrate, maintain, and continuously operate a bag leak detection system as specified in paragraphs (b)(1) through (8) of this section.

(1) You must install and operate a bag leak detection system for each exhaust stack of the fabric filter.

(2) Each bag leak detection system must be installed, operated, calibrated, and maintained in a manner consistent with the manufacturer's written specifications and recommendations.

(3) The bag leak detection system must be certified by the manufacturer to be capable of detecting particulate matter emissions at concentrations of 10 milligrams per actual cubic meter or less.

(4) The bag leak detection system sensor must provide output of relative or absolute particulate matter loadings.

(5) The bag leak detection system must be equipped with a device to continuously record the output signal from the sensor.

(6) The bag leak detection system must be equipped with an alarm system that will sound automatically when an increase in relative particulate matter emissions over a preset level is detected. The alarm must be located where it is easily heard by plant operating personnel.

(7) For positive pressure fabric filter systems, a bag leak detection system must be installed in each baghouse compartment or cell. For negative pressure or induced air fabric filters, the bag leak detector must be installed downstream of the fabric filter.

(8) Where multiple detectors are required, the system's instrumentation and alarm may be shared among detectors.

(c) If you are using an emission control system other than a wet scrubber to comply with the emission limitations under § 62.14630, you must install, calibrate (to the manufacturers' specifications), maintain, and operate the equipment necessary to monitor compliance with the site-specific operating limits established using the procedures in § 62.14640.

§ 62.14695 Is there a minimum amount of monitoring data I must obtain?

(a) Except for monitoring malfunctions, associated repairs, and required quality assurance or quality control activities (including, as applicable, calibration checks and required zero and span adjustments of the monitoring system), you must conduct all monitoring at all times the CISWI unit is operating.

(b) Do not use data recorded during monitor malfunctions, associated repairs, and required quality assurance or quality control activities for meeting the requirements of this subpart, including data averages and calculations. You must use all the data collected during all other periods in assessing compliance with the operating limits.

Recordkeeping and Reporting

§ 62.14700 What records must I keep?

You must maintain the 13 items (as applicable) as specified in paragraphs (a) through (m) of this section for a period of at least 5 years:

(a) Calendar date of each record.

(b) Records of the data described in paragraphs (b)(1) through (6) of this section:

(1) The CISWI unit charge dates, times, weights, and hourly charge rates.

(2) Liquor flow rate to the wet scrubber inlet every 15 minutes of operation, as applicable.

(3) Pressure drop across the wet scrubber system every 15 minutes of operation or amperage to the wet scrubber every 15 minutes of operation, as applicable.

(4) Liquor pH as introduced to the wet scrubber every 15 minutes of operation, as applicable.

(5) For affected CISWI units that establish operating limits for controls other than wet scrubbers under § 62.14640, you must maintain data collected for all operating parameters used to determine compliance with the operating limits.

(6) If a fabric filter is used to comply with the emission limitations, you must record the date, time, and duration of each alarm and the time corrective action was initiated and completed, and a brief description of the cause of the alarm and the corrective action taken. You must also record the percent of operating time during each 6-month period that the alarm sounds, calculated as specified in § 62.14635(c).

(c) Identification of calendar dates and times for which monitoring systems used to monitor operating limits were inoperative, inactive, malfunctioning, or out of control (except for downtime

associated with zero and span and other routine calibration checks). Identify the operating parameters not measured, the duration, reasons for not obtaining the data, and a description of corrective actions taken.

(d) Identification of calendar dates, times, and durations of malfunctions, and a description of the malfunction and the corrective action taken.

(e) Identification of calendar dates and times for which data show a deviation from the operating limits in table 2 of this subpart or a deviation from other operating limits established under § 62.14640 with a description of the deviations, reasons for such deviations, and a description of corrective actions taken.

(f) The results of the initial, annual, and any subsequent performance tests conducted to determine compliance with the emission limits and/or to establish operating limits, as applicable. Retain a copy of the complete test report including calculations.

(g) Records showing the names of CISWI unit operators who have completed review of the information in § 62.14620(a) as required by § 62.14620(b), including the date of the initial review and all subsequent annual reviews.

(h) Records showing the names of the CISWI operators who have completed the operator training requirements under § 62.14595, met the criteria for qualification under § 62.14605, and maintained or renewed their qualification under § 62.14610 or § 62.14615. Records must include documentation of training, the dates of the initial and refresher training, and the dates of their qualification and all subsequent renewals of such qualifications.

(i) For each qualified operator, the phone and/or pager number at which they can be reached during operating hours.

(j) Records of calibration of any monitoring devices as required under § 62.14690.

(k) Equipment vendor specifications and related operation and maintenance requirements for the incinerator, emission controls, and monitoring equipment.

(l) The information listed in § 62.14620(a).

(m) On a daily basis, keep a log of the quantity of waste burned and the types of waste burned (always required).

§ 62.14705 Where and in what format must I keep my records?

All records must be available onsite in either paper copy or computer-readable format that can be printed upon request, unless an alternative format is approved by the Administrator.

§ 62.14710 What reports must I submit?

See table 4 of this subpart for a summary of the reporting requirements.

§ 62.14715 When must I submit my waste management plan?

You must submit the waste management plan no later than April 5, 2004.

§ 62.14720 What information must I submit following my initial performance test?

You must submit the information specified in paragraphs (a) through (c) of this section no later than 60 days following the initial performance test. All reports must be signed by the facilities manager.

(a) The complete test report for the initial performance test results obtained under § 62.14660, as applicable.

(b) The values for the site-specific operating limits established in § 62.14635 or § 62.14640.

(c) If you are using a fabric filter to comply with the emission limitations, documentation that a bag leak detection system has been installed and is being operated, calibrated, and maintained as required by § 62.14690(b).

§ 62.14725 When must I submit my annual report?

You must submit an annual report no later than 12 months following the submission of the information in § 62.14720. You must submit subsequent reports no more than 12 months following the previous report. As with all other requirements in this subpart, the requirement to submit an annual report does not modify or replace the operating permit requirements of 40 CFR parts 70 and 71.

§ 62.14730 What information must I include in my annual report?

The annual report required under § 62.14725 must include the ten items listed in paragraphs (a) through (j) of this section. If you have a deviation from the operating limits or the emission limitations, you must also submit deviation reports as specified in §§ 62.14735, 62.14740, and 62.14745.

(a) Company name and address.

(b) Statement by a responsible official, with that official's name, title, and signature, certifying the accuracy of the content of the report.

(c) Date of report and beginning and ending dates of the reporting period.

(d) The values for the operating limits established pursuant to § 62.14635 or § 62.14640.

(e) If no deviation from any emission limitation or operating limit that applies to you has been reported, a statement that there was no deviation from the emission limitations or operating limits during the reporting period, and that no monitoring system used to determine compliance with the operating limits was inoperative, inactive, malfunctioning or out of control.

(f) The highest recorded 3-hour average and the lowest recorded 3-hour average, as applicable, for each operating parameter recorded for the calendar year being reported.

(g) Information recorded under § 62.14700(b)(6) and (c) through (e) for the calendar year being reported.

(h) If a performance test was conducted during the reporting period, the results of that test.

(i) If you met the requirements of § 62.14680(a) or (b), and did not conduct a performance test during the reporting period, you must state that you met the requirements of § 62.14680(a) or (b), and, therefore, you were not required to conduct a performance test during the reporting period.

(j) Documentation of periods when all qualified CISWI unit operators were unavailable for more than 8 hours, but less than 2 weeks.

§ 62.14735 What else must I report if I have a deviation from the operating limits or the emission limitations?

(a) You must submit a deviation report if any recorded 3-hour average parameter level is above the maximum operating limit or below the minimum operating limit established under this subpart, if the bag leak detection system alarm sounds for more than 5 percent of the operating time for any 6-month reporting period, or if a performance test was conducted that yielded results that deviated from any emission limitation.

(b) The deviation report must be submitted by August 1 of that year for data collected during the first half of the calendar year (January 1 to June 30), and by February 1 of the following year for data you collected during the second half of the calendar year (July 1 to December 31).

§ 62.14740 What must I include in the deviation report?

In each report required under § 62.14735, for any pollutant or parameter that deviated from the emission limitations or operating limits specified in this subpart, include the six items described in paragraphs (a) through (f) of this section.

(a) The calendar dates and times your unit deviated from the emission limitations or operating limit requirements.

(b) The averaged and recorded data for those dates.

(c) Duration and causes of each deviation from the emission limitations or operating limits and your corrective actions.

(d) A copy of the operating limit monitoring data during each deviation and any test report that documents the emission levels.

(e) The dates, times, number, duration, and causes for monitoring downtime incidents (other than downtime associated with zero, span, and other routine calibration checks).

(f) Whether each deviation occurred during a period of startup, shutdown, or malfunction, or during another period.

§ 62.14745 What else must I report if I have a deviation from the requirement to have a qualified operator accessible?

(a) If all qualified operators are not accessible for two weeks or more, you must take the two actions in paragraphs (a)(1) and (2) of this section.

(1) Within 10 days of each deviation, you must submit a notification that includes the three items in paragraphs (a)(1)(i) through (iii) of this section.

(i) A statement of what caused the deviation.

(ii) A description of what you are doing to ensure that a qualified operator is accessible.

(iii) The date when you anticipate that a qualified operator will be available.

(2) Submit a status report to the Administrator every 4 weeks that includes the three items in paragraphs (a)(2)(i) through (iii) of this section.

(i) A description of what you are doing to ensure that a qualified operator is accessible.

(ii) The date when you anticipate that a qualified operator will be accessible.

(iii) Request approval from the Administrator to continue operation of the CISWI unit.

(b) If your unit was shut down by the Administrator, under the provisions of § 62.14625(b)(2), due to a failure to provide an accessible qualified operator, you must notify the Administrator that you are resuming operation once a qualified operator is accessible.

§ 62.14750 Are there any other notifications or reports that I must submit?

You must submit notifications as provided by 40 CFR 60.7.

§ 62.14755 In what form can I submit my reports?

Submit initial, annual, and deviation reports electronically or in paper format, postmarked on or before the submittal due dates.

§ 62.14760 Can reporting dates be changed?

If the Administrator agrees, you may change the semiannual or annual reporting dates. See 40 CFR 60.19(c) for procedures to seek approval to change your reporting date.

Air Curtain Incinerators That Burn 100 Percent Wood Wastes, Clean Lumber and/or Yard Waste

§ 62.14765 What is an air curtain incinerator?

An air curtain incinerator operates by forcefully projecting a curtain of air across an open chamber or open pit in which combustion occurs. Incinerators of this type can be constructed above or below ground and with or without refractory walls and floor. (Air curtain incinerators are different from conventional combustion devices which typically have enclosed fireboxes and controlled air technology such as mass burn, modular, and fluidized bed combustors.)

§ 62.14770 When must I achieve final compliance?

If you plan to continue operating, then you must achieve final compliance by October October 4, 2004. It is unlawful for your air curtain incinerator to operate after October 4, 2004 if you have not achieved final compliance. An air curtain incinerator that continues to operate after October 4, 2004 without being in compliance is subject to penalties.

§ 62.14795 How do I achieve final compliance?

For the final compliance, you must complete all equipment changes and retrofit installation control devices so that, when the affected air curtain incinerator is placed into service, all necessary equipment and air pollution control devices operate as designed and meet the opacity limits of § 62.14815.

§ 62.14805 What must I do if I close my air curtain incinerator and then restart it?

(a) If you close your incinerator but will reopen it prior to the final compliance date in this subpart, you must achieve final compliance by October 4, 2004.

(b) If you close your incinerator but will restart it after October 4, 2004, you must have completed any needed emission control retrofits and meet the opacity limits of § 62.14815 on the date your incinerator restarts operation.

(c) You are subject to the operating permit requirements of title V of the CAA and 40 CFR part 70 or 71 until you close your air curtain incinerator and at the time you restart it.

§ 62.14810 What must I do if I plan to permanently close my air curtain incinerator and not restart it?

If you plan to permanently close your incinerator rather than comply with this subpart, you must submit a closure notification, including the date of closure, to the Administrator by March 31, 2004. In addition, while still in operation, your air curtain incinerator is subject to the same requirement to apply for and obtain a title V operating permit that applies to an air curtain incinerator that will not be permanently closing.

§ 62.14815 What are the emission limitations for air curtain incinerators that burn 100 percent wood wastes, clean lumber and/or yard waste?

(a) After the date the initial test for opacity is required or completed (whichever is earlier), you must meet the limitations in paragraphs (a)(1) and (2) of this section.

(1) The opacity limitation is 10 percent (6-minute average), except as described in paragraph (a)(2) of this section.

(2) The opacity limitation is 35 percent (6-minute average) during the startup period that is within the first 30 minutes of operation.

(b) Except during malfunctions, the requirements of this subpart apply at all times, and each malfunction must not exceed 3 hours.

§ 62.14820 How must I monitor opacity for air curtain incinerators that burn 100 percent wood wastes, clean lumber, and/or yard waste?

(a) Use Method 9 of 40 CFR part 60, Appendix A to determine compliance with the opacity limitation.

(b) Conduct an initial test for opacity as specified in § 60.8 no later than January 2, 2005.

(c) After the initial test for opacity, conduct annual tests no more than 12 calendar months following the date of your previous test.

§ 62.14825 What are the recordkeeping and reporting requirements for air curtain incinerators that burn 100 percent wood wastes, clean lumber, and/or yard waste?

(a) Keep records of results of all initial and annual opacity tests onsite in either paper copy or electronic format, unless the Administrator approves another format, for at least 5 years.

(b) Make all records available for submittal to the Administrator or for an inspector's onsite review.

(c) Submit an initial report no later than 60 days following the initial opacity test that includes the information specified in paragraphs (c)(1) and (2) of this section.

(1) The types of materials you plan to combust in your air curtain incinerator.

(2) The results (each 6-minute average) of the initial opacity tests.

(d) Submit annual opacity test results within 12 months following the previous report.

(e) Submit initial and annual opacity test reports as electronic or paper copy on or before the applicable submittal date and keep a copy onsite for a period of five years.

Title V Requirements

§ 62.14830 Does this subpart require me to obtain an operating permit under title V of the Clean Air Act?

If you are subject to this subpart, you are required to apply for and obtain a title V operating permit unless you meet the relevant requirements specified in 40 CFR 62.14525(a) through (h) and (j) through (o) and all of the requirements specified in 40 CFR 62.14531.

§ 62.14835 When must I submit a title V permit application for my existing CISWI unit?

(a) If your existing CISWI unit is not subject to an earlier permit application deadline, a complete title V permit application must be submitted not later than the date 36 months after promulgation of 40 CFR Part 60, subpart DDDD (December 1, 2003), or by the effective date of the applicable State, Tribal, or Federal operating permits program, whichever is later. For any existing CISWI unit not subject to an earlier application deadline, this final application deadline applies regardless of when this Federal plan is effective, or when the relevant State or Tribal section 111(d)/129 plan is approved by the EPA and becomes effective. See sections 129(e), 503(c), 503(d), and 502(a) of the Clean Air Act.

(b) A ''complete'' title V permit application is one that has been determined or deemed complete by the relevant permitting authority under section 503(d) of the Clean Air Act and 40 CFR 70.5(a)(2) or 71.5(a)(2). You must submit a complete permit application by the relevant application deadline in order to operate after this date in compliance with Federal law. See sections 503(d) and 502(a) of the Clean Air Act; 40 CFR 70.7(b) and 71.7(b).

Delegation of Authority

§ 62.14838 What authorities are withheld by the EPA Administrator?

The following authorities are withheld by the EPA Administrator and not transferred to the State or Tribe:

(a) Approval of alternatives to the emission limitations in table 1 of this subpart and operating limits established under § 62.14635 and table 2 of this subpart.

(b) Approval of petitions submitted pursuant to the requirements of § 62.14640 establishing operating parameters when using controls other than a dry scrubber followed by a fabric filter, a wet scrubber, or a dry scrubber followed by a fabric filter and a wet scrubber.

(c) Approval of major alternatives to test methods established under § 62.14650 and table 1 of this subpart.

(d) Approval of major alternatives to monitoring requirements established under § 62.14690, § 62.14605 and table 2 of this subpart.

(e) Approval of major alternatives to recordkeeping and reporting requirements of this subpart.

(f) Approval of petitions submitted pursuant to the requirements of § 62.14530 establishing requirements for petitions and approvals of exemptions for chemical recovery units included in § 62.14525(n).

(g) Approval of requests submitted pursuant to the requirements in § 62.14625(b)(2).

Definitions

§ 62.14840 What definitions must I know?

Terms used but not defined in this subpart are defined in the Clean Air Act, subparts A and B of part 60 and subpart A of this part 62.

Administrator means the Administrator of the U.S. Environmental Protection Agency or his/her authorized representative or Administrator of a State Air Pollution Control Agency.

Agricultural waste means vegetative agricultural materials such as nut and grain hulls and chaff (*e.g.,* almond, walnut, peanut, rice, and wheat), bagasse, orchard prunings, corn stalks, coffee bean hulls and grounds, and other vegetative waste materials generated as a result of agricultural operations.

Air curtain incinerator means an incinerator that operates by forcefully projecting a curtain of air across an open chamber or pit in which combustion occurs. Incinerators of this type can be constructed above or below ground and with or without refractory walls and floor. (Air curtain incinerators are different from conventional combustion devices which typically have enclosed fireboxes and controlled air technology such as mass burn, modular, and fluidized bed combustors.)

Auxiliary fuel means natural gas, liquified petroleum gas, fuel oil, or diesel fuel.

Bag leak detection system means an instrument that is capable of monitoring particulate matter loadings in the exhaust of a fabric filter (*i.e.,* baghouse) in order to detect bag failures. A bag leak detection system includes, but is not limited to, an instrument that operates on triboelectric, light scattering, light transmittance, or other principle to monitor relative particulate matter loadings.

Calendar quarter means 3 consecutive months (non-overlapping) beginning on: January 1, April 1, July 1, or October 1.

Calendar year means 365 consecutive days starting on January 1 and ending on December 31.

Chemotherapeutic waste means waste material resulting from the production or use of antineoplastic agents used for the purpose of stopping or reversing the growth of malignant cells.

Clean lumber means wood or wood products that have been cut or shaped and include wet, air-dried, and kiln-dried wood products. Clean lumber does not include wood products that have been painted, pigment-stained, or pressure-treated by compounds such as chromate copper arsenate, pentachlorophenol, and creosote.

Commercial and industrial solid waste incineration (CISWI) unit means any combustion device that combusts commercial and industrial waste, as defined in this subpart. The boundaries of a CISWI unit are defined as, but not limited to, the commercial or industrial solid waste fuel feed system, grate system, flue gas system, and bottom ash. The CISWI unit does not include air pollution control equipment or the stack. The CISWI unit boundary starts at the commercial and industrial solid waste hopper (if applicable) and extends through two areas:

(1) The combustion unit flue gas system, which ends immediately after the last combustion chamber.

(2) The combustion unit bottom ash system, which ends at the truck loading station or similar equipment that transfers the ash to final disposal. It includes all ash handling systems connected to the bottom ash handling system.

Commercial and industrial waste, for the purposes of this subpart, means solid waste combusted in an enclosed device using controlled flame combustion without energy recovery that is a distinct operating unit of any commercial or industrial facility (including field-erected, modular, and custom built incineration units operating with starved or excess air), or solid waste combusted in an air curtain incinerator without energy recovery that is a distinct operating unit of any commercial or industrial facility.

Contained gaseous material means gases that are in a container when that container is combusted.

Cyclonic barrel burner means a combustion device for waste materials that is attached to a 55 gallon, open-

head drum. The device consists of a lid, which fits onto and encloses the drum, and a blower that forces combustion air into the drum in a cyclonic manner to enhance the mixing of waste material and air.

Deviation means any instance in which an affected source subject to this subpart, or an owner or operator of such a source:

(1) Fails to meet any requirement or obligation established by this subpart, including but not limited to any emission limitation, operating limit, or operator qualification and accessibility requirements;

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit; or

(3) Fails to meet any emission limitation, operating limit, or operator qualification and accessibility requirement in this subpart during startup, shutdown, or malfunction, regardless or whether or not such failure is permitted by this subpart.

Dioxins/furans means tetra-through octachlorinated dibenzo-p-dioxins and dibenzofurans.

Discard means, for purposes of this subpart and 40 CFR part 60, subpart DDDD, only, burned in an incineration unit without energy recovery.

Drum reclamation unit means a unit that burns residues out of drums (*e.g.,* 55 gallon drums) so that the drums can be reused.

Energy recovery means the process of recovering thermal energy from combustion for useful purposes such as steam generation or process heating.

Fabric filter means an add-on air pollution control device used to capture particulate matter by filtering gas streams through filter media, also known as a baghouse.

Low-level radioactive waste means waste material which contains radioactive nuclides emitting primarily beta or gamma radiation, or both, in concentrations or quantities that exceed applicable Federal or State standards for unrestricted release. Low-level radioactive waste is not high-level radioactive waste, spent nuclear fuel, or by-product material as defined by the Atomic Energy Act of 1954 (42 U.S.C. 2014(e)(2)).

Malfunction means any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner. Failures that are caused, in part, by poor maintenance or careless operation are not malfunctions.

Modification or *modified CISWI unit* means a CISWI unit you have changed later than promulgation of the final CISWI emission guidelines in 40 CFR part 60, subpart DDDD and that meets one of two criteria:

(1) The cumulative cost of the changes over the life of the unit exceeds 50 percent of the original cost of building and installing the CISWI unit (not including the cost of land) updated to current costs (current dollars). To determine what systems are within the boundary of the CISWI unit used to calculate these costs, see the definition of CISWI unit.

(2) Any physical change in the CISWI unit or change in the method of operating it that increases the amount of any air pollutant emitted for which section 129 or section 111 of the Clean Air Act has established standards.

Particulate matter means total particulate matter emitted from CISWI units as measured by Method 5 or Method 29 of 40 CFR part 60, Appendix A.

Parts reclamation unit means a unit that burns coatings off parts (*e.g.,* tools, equipment) so that the parts can be reconditioned and reused.

Pathological waste means waste material consisting of only human or animal remains, anatomical parts, and/or tissue, the bags/containers used to collect and transport the waste material, and animal bedding (if applicable).

Rack reclamation unit means a unit that burns the coatings off racks used to hold small items for application of a coating. The unit burns the coating overspray off the rack so the rack can be reused.

Reconstruction means rebuilding a CISWI unit and meeting two criteria:

(1) The reconstruction begins on or after promulgation of the final CISWI emission guidelines in 40 CFR part 60, subpart DDDD.

(2) The cumulative cost of the construction over the life of the incineration unit exceeds 50 percent of the original cost of building and installing the CISWI unit (not including land) updated to current costs (current dollars). To determine what systems are within the boundary of the CISWI unit used to calculate these costs, see the definition of CISWI unit.

Refuse-derived fuel means a type of municipal solid waste produced by processing municipal solid waste through shredding and size classification. This includes all classes of refuse-derived fuel including two fuels:

(1) Low-density fluff refuse-derived fuel through densified refuse-derived fuel.

(2) Pelletized refuse-derived fuel.

Shutdown means the period of time after all waste has been combusted in the primary chamber.

Solid waste means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, agricultural operations, and from community activities, but does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under section 402 of the Federal Water Pollution Control Act, as amended (86 Stat. 880), or source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 923). For purposes of this subpart and 40 CFR part 60, subpart DDDD, only, solid waste does not include the waste burned in the fifteen types of units described in 40 CFR 60.2555 of subpart DDDD and § 62.14525 of this subpart.

Standard conditions, when referring to units of measure, means a temperature of 68 °F (20 °C) and a pressure of 1 atmosphere (101.3 kilopascals).

Startup period means the period of time between the Activation of the system and the first charge to the unit.

Tribal plan means a plan submitted by a Tribal Authority pursuant to 40 CFR parts 9, 35, 49, 50, and 81 that implements and enforces 40 CFR part 60, subpart DDDD.

Wet scrubber means an add-on air pollution control device that utilizes an aqueous or alkaline scrubbing liquor to collect particulate matter (including non-vaporous metals and condensed organics) and/or to absorb and neutralize acid gases.

Wood waste means untreated wood and untreated wood products, including tree stumps (whole or chipped), trees, tree limbs (whole or chipped), bark, sawdust, chips, scraps, slabs, millings, and shavings. Wood waste does not include:

(1) Grass, grass clippings, bushes, shrubs, and clippings from bushes and shrubs from residential, commercial/retail, institutional, or industrial sources as part of maintaining yards or other private or public lands.

(2) Construction, renovation, or demolition wastes.

(3) Clean lumber.

Yard waste means grass, grass clippings, bushes, shrubs, and clippings from bushes and shrubs from

residential, commercial/retail, institutional, or industrial sources as part of maintaining yards or other private or public lands.

TABLE 1 OF SUBPART III OF PART 62.—EMISSION LIMITATIONS

For the air pollutant	You must meet this emission limitation [a]	Using this averaging time	And determining compliance using this method
Cadmium	0.004 milligrams per dry standard cubic meter.	3-run average (1 hour minimum sample time per run).	Performance test (Method 29 of appendix A of part 60).
Carbon monoxide	157 parts per million by dry volume.	3-run average (1 hour minimum sample time per run).	Performance test (Method 10, 10A, or 10B, of appendix A of part 60).
Dioxins/furans (toxic equivalency basis).	0.41 nanograms per dry standard cubic meter.	3-run average (4 hour minimum sample time per run).	Performance test (Method 23 of appendix A of part 60).
Hydrogen chloride	62 parts per million by dry volume	3-run average (1 hour minimum sample time per run).	Performance test (Method 26A of appendix A of part 60).
Lead	0.04 milligrams per dry standard cubic meter.	3-run (1 hour minimum sample time per run).	Performance test (Method 29 of appendix A of part 60).
Mercury	0.47 milligrams per dry standard cubic meter.	3-run average (1 hour minimum sample time per run).	Performance test (Method 29 of appendix A of part 60).
Opacity	10 percent	6-minute averages	Performance test (Method 9 of appendix A of part 60).
Oxides of nitrogen	388 parts per million by dry volume.	3-run average (1 hour minimum sample time per run).	Performance test (Methods 7, 7A, 7C, 7D, or 7E of appendix A of part 60).
Particulate matter	70 milligrams per dry standard cubic meter.	3-run average (1 hour minimum sample time per run).	Performance test (Method 5 or 29 of appendix A of part 60).
Sulfur dioxide	20 parts per million by dry volume	3-run average (1 hour minimum sample time per run).	Performance test (Method 6 or 6c of appendix A of part 60).

[a] All emission limitations (except for opacity) are measured at 7 percent oxygen, dry basis at standard conditions.

TABLE 2 OF SUBPART III OF PART 62.—OPERATING LIMITS FOR WET SCRUBBERS

For these operating parameters	You must establish these operating limits	And monitor using these minimum frequencies		
		Data measurement	Data recording	Averaging time
Charge rate	Maximum charge rate	Continuous	Every hour	1. Daily (batch units) 2. 3-hour rolling (continuous and intermittent units) [a]
Pressure drop across the wet scrubber or amperage to wet scrubber.	Minimum pressure drop or amperage.	Continuous	Every 15 minutes	3-hour rolling [a]
Scrubber liquor flow rate	Minimum flow rate	Continuous	Every 15 minutes	3-hour rolling [a]
Scrubber liquor pH	Minimum pH	Continuous	Every 15 minutes	3-hour rolling [a]

[a] Calculated each hour as the average of the previous 3 operating hours.

TABLE 3 OF SUBPART III OF PART 62.—TOXIC EQUIVALENCY FACTORS

Dioxin/furan congener	Toxic equivalency factor
A. 2,3,7,8-tetrachlorinated dibenzo-p-dioxin	1
B. 12,3,7,8-pentachlorinated dibenzo-p-dioxin	0.5
C. 1,2,3,4,7,8-hexachlorinated dibenzo-p-dioxin	0.1
D. 1,2,3,7,8,9-hexachlorinated dibenzo-p-dioxin	0.1
E. 12,3,6,7,8-hexachlorinated dibenzo-p-dioxin	0.1
F. 1,2,3,4,6,7,8-heptachlorinated dibenzo-p-dioxin	0.01
G. 0ctachlorinated dibenzo-p-dioxin	0.001
H. 2,3,7,8-tetrachlorinated dibenzofuran	0.1
I. 2,3,4,7,8-pentachlorinated dibenzofuran	0.5
J. 1,2,3,7,8-pentachlorinated dibenzofuran	0.05
K. 1,2,3,4,7,8-hexachlorinated dibenzofuran	0.1
L. 1,2,3,6,7,8-hexachlorinated dibenzofuran	0.1
M. 1,2,3,7,8,9-hexachlorinated dibenzofuran	0.1
N. 2,3,4,6,7,8-hexachlorinated dibenzofuran	0.1
O. 1,2,3,4,6,7,8-heptachlorinated dibenzofuran	0.01
P. 1,2,3,4,7,8,9-heptachlorinated dibenzofuran	0.01
Q. 0ctachlorinated dibenzofuran	0.001

TABLE 4 OF SUBPART III—SUMMARY OF REPORTING REQUIREMENTS [A]

Report	Due date	Contents	Reference
A. Waste Management Plan	No later than April 5, 2004	Waste management plan	§ 62.14715.
B. Initial Test Report	No later than 60 days following the initial performance test.	1. Complete test report for the initial performance test. 2. The values for the site-specific operating limits. 3. Installation of bag leak detection systems for fabric filters.	§ 62.14720.
C. Annual report	No later than 12 months following the submission of the initial test report. Subsequent reports are to be submitted no more than 12 months following the previous report.	1. Name and address 2. Statement and signature by responsible official. 3. Date of report. 4. Values for the operating limits. 5. If no deviations or malfunctions were reported, a statement that no deviations occurred during the reporting period. 6. Highest recorded 3-hour average and the lowest 3-hour average, as applicable, for each operating parameter recorded for the calendar year being reported 7. Information for deviations or malfunctions recorded under § 62.14700(b)(6) and (c) through (e). 8. If a performance test was conducted during the reporting period, the results of the test. 9. If a performance test was not conducted during the reporting period, a statement that the requirements of § 62.14680(a) or (b) were met. 10. Documentation of periods when all qualified CISWI unit operators were unavailable for more than 8 hours but less than 2 weeks.	§§ 62.14725 and 62.14730. Subsequent reports are to be submitted no more than 12 months following the previous report.
D. Emission Limitation or Operating Limit Deviation Report.	By August 1 of that year for data collected during the first half of the calendar year. By February 1 of the following year for data collected during the second half of the calendar year.	1. Dates and times of deviations 2. Averaged and recorded data for these dates. 3. Duration and causes for each deviation and the corrective actions taken. 4. Copy of operating limit monitoring data and any test reports. 5. Dates, times, and causes for monitor downtime incidents. 6. Whether each deviation occurred during a period of startup, shutdown, or malfunction.	§§ 62.14735 and 62.14740.
E. Qualified Operator Deviation Notification.	Within 10 days of deviation	1. Statement of cause of deviation. 2. Description of efforts to have an accessible qualified operator. 3. The date a qualified operator will be accessible.	§ 62.14745(a)(1).
F. Qualified Operator Deviation Status Report.	Every 4 weeks following deviation.	1. Description of efforts to have an accessible qualified operator. 2. The date a qualified operator will be accessible. 3. Request for approval to continue operation.	§ 62.14745(a)(2).
G. Qualified Operator Deviation Notification of Resumed Operation.	Prior to resuming operation	Notification that you are resuming operation.	§ 62.14745(b).

[a] This table is only a summary, see the referenced sections of the rule for the complete requirements.

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Friday,
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Part III

State Justice Institute

Grant Guideline; Notice

STATE JUSTICE INSTITUTE

Grant Guideline

AGENCY: State Justice Institute.

ACTION: Proposed grant Guideline.

SUMMARY: This Guideline sets forth the administrative, programmatic, and financial requirements attendant to Fiscal Year 2004 State Justice Institute grants, cooperative agreements, and contracts.

DATES: The Institute invites public comment on the Guideline until November 3, 2003.

ADDRESSES: Comments should be mailed to the State Justice Institute, 1650 King St. (Suite 600), Alexandria, VA 22314, or e-mailed to *kschwartz@statejustice.org.*

FOR FURTHER INFORMATION CONTACT: David I. Tevelin, Executive Director, or Kathy Schwartz, Deputy Director, State Justice Institute, 1650 King St. (Suite 600), Alexandria, VA 22314, (703) 684–6100.

SUPPLEMENTARY INFORMATION: Pursuant to the State Justice Institute Act of 1984, 42 U.S.C. 10701, *et seq.*, as amended, the Institute is authorized to award grants, cooperative agreements, and contracts to State and local courts, nonprofit organizations, and others for the purpose of improving the quality of justice in the State courts of the United States.

Types of Grants Available and Funding Schedules

SJI proposes to offer five types of grants in FY 2004: Project Grants, Technical Assistance (TA) Grants, Judicial Branch Education Technical Assistance (JBE TA) grants, Continuation Grants, and Scholarships.

Project Grants. Project Grants are awarded to support innovative education, research, demonstration, and technical assistance projects that can improve the administration of justice in State courts nationwide. As provided in section V.C. of the Guideline, Project Grants may ordinarily not exceed $150,000 a year; however, grants in excess of $100,000 are likely to be rare, and awarded only to support projects likely to have a significant national impact.

SJI also awards ''think piece'' Project Grants to support the development of essays of publishable quality that explore emerging issues that could result in significant changes in court processes or judicial administration. ''Think pieces'' are limited to no more than $10,000. *See* section II.B.

Special Interest Categories. Project Grants, including ''think piece'' grants, would be awarded only for projects that fall within one of the Guideline's five Special Interest categories: Access to the Courts, Application of Technology in the Courts, Children and Families in Court, Judicial Branch Education, and the Relationship Between State and Federal Courts. These are the same categories included in last year's Guideline; however, specific topics of interest within each category have been changed.

The deadline for submitting a Project Grant application is February 13, 2004. The Board of Directors will meet in early May 2004 to approve grant awards. *See* section VI.A. for Project Grant application procedures.

Technical Assistance Grants. Section II.D. reserves up to $200,000 for Technical Assistance Grants. Under this program, a State or local court may receive a grant of up to $30,000 to engage outside experts to provide technical assistance to diagnose, develop, and implement a response to a jurisdiction's problems.

Letters of application for a Technical Assistance Grant may be submitted at any time. Applicants submitting letters by September 26, 2003 will be notified of the Board's decision by December 5, 2003. Those submitting letters between September 27, 2003 and January 9, 2004 will be notified by April 2, 2004; those submitting letters between January 10 and February 27, 2004 will be notified by June 11, 2004; those submitting letters between February 28 and June 4, 2004 will be notified by August 27, 2004; and those submitting letters between June 5 and September 24, 2004 will be notified of the Board's decision by December 10, 2004. *See* section VI.D. for Technical Assistance Grant application procedures.

Judicial Branch Education Technical Assistance Grants. Up to $150,000 would be allocated for grants under the JBE TA grant program this year. Grants of up to $20,000 would be available to: (1) Enable a State or local court to adapt and deliver an education program that was previously developed and evaluated under an SJI project grant (*i.e.*, curriculum adaptation); and/or (2) support expert consultation in planning, developing, and administering State judicial branch education programs.

The services available through the expanded program could include consultant assistance in maintaining judicial branch education programming during the current budget crisis, or development of improved methods for evaluating judicial branch education programs. Letters requesting JBE TA Grants may be submitted at any time. The grant cycles for JBE TA Grants are the same as the grant cycles for TA Grants:

Applicants submitting letters by September 26, 2003 will be notified of the Board's decision by December 5, 2003. Those submitting letters between September 27, 2003 and January 9, 2004 will be notified by April 2, 2004; those submitting letters between January 10 and February 27, 2004 will be notified by June 11, 2004; those submitting letters between February 28 and June 4, 2004 will be notified by August 27, 2004; and those submitting letters between June 5 and September 24, 2004 will be notified of the Board's decision by December 10, 2004. *See* section VI.E. for JBE TA Grant application procedures.

Scholarships. The Guideline allocates up to $150,000 of FY 2004 funds for scholarships to enable judges and court managers to attend out-of-State education and training programs.

Scholarships for eligible applicants are approved largely on a ''first come, first served'' basis, although the Institute may approve or disapprove scholarship requests in order to achieve appropriate balances on the basis of geography, program provider, and type of court or applicant (*e.g.*, trial judge, appellate judge, trial court administrator). Scholarships will be approved only for programs that either (1) address topics included in the Guideline's Special Interest categories (section II.A.); (2) enhance the skills of judges and court managers; or (3) are part of a graduate degree program for judges or court personnel.

Applicants interested in obtaining a scholarship for a program beginning between January 1 and March 31, 2004 must submit their applications and documents between October 6 and December 1, 2003. Applicants who wish to attend programs beginning between April 1 and June 30, 2004 must submit their applications and documents between January 5 and March 1, 2004. For programs beginning between July 1 and September 30, 2004, the applications and documents must be submitted between April 5 and May 31, 2004. For programs beginning between October 1 and December 31, 2004, the applications and documents must be submitted between July 6 and August 30, 2004. For programs beginning between January 1 and March 31, 2005, the applications and documents must be submitted between October 4 and November 29, 2004. *See* section VI.F. for Scholarship application procedures.

Continuation Grants. Continuation Grants (see sections III.D., V.B.2., and VI.C.) are intended to enhance the specific program or service begun

during the initial project grant period. The Guideline establishes a firm limit for Continuation Grants of 20% of the total amount projected to be available for all Project Grants in FY 2004. Grantees should accordingly be aware that the award of a grant to support a project does not constitute a commitment to provide continuation funding. Under the Proposed Guideline, no grant awarded in FY 2004 would be continued for more than five years.

An applicant for a Continuation Grant must submit a letter notifying the Institute of its intent to seek such funding no later than 120 days before the end of the current grant period. The Institute will then notify the applicant of the deadline for its Continuation Grant application.

Matching Requirements

With the exception of JBE TA grantees, grantees that can demonstrate a financial hardship, and Scholarship recipients, the Guideline proposes that all grantees must provide match, including cash match, for any Institute grant. The matching requirements are summarized below:

State and local units of government. The Guideline would require these grantees to provide matching support equal to 50% of a new SJI-funded project. For example, if a State court system receives a $100,000 grant from the Institute, it would be required to provide a $50,000 match. A State or local unit of government would have to provide at least 20% of the required match for a new grant ($10,000 in the example) in the form of cash rather than in-kind support (*e.g.*, the value of staff time contributed to the project).

All other grantees. The Guideline would require all other grantees to contribute a match of 25% to a new SJI-funded project. For example, if a non-profit organization receives a $100,000 grant from SJI, it would be required to provide a $25,000 match. A non-profit would have to provide at least 10% of the required match for a new grant ($2,500 in the example) in the form of cash.

The amount and nature of unrequired match contributed by applicants would continue to be factors the Board of Directors considers in making grant decisions. Like last year, applicants may request a waiver of the match requirement, the cash match requirement, or both. *See* section VIII.A.8.c.

Continuation Grants. Under section VIII.A.8., all grantees would be required to assume a greater share of project support over time. State and local units of government would be required to provide match equaling at least 50% of the amount provided by SJI in the first year of the project, 60% in the second year, 75% in the third year, 90% in the fourth year, and 100% in the fifth year. For example, if SJI awards a State court $100,000 for the first year of a grant, the court would be required to provide $50,000 in match. If the second-year grant is also $100,000, the court would be required to provide $60,000 in match. A court that wished to limit its second-year contribution to $50,000 could ask SJI for a reduced amount, *i.e.*, $83,333, in order to meet the 60% requirement.

All other grantees would be required to provide match equaling at least 25% of the amount provided by SJI in the first year of the project, 30% in the second year, 37.5% in the third year, 45% in the fourth year, and 50% in the fifth year. For example, if SJI awards a non-profit organization $100,000 for the first year of a grant, the organization would be required to provide $25,000 in match. If the second year grant is also $100,000, the court would be required to provide $30,000 in match. An organization that wished to limit its second-year contribution to $25,000 could ask SJI for a reduced amount, *i.e.*, $83,333, in order to meet the 30% requirement.

Absent extraordinary circumstances, no SJI grant awarded in FY 2004 would continue for more than five years.

Solutions Project

In FY 2003, the Institute allocated approximately $800,000 to support the Solutions Project, a process that will draw on State and local court initiatives to identify and exchange promising solutions to the most critical problems facing the courts, and define a national agenda to improve the quality of justice in State courts nationwide.

Nearly $400,000 of the allocation was awarded in amounts up to $20,000 to 20 States. A list of the States receiving those grants and a description of their projects may be found on the Institute's web site (*www.statejustice.org*). The remaining FY 2003 money, and an additional $400,000 of FY 2004 money, is reserved for the National Solutions Project that will be carried out under a cooperative agreement among SJI, the National Center for State Courts (NCSC), and the Center for Effective Public Policy (CEPP). The Board of Directors has approved planning grants to both organizations and anticipates making the next awards to carry out the national aspects of the Project at its meeting in early November.

Issues Highlighted for Public Comment

The Proposed Guideline would make four significant changes from last year's grant program. Three of those changes would reduce the allocations reserved for the Institute's three small grant programs: JBE TA Grants, Technical Assistance Grants, and Scholarships. In order to make the most money possible available for Project Grants, which are designed to have nationwide impact, the Institute would reduce the pool of money available for JBE TA Grants from $300,000 to $150,000; the pool available for Technical Assistance Grants from $300,000 to $200,000; and the amount available for scholarships from $200,000 to $150,000. The reduced amounts to be reserved for each program in FY 2004 still exceed the amounts awarded under each program in FY 2003.

In addition, the Proposed Guideline would not require recipients of JBE TA Grants to provide cash match. The Board of Directors recognizes that the serious budget problems affecting State courts nationwide have sharply reduced the amount of State funds available for judicial branch education. The Board hopes that, by eliminating the cash match requirement for JBE TA grants, more States will seek these grants next fiscal year.

Recommendations to Grantwriters

Recommendations to Grantwriters may be found in Appendix A.

The State Justice Institute proposes the following Grant Guideline for FY 2004:

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I. The Mission of the State Justice Institute

The Institute was established by Public Law 98–620 to improve the administration of justice in the State courts of the United States. Incorporated in the State of Virginia as a private, nonprofit corporation, the Institute is charged, by statute, with the responsibility to:

• Direct a national program of financial assistance designed to assure that each citizen of the United States is provided ready access to a fair and effective system of justice;

• Foster coordination and cooperation with the Federal judiciary;

• Promote recognition of the importance of the separation of powers doctrine to an independent judiciary; and

• Encourage education for judges and support personnel of State court systems through national and State organizations, including universities.

To accomplish these broad objectives, the Institute is authorized to provide funds to State courts, national organizations which support and are supported by State courts, national judicial education organizations, and other organizations that can assist in improving the quality of justice in the State courts.

The Institute is supervised by an 11-member Board of Directors appointed by the President, with the consent of the Senate. The Board is statutorily composed of six judges, a State court administrator, and four members of the public, no more than two of whom can be of the same political party.

Through the award of grants, contracts, and cooperative agreements, the Institute is authorized to perform the following activities:

A. Support research, demonstrations, special projects, technical assistance, and training to improve the administration of justice in the State courts;

B. Provide for the preparation, publication, and dissemination of information regarding State judicial systems;

C. Participate in joint projects with Federal agencies and other private grantors;

D. Evaluate or provide for the evaluation of programs and projects funded by the Institute to determine their impact upon the quality of criminal, civil, and juvenile justice and the extent to which they have contributed to improving the quality of justice in the State courts;

E. Encourage and assist in furthering judicial education;

F. Encourage, assist, and serve in a consulting capacity to State and local justice system agencies in the development, maintenance, and coordination of criminal, civil, and juvenile justice programs and services; and

G. Be responsible for the certification of national programs that are intended to aid and improve State judicial systems.

II. Scope of the Program

As set forth in section I., the Institute is authorized to fund projects addressing a broad range of program areas. However, during FY 2004, the Institute will consider applications for funding support that address only the topics included in the following five program categories designated by the Board as being of special interest. Funds will not be made available for the ordinary, routine operation of court systems or programs in any of these areas.

A. Special Interest Program Categories

The Institute is interested in funding both innovative programs and programs of proven merit that can be replicated in other jurisdictions. The Institute is especially interested in funding projects that:

• Formulate new procedures and techniques, or creatively enhance existing procedures and techniques;

• Address aspects of the State judicial systems that are in special need of serious attention;

• Have national significance by developing products, services, and techniques that may be used in other States; and

• Create and disseminate products that effectively transfer the information and ideas developed to relevant audiences in State and local judicial systems, or provide technical assistance to facilitate the adaptation of effective programs and procedures in other State and local jurisdictions.

A project will be identified as a *Special Interest* project if it meets the four criteria set forth above and it falls within the scope of the *Special Interest* program categories designated below.

The Board has designated the areas set forth below as *Special Interest* program categories. The order of listing does not imply any ordering of priorities among the categories. For a complete list of projects supported in previous years in each of these categories, please visit the Institute's Internet homepage at *http://www.statejustice.org/* and click on *Grants by Category.*

1. Access to the Courts

This category includes demonstration, evaluation, research, and education projects designed to improve the responsiveness of courts to public concerns regarding the fairness, accessibility, timeliness, and comprehensibility of the court process.

The Institute is particularly interested in supporting innovative projects that:

• Test and evaluate approaches permitting self-represented litigants to file pleadings, responses, and other forms electronically;

• Test and evaluate new approaches to enhance public access to the courts, including demonstrations of innovative collaborative efforts between courts and community institutions (*e.g.,* bar associations, legal service agencies, schools, and public libraries) to enhance access to the courts by people without lawyers (in this regard, however, Institute funds may not be used to directly or indirectly support legal representation of individuals in specific cases); and

• Develop and test a range of strategies, methodologies, guidelines, and outcome measures to evaluate the effectiveness of programs established to assist people without lawyers.

2. Application of Technology in the Courts

This category includes the testing of innovative applications of technology to improve the operation of court management systems and judicial practices at both the trial and appellate court levels. The Institute seeks to support local experiments with promising but untested applications of technology in the courts that include an evaluation of the impact of the technology in terms of costs, benefits, and staff workload, and a training component to assure that staff is appropriately educated about the purpose and use of the new technology. In this context, ''untested'' includes novel applications of technology developed for the private sector that have not previously been applied in the courts.

The Institute is particularly interested in supporting efforts to test and evaluate technologies that would:

• Test and evaluate approaches permitting self-represented litigants to file pleadings, responses, and other forms electronically;

• Demonstrate and evaluate the delivery of technology to rural courts through an Internet-based ''application service provider'' approach;

• Evaluate approaches for electronically filing pleadings, briefs,

and other documents; approaches to integrate electronic filing and electronic document management; and the impact of electronic court record systems on case management and court procedures;

• Test and evaluate the use of Geographic Information System (GIS) software as a means of examining and improving courts' outreach to particular segments of the communities they serve;

• Demonstrate and evaluate the use of expert system technology to assist judicial decision-making; and

• Evaluate innovative applications of technology designed to ensure the safety of all who use and work in the courts.

3. Children and Families in Court

This category includes education, demonstration, evaluation, technical assistance, and research projects to identify and inform judges of innovative, effective approaches for handling cases involving children and families. The Institute is particularly interested in projects that would:

• Test and evaluate different approaches to managing and adjudicating domestic violence cases, including domestic violence courts; integrated case management information systems; collaborations among courts, law enforcement agencies, social service agencies, women's shelters, victims support and advocacy organizations, and others; and other innovative practices intended to improve the courts' response to domestic violence.

• Demonstrate and evaluate innovative approaches to manage and coordinate cases and proceedings involving multiple members of the same family;

• Demonstrate and evaluate the effectiveness of a ''one social worker/one family'' or judge-social worker team approach to handling child abuse and neglect cases;

• Develop and test innovative protocols, procedures, educational programs, and other measures to address the service needs of children exposed to family violence and the methods for mitigating those effects when issuing protection, custody, visitation, or other orders;

• Educate judges about how to interpret and evaluate evidence presented by psychologists, psychiatrists, and other professionals appearing in child custody and visitation cases involving domestic violence between the parents;

• Develop and test the implementation of a differentiated case management system for handling child custody disputes;

• Develop and evaluate educational programs addressing a collaborative community approach to reducing and preventing domestic violence for a multidisciplinary audience that includes judges, prosecutors, defense attorneys, victim advocates, doctors, and social services providers;

• Evaluate the impact of court policies and procedures and collaborative community approaches designed to ensure that juvenile sex offenders have access to an appropriate array of services; and

• Create and test educational programs, guidelines, and monitoring systems to assure that the juvenile justice system meets the needs of girls and children of color.

Institute funds may not be used to provide operational support to programs offering direct services or compensation to victims of crimes. (Applicants interested in obtaining such operational support should contact the Office for Victims of Crime [OVC], Office of Justice Programs, U.S. Department of Justice, or the agency in their State that awards OVC funds to State and local victim assistance and compensation programs.)

4. Judicial Branch Education

The Institute is interested in supporting projects that will continue to strengthen and broaden the availability of court education programs at the State, regional, and national levels. This category is divided into three subsections: (a) Innovative Educational Programs; (b) Judicial Branch Education Technical Assistance Projects; and (c) Scholarships.

a. *Innovative Educational Programs.* This category includes support for the development and pilot-testing of innovative, high-quality educational programs for trial and appellate judges or court personnel that address key issues of concern to the nation's courts, or help local courts or State court systems develop or enhance their capacity to deliver quality continuing education.

Programs may be designed for presentation at the local, State, regional, or national level. Ordinarily, court education programs should be based on an assessment of the needs of the target audience; include clearly stated learning objectives that delineate the new knowledge or skills participants will acquire (as opposed to a description of what will be taught); incorporate adult education principles and multiple teaching/learning methods; and result in the development of a curriculum as defined in section III.E.

The Institute is particularly interested in supporting the development of programs that:

• Educate judges and court personnel about how to design and sustain problem-solving courts;

• Educate State court judges, law clerks, and staff counsel about capital case law, DNA evidence, and other legal and scientific issues related to the trial and appeal of capital cases;

• Educate State court judges and court personnel about special problems related to the adjudication of capital cases, including jury voir dire, jury sequestration, sentencing hearings, court security, and media management; and

• Develop and test curricula and materials designed to familiarize judges and court managers with the need for and key elements of effective assistance programs for people without lawyers, and the resources required to sustain them.

b. *Judicial Branch Education Technical Assistance Projects.* The Board is reserving up to $150,000 to support technical assistance and on-site consultation in planning, developing, and administering comprehensive and specialized State judicial branch education programs, as well as the adaptation of model curricula previously developed with SJI funds.

The goals of the Judicial Branch Education Technical Assistance Program (JBE TA) in FY 2004 are to:

(1) Provide State and local courts with the opportunity to access expert strategic assistance to enable them to maintain judicial branch education programming during the current budget crisis; and

(2) Enable courts to modify a model curriculum, course module, or conference program developed with SJI funds to meet a particular State's or local jurisdiction's educational needs; train instructors to present portions or all of the curriculum; and pilot-test it to determine its appropriateness, quality, and effectiveness. An illustrative but non-inclusive list of the curricula that may be appropriate for adaptation is contained in Appendix E.

Only State or local courts may apply for JBE TA funding. Application procedures may be found in section VI.E. State and local courts are not required to contribute cash match to JBE TA grants.

c. *Scholarships for Judges and Court Managers.* The Institute is reserving up to $150,000 to support a scholarship program for State judges and court managers. The purposes of the scholarship program are to:

• Enhance the skills, knowledge, and abilities of judges and court managers;

• Enable State court judges and court managers to attend out-of-State

educational programs sponsored by national and State providers that they could not otherwise attend because of limited State, local, and personal budgets; and

• Provide States, judicial educators, and the Institute with evaluative information on a range of judicial and court-related education programs.

Scholarships will be granted to individuals only for the purpose of attending an out-of-State educational program within the United States. Application procedures may be found in section VI.F.

5. The Relationship Between State and Federal Courts

This category includes education, research, demonstration, and evaluation projects designed to facilitate appropriate and effective communication, cooperation, and coordination between State and Federal courts.

The Institute is particularly interested in innovative projects that:

• Evaluate State and Federal courts' experiences with capital cases to identify reasons for reversals of trial court convictions, barriers to timely disposition, and steps that can be taken to minimize reversals and undue delay;

• Educate judges about capital case law, DNA evidence, and judicial administration issues arising from death penalty cases, e.g., court security, jury sequestration, and media management;

• Establish standards for selecting qualified appointed defense counsel in capital cases, and evaluating different appointment approaches;

• Support commissions that involve members of the judiciary in reviewing and remedying errors that led to wrongful convictions in death penalty cases;

• Coordinate and process mass tort cases fairly and efficiently at the trial and appellate levels;

• Provide assistance to courts in developing plans to continue operations in the wake of a catastrophic incident, including establishing lines of succession; and

• Develop effective emergency responses to acts of terrorism.

B. ''Think Pieces''

This category addresses the development of essays of publishable quality directed to the court community. The essays should explore emerging issues that could result in significant changes in court process or judicial administration and their implications for the future for judges, court managers, policy-makers, and the public. Grants supporting such projects are limited to no more than $10,000. Applicants should follow the procedures explained in section VI.B. of this Guideline.

Think piece topics are limited to the five Special Interest categories listed in section II.A. of this Guideline. In particular, the Institute is interested in supporting the development of essays on:

• Issues related to the institutionalization and maintenance of drug and other problem-solving courts, e.g., maintaining budgets in fiscally constrained times, finding new sources of money, identifying and selecting new judges while still maintaining the focus of the court and enthusiasm for the concept;

• What the courts have learned from problem-solving approaches that can be applied throughout the court system to enhance public trust and confidence; and

• The advantages, disadvantages, and appropriate use of anonymous juries.

C. The Solutions Project

The Solutions Project is a process intended to infuse the State courts with the ability to develop innovative and creative ways to address the problems they face and provide a mechanism to transfer these ideas throughout the nation. In addition to providing State courts with an array of promising solutions to their most pressing problems, the Solutions Project will generate consensus on projects, ideas, and programs that merit additional Federal funding support because of their broad appeal and promise.

In FY 2003, the Institute awarded close to $400,000 to support Solutions Project grants in 20 States. The grants support events and activities such as town hall meetings, focus groups, surveys, and other initiatives designed to (a) collect information about the problems facing the courts in a particular State, (b) assess the effectiveness of the solutions the court system has developed to respond to those problems, and (c) solicit the public's recommendations about other potential solutions.

The Board of Directors also awarded planning grants to the National Center for State Courts and the Center for Effective Public Policy to design the tasks required to carry out the national aspects of the Project. The Institute has reserved up to $400,000 in FY 03 funds and up to $400,000 in FY 04 funds to support the national phase of The Solutions Project. Visit the SJI Web site (*www.statejustice.org*) for continuing updates on the Project.

D. Technical Assistance Grants

The Board will set aside up to $200,000 to support the provision of technical assistance to State and local courts. The program is designed to provide State and local courts with sufficient support to obtain technical assistance to diagnose a problem, develop a response to that problem, and implement any needed changes. The Institute will reserve sufficient funds each quarter to assure the availability of Technical Assistance Grants throughout the year.

Technical Assistance Grants are limited to no more than $30,000 each, and may cover the cost of obtaining the services of expert consultants; travel by a team of officials from one court to examine a practice, program, or facility in another jurisdiction that the applicant court is interested in replicating; or both. Normally, the technical assistance must be completed within 12 months after the start date of the grant.

Only a State or local court may apply for a Technical Assistance grant. The application procedures may be found in section VI.D.

III. Definitions

The following definitions apply for the purposes of this Guideline:

A. Acknowledgment of SJI Support

The prominent display of the SJI logo on the front cover of a written product or in the opening frames of a videotape developed with Institute support, and inclusion of a brief statement on the inside front cover or title page of the document or the opening frames of the videotape identifying the grant number. See section VIII.A.11.a.(2) for the precise wording of the statement.

B. Application

A formal request for an Institute grant. A complete application consists of: Form A—Application; Form B—Certificate of State Approval (for applications from local trial or appellate courts or agencies); Form C—Project Budget/Tabular Format or Form C1—Project Budget/Spreadsheet Format; Form D—Assurances; Disclosure of Lobbying Activities; a detailed 25-page description of the need for the project and all related tasks, including the time frame for completion of each task, and staffing requirements; and a detailed budget narrative that provides the basis for all costs. *See* section VI. for a complete description of application submission requirements. *See* appendix F for the Project Grant application forms.

C. Close-Out

The process by which the Institute determines that all applicable administrative and financial actions and all required grant work have been completed by both the grantee and the Institute.

D. Continuation Grant

A grant lasting no longer than 15 months to permit completion of activities initiated under an existing Institute grant or enhancement of the products or services produced during the prior grant period. *See* section VI.C. for a complete description of continuation application requirements.

E. Curriculum

The materials needed to replicate an education or training program developed with grant funds including, but not limited to: The learning objectives; the presentation methods; a sample agenda or schedule; an outline of presentations and relevant instructors' notes; copies of overhead transparencies or other visual aids; exercises, case studies, hypotheticals, quizzes, and other materials for involving the participants; background materials for participants; evaluation forms; and suggestions for replicating the program, including possible faculty or the preferred qualifications or experience of those selected as faculty.

F. Designated Agency or Council

The office or judicial body which is authorized under State law or by delegation from the State Supreme Court to approve applications for SJI grant funds and to receive, administer, and be accountable for those funds.

G. Disclaimer

A brief statement that must be included at the beginning of a document or in the opening frames of a videotape produced with Institute support that specifies that the points of view expressed in the document or tape do not necessarily represent the official position or policies of the Institute. *See* section VIII.A.11.a.(2) for the precise wording of this statement.

H. Grant Adjustment

A change in the design or scope of a project from that described in the approved application, acknowledged in writing by the Institute. See section X.A for a list of the types of changes requiring a formal grant adjustment. Ordinarily, changes requiring a Grant Adjustment (including budget reallocations between direct cost categories that individually or cumulatively exceed five percent of the approved original budget) should be requested at least 30 days in advance of the implementation of the requested change.

I. Grantee

The organization, entity, or individual to which an award of Institute funds is made. For a grant based on an application from a State or local court, *grantee* refers to the State Supreme Court or its designee.

J. Human Subjects

Individuals who are participants in an experimental procedure or who are asked to provide information about themselves, their attitudes, feelings, opinions, and/or experiences through an interview, questionnaire, or other data collection technique.

K. Judicial Branch Education Technical Assistance (JBE TA) Grant

A grant of up to $20,000 awarded to a State or local court to support expert assistance in designing or delivering judicial branch education programming, and/or the adaptation of an education program based on an SJI-supported curriculum that was previously developed and evaluated under an SJI Project Grant. *See* section VI.E. for a complete description of JBE TA Grant application requirements.

L. Match

The portion of project costs not borne by the Institute. Match includes both in-kind and cash contributions. Cash match is the direct outlay of funds by the grantee to support the project. Examples of cash match are the dedication of funds to support a new employee or purchase new equipment to carry out the project; that portion of the grantee's Federally approved indirect cost rate that exceeds the Guideline's limit of permitted charges (75% of salaries and benefits); any other reduction in the indirect cost rate to be charged to the grant; and the application of project income (*e.g.,* tuition or the proceeds of sales of grant products) generated during the grant period to grant costs.

In-kind match consists of contributions of time and/or services of current staff members, space, supplies, etc., made to the project by the grantee or others (*e.g.,* advisory board members) working directly on the project.

Under normal circumstances, allowable match may be incurred only during the project period. When appropriate, and with the prior written permission of the Institute, match may be incurred from the date of the Board of Directors' approval of an award. Match does not include the time of participants attending an education program.

See section VIII.A.8. for the Institute's matching requirements.

M. Products

Tangible materials resulting from funded projects including, but not limited to: Curricula; monographs; reports; books; articles; manuals; handbooks; benchbooks; guidelines; videotapes; audiotapes; computer software; and CD–ROM disks.

N. Project Grant

An initial grant lasting up to 15 months to support an innovative education, research, demonstration, or technical assistance project that can improve the administration of justice in State courts nationwide. Ordinarily, a project grant may not exceed $150,000 a year; however, a grant in excess of $100,000 is likely to be rare and awarded only to support highly promising projects that will have a significant national impact. *See* section VI.A. for a complete description of Project Grant application requirements.

O. Project-Related Income

Interest, royalties, registration and tuition fees, proceeds from the sale of products, and other earnings generated as a result of an Institute grant. Registration and tuition fees, and proceeds from the sale of products generated during the grant period may be counted as match. For a more complete description of different types of project-related income, *see* section IX.G.

P. Scholarship

A grant of up to $1,500 awarded to a judge or court employee to cover the cost of tuition for and transportation to and from an out-of-State educational program within the United States. *See* section VI.F. for a complete description of scholarship application requirements.

Q. Special Condition

A requirement attached to a grant award that is unique to a particular project.

R. State Supreme Court

The highest appellate court in a State, or, for the purposes of the Institute program, a constitutionally or legislatively established judicial council that acts in place of that court. In States having more than one court with final appellate authority, *State Supreme Court* means that court which also has administrative responsibility for the State's judicial system. *State Supreme*

Court also includes the office of the court or council, if any, it designates to perform the functions described in this Guideline.

S. Subgrantee

A State or local court which receives Institute funds through the State Supreme Court.

T. Technical Assistance Grant

A grant, lasting up to 12 months, of up to $30,000 to a State or local court to support outside expert assistance in diagnosing a problem and developing and implementing a response to that problem. *See* section VI.D. for a complete description of technical assistance grant application requirements.

IV. Eligibility for Award

The Institute is authorized by Congress to award grants, cooperative agreements, and contracts to the following entities and types of organizations:

A. *State and local courts and their agencies (42 U.S.C.10705(b)(1)(A)).* Each application for funding from a State or local court must be approved, consistent with State law, by the State's Supreme Court or its designated agency or council. The latter shall receive all Institute funds awarded to such courts and be responsible for assuring proper administration of Institute funds, in accordance with section IX.C.2. of this Guideline.

B. *National nonprofit organizations controlled by, operating in conjunction with, and serving the judicial branches of State governments (42 U.S.C. 10705(b)(1)(B)).*

C. *National nonprofit organizations for the education and training of judges and support personnel of the judicial branch of State governments (42 U.S.C. 10705(b)(1)(C)).* An applicant is considered a national education and training applicant under section 10705(b)(1)(C) if:

1. The principal purpose or activity of the applicant is to provide education and training to State and local judges and court personnel; and

2. the applicant demonstrates a record of substantial experience in the field of judicial education and training.

D. *Other eligible grant recipients (42 U.S.C.10705(b)(2)(A)–(D)).*

1. Provided that the objectives of the project can be served better, the Institute is also authorized to make awards to:

a. Nonprofit organizations with expertise in judicial administration;

b. institutions of higher education;

c. individuals, partnerships, firms, corporations (for-profit organizations must waive their fees); and

d. private agencies with expertise in judicial administration.

2. The Institute may also make awards to State or local agencies and institutions other than courts for services that cannot be adequately provided through nongovernmental arrangements (42 U.S.C. 10705(b)(3)).

E. *Inter-agency Agreements.* The Institute may enter into inter-agency agreements with Federal agencies (42 U.S.C. 10705(b)(4)) and private funders to support projects consistent with the purposes of the State Justice Institute Act.

V. Types of Projects and Grants; Size of Awards

A. Types of Projects

The Institute supports the following general types of projects:

1. Education and training;
2. research and evaluation;
3. demonstration; and
4. technical assistance.

B. Types of Grants

The Institute supports the following types of grants:

1. Project Grants

See sections II.A. and B., and VI.A. The Institute places no annual limitations on the overall number of project grant awards or the number of awards in each Special Interest category.

2. Continuation Grants

See sections III.D. and VI.C. In FY 2004, the Institute is allocating no more than 20% of available Project Grant funds for continuation grants.

3. Technical Assistance Grants

See sections II.D. and VI.D. In FY 2004, the Institute is reserving up to $200,000 for these grants.

4. Judicial Branch Education Technical Assistance Grants

See sections II.A.4.b., III.K., and VI.E. In FY 2004, the Institute is reserving up to $150,000 for Judicial Branch Education Technical Assistance Grants, which includes adaptations of curricula previously developed with SJI funding.

5. Scholarships

See sections II.A.4.c., III.P., and VI.F. In FY 2004, the Institute is reserving up to $150,000 for scholarships for judges and court employees. The Institute will reserve sufficient funds each quarter to assure the availability of scholarships throughout the year.

C. Maximum Size of Awards

1. Except as specified below, applicants for new Project Grants and continuation grants may request funding in amounts up to $150,000 for 15 months, although new and continuation awards in excess of $100,000 are likely to be rare and to be made, if at all, only for highly promising proposals that will have a significant impact nationally.

2. Applicants for Technical Assistance Grants may request funding in amounts up to $30,000.

3. Applicants for Judicial Branch Education Technical Assistance Grants may request funding in amounts up to $20,000.

4. Applicants for scholarships may request funding in amounts up to $1,500.

D. Length of Grant Periods

1. Grant periods for all new and continuation projects ordinarily may not exceed 15 months. Absent extraordinary circumstances, no grant will continue for more than five years.

2. Grant periods for Technical Assistance Grants and Judicial Branch Education Technical Assistance Grants ordinarily may not exceed 12 months.

VI. Applications

A. Project Grants

An application for a Project Grant must include an application form; budget forms (with appropriate documentation); a project abstract and program narrative; a disclosure of lobbying form, when applicable; and certain certifications and assurances (*see* below). *See* appendix F for the Project Grant application forms. For a summary of the application process, visit the Institute's Web site (*www.statejustice.org*) and click on On-Line Tutorials, then Project Grant.

1. Forms

a. *Application Form (FORM A).* The application form requests basic information regarding the proposed project, the applicant, and the total amount of funding requested from the Institute. It also requires the signature of an individual authorized to certify on behalf of the applicant that the information contained in the application is true and complete; that submission of the application has been authorized by the applicant; and that if funding for the proposed project is approved, the applicant will comply with the requirements and conditions of the award, including the assurances set forth in Form D.

b. *Certificate of State Approval (FORM B).* An application from a State or local court must include a copy of FORM B signed by the State's Chief Justice or Chief Judge, the director of the

designated agency, or the head of the designated council. The signature denotes that the proposed project has been approved by the State's highest court or the agency or council it has designated. It denotes further that if the Institute approved funding for the project, the court or the specified designee will receive, administer, and be accountable for the awarded funds.

c. *Budget Forms (FORM C or C1).* Applicants may submit the proposed project budget either in the tabular format of FORM C or in the spreadsheet format of FORM C1. Applicants requesting $100,000 or more are strongly encouraged to use the spreadsheet format. If the proposed project period is for more than a year, a separate form should be submitted for each year or portion of a year for which grant support is requested, as well as for the total length of the project.

In addition to FORM C or C1, applicants must provide a detailed budget narrative providing an explanation of the basis for the estimates in each budget category. (*See* section VI.A.4. below.)

If funds from other sources are required to conduct the project, either as match or to support other aspects of the project, the source, current status of the request, and anticipated decision date must be provided.

d. *Assurances (FORM D).* This form lists the statutory, regulatory, and policy requirements with which recipients of Institute funds must comply.

e. *Disclosure of Lobbying Activities.* Applicants other than units of State or local government are required to disclose whether they, or another entity that is part of the same organization as the applicant, have advocated a position before Congress on any issue, and to identify the specific subjects of their lobbying efforts. (*See* section VIII.A.7.)

2. Project Abstract

The abstract should highlight the purposes, goals, methods, and anticipated benefits of the proposed project. It should not exceed 1 single-spaced page on 8½ by 11 inch paper.

3. Program Narrative

The program narrative for an application may not exceed 25 double-spaced pages on 8½ by 11 inch paper. Margins must be at least 1 inch, and type size must be at least 12-point and 12 cpi. The pages should be numbered. This page limit does not include the forms, the abstract, the budget narrative, and any appendices containing resumes and letters of cooperation or endorsement. Additional background material should be attached only if it is essential to impart a clear understanding of the proposed project. Numerous and lengthy appendices are strongly discouraged.

The program narrative should address the following topics:

a. *Project Objectives.* The applicant should include a clear, concise statement of what the proposed project is intended to accomplish. In stating the objectives of the project, applicants should focus on the overall programmatic objective (*e.g.*, to enhance understanding and skills regarding a specific subject, or to determine how a certain procedure affects the court and litigants) rather than on operational objectives (*e.g.*, provide training for 32 judges and court managers, or review data from 300 cases).

b. *Program Areas to be Covered.* The applicant should note the Special Interest category or categories that are addressed by the proposed project (*see* section II.A.).

c. *Need for the Project.* If the project is to be conducted in any specific location(s), the applicant should discuss the particular needs of the project site(s) to be addressed by the project and why those needs are not being met through the use of existing programs, procedures, services, or other resources.

If the project is not site-specific, the applicant should discuss the problems that the proposed project would address, and why existing programs, procedures, services, or other resources cannot adequately resolve those problems. The discussion should include specific references to the relevant literature and to the experience in the field.

d. *Tasks, Methods and Evaluation.* (1) *Tasks and Methods.* The applicant should delineate the tasks to be performed in achieving the project objectives and the methods to be used for accomplishing each task. For example:

(a) *For research and evaluation projects*, the applicant should include the data sources, data collection strategies, variables to be examined, and analytic procedures to be used for conducting the research or evaluation and ensuring the validity and general applicability of the results. For projects involving human subjects, the discussion of methods should address the procedures for obtaining respondents' informed consent, ensuring the respondents' privacy and freedom from risk or harm, and protecting others who are not the subjects of research but would be affected by the research. If the potential exists for risk or harm to human subjects, a discussion should be included that explains the value of the proposed research and the methods to be used to minimize or eliminate such risk.

(b) *For education and training projects*, the applicant should include the adult education techniques to be used in designing and presenting the program, including the teaching/learning objectives of the educational design, the teaching methods to be used, and the opportunities for structured interaction among the participants; how faculty would be recruited, selected, and trained; the proposed number and length of the conferences, courses, seminars, or workshops to be conducted and the estimated number of persons who would attend them; the materials to be provided and how they would be developed; and the cost to participants.

(c) *For demonstration projects,* the applicant should include the demonstration sites and the reasons they were selected, or if the sites have not been chosen, how they would be identified and their cooperation obtained; and how the program or procedures would be implemented and monitored.

(d) *For technical assistance projects,* the applicant should explain the types of assistance that would be provided; the particular issues and problems for which assistance would be provided; how requests would be obtained and the type of assistance determined; how suitable providers would be selected and briefed; how reports would be reviewed; and the cost to recipients.

(2) *Evaluation.* Every project must include an evaluation plan to determine whether the project met its objectives. The evaluation should be designed to provide an objective and independent assessment of the effectiveness or usefulness of the training or services provided; the impact of the procedures, technology, or services tested; or the validity and applicability of the research conducted. In addition, where appropriate, the evaluation process should be designed to provide ongoing or periodic feedback on the effectiveness or utility of the project in order to promote its continuing improvement. The plan should present the qualifications of the evaluator(s); describe the criteria that would be used to evaluate the project's effectiveness in meeting its objectives; explain how the evaluation would be conducted, including the specific data collection and analysis techniques to be used; discuss why this approach would be appropriate; and present a schedule for completion of the evaluation within the proposed project period.

The evaluation plan should be appropriate to the type of project proposed. For example:

(a) *Research.* An evaluation approach suited to many research projects is a review by an advisory panel of the research methodology, data collection instruments, preliminary analyses, and products as they are drafted. The panel should be comprised of independent researchers and practitioners representing the perspectives affected by the proposed project.

(b) *Education and Training.* The most valuable approaches to evaluating educational or training programs reinforce the participants' learning experience while providing useful feedback on the impact of the program and possible areas for improvement. One appropriate evaluation approach is to assess the acquisition of new knowledge, skills, attitudes, or understanding through participant feedback on the seminar or training event. Such feedback might include a self-assessment of what was learned along with the participant's response to the quality and effectiveness of faculty presentations, the format of sessions, the value or usefulness of the material presented, and other relevant factors. Another appropriate approach would be to use an independent observer who might request both verbal and written responses from participants in the program. When an education project involves the development of curricular materials, an advisory panel of relevant experts can be coupled with a test of the curriculum to obtain the reactions of participants and faculty as indicated above.

(c) *Demonstration.* The evaluation plan for a demonstration project should encompass an assessment of program effectiveness (*e.g.*, how well did it work?); user satisfaction, if appropriate; the cost-effectiveness of the program; a process analysis of the program (*e.g.*, was the program implemented as designed, and/or did it provide the services intended to the targeted population?); the impact of the program (*e.g.*, what effect did the program have on the court, and/or what benefits resulted from the program?); and the replicability of the program or components of the program.

(d) *Technical Assistance.* For technical assistance projects, applicants should explain how the quality, timeliness, and impact of the assistance provided would be determined, and develop a mechanism for feedback from both the users and providers of the technical assistance.

Evaluation plans involving human subjects should include a discussion of the procedures for obtaining respondents' informed consent, ensuring the respondents' privacy and freedom from risk or harm, and protecting others who are not the subjects of the evaluation but would be affected by it. Other than the provision of confidentiality to respondents, human subject protection issues ordinarily are not applicable to participants evaluating an education program.

e. *Project Management.* The applicant should present a detailed management plan, including the starting and completion date for each task; the time commitments to the project of key staff and their responsibilities regarding each project task; and the procedures that would ensure that all tasks are performed on time, within budget, and at the highest level of quality. In preparing the project time line, Gantt Chart, or schedule, applicants should make certain that all project activities, including publication or reproduction of project products and their initial dissemination, would occur within the proposed project period. The management plan must also provide for the submission of Quarterly Progress and Financial Reports within 30 days after the close of each calendar quarter (*i.e.*, no later than January 30, April 30, July 30, and October 30).

Applicants should be aware that the Institute is unlikely to approve more than one limited extension of the grant period. Therefore, the management plan should be as realistic as possible and fully reflect the time commitments of the proposed project staff and consultants.

f. *Products.* The program narrative in the application should contain a description of the products to be developed (*e.g.*, training curricula and materials, videotapes, articles, manuals, or handbooks), including when they would be submitted to the Institute. The budget should include the cost of producing and disseminating the product to each in-State SJI library (*See* appendix C), State chief justice, State court administrator, and other appropriate judges or court personnel.

(1) *Dissemination Plan.* The application must explain how and to whom the products would be disseminated; describe how they would benefit the State courts, including how they could be used by judges and court personnel; identify development, production, and dissemination costs covered by the project budget; and present the basis on which products and services developed or provided under the grant would be offered to the courts community and the public at large (*i.e.*, whether products would be distributed at no cost to recipients, or if costs are involved, the reason for charging recipients and the estimated price of the product) (*see* section VIII.A.11.b.). Ordinarily, applicants should schedule all product preparation and distribution activities within the project period.

A copy of each product must be sent to the library established in each State to collect the materials developed with Institute support. (A list of these libraries is contained in appendix C.) Applicants proposing to develop web-based products should provide for sending a hard-copy document to the SJI-designated libraries and other appropriate audiences to alert them to the availability of the web site or electronic product (*i.e.*, a written report with a reference to the web site).

Fifteen (15) copies of all project products must be submitted to the Institute, along with an electronic version in .html or .pdf format.

(2) *Types of Products and Press Releases.* The type of product to be prepared depends on the nature of the project. For example, in most instances, the products of a research, evaluation, or demonstration project should include an article summarizing the project findings that is publishable in a journal serving the courts community nationally, an executive summary that would be disseminated to the project's primary audience, or both. Applicants proposing to conduct empirical research or evaluation projects with national import should describe how they would make their data available for secondary analysis after the grant period. (*See* section VIII.A.14.a.).

The curricula and other products developed through education and training projects should be designed for use outside the classroom so that they may be used again by the original participants and others in the course of their duties.

In addition, recipients of project grants must prepare a press release describing the project and announcing the results, and distribute the release to a list of national and State judicial branch organizations. SJI will provide press release guidelines and a list of recipients to grantees at least 30 days before the end of the grant period.

(3) *Institute Review.* Applicants must submit a final draft of all written grant products to the Institute for review and approval at least 30 days before the products are submitted for publication or reproduction. For products in a videotape or CD-ROM format, applicants must provide for Institute review of the product at the treatment, script, rough-cut, and final stages of

development, or their equivalents. No grant funds may be obligated for publication or reproduction of a final grant product without the written approval of the Institute. (*See* section VIII.A.11.e.)

(4) *Acknowledgment, Disclaimer, and Logo.* Applicants must also include in all project products a prominent acknowledgment that support was received from the Institute and a disclaimer paragraph based on the example provided in section VIII.A.11.a.(2) of the Guideline. The ''SJI'' logo must appear on the front cover of a written product, or in the opening frames of a video, unless the Institute approves another placement.

g. *Applicant Status.* An applicant that is not a State or local court and has not received a grant from the Institute within the past three years should state whether it is either a national non-profit organization controlled by, operating in conjunction with, and serving the judicial branches of State governments, or a national non-profit organization for the education and training of State court judges and support personnel. *See* section IV. If the applicant is a nonjudicial unit of Federal, State, or local government, it must explain whether the proposed services could be adequately provided by non-governmental entities.

h. *Staff Capability.* The applicant should include a summary of the training and experience of the key staff members and consultants that qualify them for conducting and managing the proposed project. Resumes of identified staff should be attached to the application. If one or more key staff members and consultants are not known at the time of the application, a description of the criteria that would be used to select persons for these positions should be included. The applicant also should identify the person who would be responsible for managing and reporting on the financial aspects of the proposed project.

i. *Organizational Capacity.* Applicants that have not received a grant from the Institute within the past three years should include a statement describing their capacity to administer grant funds, including the financial systems used to monitor project expenditures (and income, if any), and a summary of their past experience in administering grants, as well as any resources or capabilities that they have that would particularly assist in the successful completion of the project.

Unless requested otherwise, an applicant that has received a grant from the Institute within the past three years should describe only the changes in its organizational capacity, tax status, or financial capability that may affect its capacity to administer a grant.

If the applicant is a non-profit organization (other than a university), it must also provide documentation of its 501(c) tax-exempt status as determined by the Internal Revenue Service and a copy of a current certified audit report. For purposes of this requirement, ''current'' means no earlier than two years prior to the present calendar year.

If a current audit report is not available, the Institute will require the organization to complete a financial capability questionnaire, which must be signed by a Certified Public Accountant. Other applicants may be required to provide a current audit report, a financial capability questionnaire, or both, if specifically requested to do so by the Institute.

j. *Statement of Lobbying Activities.* Non-governmental applicants must submit the Institute's Disclosure of Lobbying Activities Form, which documents whether they, or another entity that is a part of the same organization as the applicant, have advocated a position before Congress on any issue, and identifies the specific subjects of their lobbying efforts. *See* appendix F.

k. *Letters of Cooperation or Support.* If the cooperation of courts, organizations, agencies, or individuals other than the applicant is required to conduct the project, the applicant should attach written assurances of cooperation and availability to the application, or send them under separate cover. To ensure sufficient time to bring them to the Board's attention, letters of support sent under separate cover must be received by March 15, 2004.

4. Budget Narrative

The budget narrative should provide the basis for the computation of all project-related costs. When the proposed project would be partially supported by grants from other funding sources, applicants should make clear what costs would be covered by those other grants. Additional background or schedules may be attached if they are essential to obtaining a clear understanding of the proposed budget. Numerous and lengthy appendices are strongly discouraged.

The budget narrative should cover the costs of all components of the project and clearly identify costs attributable to the project evaluation. Under OMB grant guidelines incorporated by reference in this Guideline, grant funds may not be used to purchase alcoholic beverages.

a. *Justification of Personnel Compensation.* The applicant should set forth the percentages of time to be devoted by the individuals who would staff the proposed project, the annual salary of each of those persons, and the number of work days per year used for calculating the percentages of time or daily rates of those individuals. The applicant should explain any deviations from current rates or established written organizational policies. If grant funds are requested to pay the salary and related costs for a current employee of a court or other unit of government, the applicant should explain why this would not constitute a supplantation of State or local funds in violation of 42 U.S.C. 10706(d)(1). An acceptable explanation may be that the position to be filled is a new one established in conjunction with the project or that the grant funds would support only the portion of the employee's time that would be dedicated to new or additional duties related to the project.

b. *Fringe Benefit Computation.* The applicant should provide a description of the fringe benefits provided to employees. If percentages are used, the authority for such use should be presented, as well as a description of the elements included in the determination of the percentage rate.

c. *Consultant/Contractual Services and Honoraria.* The applicant should describe the tasks each consultant would perform, the estimated total amount to be paid to each consultant, the basis for compensation rates (e. *g.,* the number of days multiplied by the daily consultant rates), and the method for selection. Rates for consultant services must be set in accordance with section IX.I.2.c. Prior written Institute approval is required for any consultant rate in excess of $300 per day; Institute funds may not be used to pay a consultant more than $900 per day. Honorarium payments must be justified in the same manner as consultant payments.

d. *Travel.* Transportation costs and per diem rates must comply with the policies of the applicant organization. If the applicant does not have an established travel policy, then travel rates must be consistent with those established by the Institute or the Federal Government. (A copy of the Institute's travel policy is available upon request.) The budget narrative should include an explanation of the rate used, including the components of the per diem rate and the basis for the estimated transportation expenses. The purpose of the travel should also be included in the narrative.

e. *Equipment.* Grant funds may be used to purchase only the equipment necessary to demonstrate a new technological application in a court or that is otherwise essential to accomplishing the objectives of the project. Equipment purchases to support basic court operations ordinarily will not be approved. The applicant should describe the equipment to be purchased or leased and explain why the acquisition of that equipment is essential to accomplish the project's goals and objectives. The narrative should clearly identify which equipment is to be leased and which is to be purchased. The method of procurement should also be described. Purchases of automated data processing equipment must comply with section IX.I.2.b.

f. *Supplies.* The applicant should provide a general description of the supplies necessary to accomplish the goals and objectives of the grant. In addition, the applicant should provide the basis for the amount requested for this expenditure category.

g. *Construction.* Construction expenses are prohibited except for the limited purposes set forth in section VIII.A.16.b. Any allowable construction or renovation expense should be described in detail in the budget narrative.

h. *Telephone.* Applicants should include anticipated telephone charges, distinguishing between monthly charges and long distance charges in the budget narrative. Also, applicants should provide the basis used to calculate the monthly and long distance estimates.

i. *Postage.* Anticipated postage costs for project-related mailings, including distribution of the final product(s), should be described in the budget narrative. The cost of special mailings, such as for a survey or for announcing a workshop, should be distinguished from routine operational mailing costs. The bases for all postage estimates should be included in the budget narrative.

j. *Printing/Photocopying.* Anticipated costs for printing or photocopying project documents, reports, and publications should be included in the budget narrative, along with the bases used to calculate these estimates.

k. *Indirect Costs.* Recoverable indirect costs are limited to no more than 75% of a grantee's direct personnel costs (salaries plus fringe benefits). Grantees may apply unrecoverable indirect costs to meet their required matching contributions, including the required level of cash match. *See* sections III.L. and IX.I.4.

Applicants should describe the indirect cost rates applicable to the grant in detail. If costs often included within an indirect cost rate are charged directly (*e.g.,* a percentage of the time of senior managers to supervise project activities), the applicant should specify that these costs are not included within its approved indirect cost rate. These rates must be established in accordance with section IX.I.4. If the applicant has an indirect cost rate or allocation plan approved by any Federal granting agency, a copy of the approved rate agreement should be attached to the application.

1. Match. Courts or other units of State or local government (not including publicly supported institutions of higher education) must provide a match from private or public sources of not less than 50% of the total amount of the Institute's award. 42 U.S.C. 10705(d). At least 20% of the required match for a new grant to a court or other unit of State or local government (other than a Judicial Branch Education Technical Assistance grant) must be cash. All other grantees (except scholarship recipients and individuals receiving ''think piece'' grants) must contribute a match of 25% to a new grant; at least 10% of the required match must be cash.

The applicant should describe the source of the matching contribution and the nature of the match provided. Any additional cash and in-kind contributions to the project should be described in this section of the budget narrative as well. If in-kind match is to be provided, the applicant should describe how the amount and value of the time, services, or materials actually contributed would be documented for audit purposes. Applicants should be aware that the time spent by participants in education courses does not qualify as in-kind match.

Applicants that do not contemplate making matching contributions continuously throughout the course of the project or on a task-by-task basis must provide a schedule within 30 days after the beginning of the project period indicating at what points during the project period the matching contributions would be made. (*See* sections III.L., VIII.A.8., and IX.E.1.)

The Institute may waive the match and cash match requirements in certain circumstances. *See* section VIII.A.8.c.

5. Submission Requirements

a. Every applicant must submit an original and four copies of the application package consisting of FORM A; FORM B, if the application is from a State or local court, or a Disclosure of Lobbying Form, if the applicant is not a unit of State or local government; the Budget Forms (either FORM C or C–1); the Application Abstract; the Program Narrative; the Budget Narrative; and any necessary appendices.

All applications must be sent by first class or overnight mail or by courier no later than February 13, 2004. A postmark or courier receipt will constitute evidence of the submission date. Please mark APPLICATION on the application package envelope and send it to: State Justice Institute, 1650 King Street, Suite 600, Alexandria, VA 22314.

Receipt of each application will be acknowledged in writing. Extensions of the deadline for submission of applications will not be granted without good cause.

b. Applicants submitting more than one application may include material that would be identical in each application in a cover letter. This material will be incorporated by reference into each application and counted against the 25-page limit for the program narrative. A copy of the cover letter should be attached to each copy of each application.

B. ''Think Piece'' Applications

1. Purpose and Scope

''Think pieces'' are essays of publishable quality directed to the court community. They are intended to explore emerging issues that could result in significant changes in court process or judicial administration and their implications for the future for judges, court managers, policy-makers, and the public.

2. Forms

An application for a ''think piece'' must include the same forms required for a project grant. *See* A.1. above in this section.

3. Program Narrative

The program narrative should be no longer than necessary, but must not exceed 8 double-spaced pages on 8½ by 11 inch paper. Margins must be at least 1 inch and type size must be at least 12 point and 12 cpi. The pages should be numbered. The narrative should:

a. Identify the specific Special Interest category into which the ''think piece'' would fall;

b. describe the subject it would address;

c. explain how the essay would advance the current state of the art or knowledge about the subject;

d. discuss the benefits that would accrue to the State courts generally as a result of the essay's publication; and

e. outline plans for the publication of the ''think piece,'' *e.g.,* the intended audience, and the types or titles of periodicals or journals to which it would be submitted.

4. Budget and Budget Narrative

The applicant should provide a complete budget and budget narrative conforming to the requirements set forth in A.4. above in this section; however, individuals proposing to develop ''think pieces'' are not required to provide match.

5. Submission Requirements

The submission requirements set forth in section VI.A.5 apply to all ''think piece'' applications.

C. Continuation Grant Applications

1. Purpose

Continuation grants are intended to support projects that carry out the same type of activities carried out under a previous grant. They are intended to enhance the specific program or service produced or established during the prior grant period. They may be used, for example, when a project is divided into two or more sequential phases, for secondary analysis of data obtained in an Institute-supported research project, or for more extensive testing of an innovative technology, procedure, or program developed with SJI grant support.

2. Limitations

The award of an initial grant to support a project does not constitute a commitment by the Institute to continue funding. For a project to be considered for continuation funding, the grantee must have completed all project tasks and met all grant requirements and conditions in a timely manner, absent extenuating circumstances or prior Institute approval of changes to the project design. Continuation grants are not intended to provide support for a project for which the grantee has underestimated the amount of time or funds needed to accomplish the project tasks. Absent extraordinary circumstances, no grant will continue for more than five years.

3. Letters of Intent

A grantee seeking a continuation grant must inform the Institute, by letter, of its intent to submit an application for such funding as soon as the need for continued funding becomes apparent but no less than 120 days before the end of the current grant period.

a. A letter of intent must be no more than 3 single-spaced pages on 8½ by 11 inch paper and contain a concise but thorough explanation of the need for continuation; an estimate of the funds to be requested; and a brief description of anticipated changes in the scope, focus, or audience of the project.

b. Within 30 days after receiving a letter of intent, Institute staff will review the proposed activities for the next project period and inform the grantee of specific issues to be addressed in the continuation application and the date by which the application must be submitted.

4. Application Format

An application for a continuation grant must include an application form, budget forms (with appropriate documentation), a project abstract conforming to the format set forth in A.2. of this section, a program narrative, a budget narrative, a Certificate of State Approval—FORM B (if the applicant is a State or local court), a Disclosure of Lobbying Activities form (from applicants other than units of State or local government), and any necessary appendices. *See* appendix F for the application forms.

The program narrative should conform to the length and format requirements set forth in section VI.A.3. However, rather than the topics listed there, the program narrative of a continuation application should include:

a. *Project Objectives.* The applicant should clearly and concisely state what the continuation project is intended to accomplish.

b. *Need for Continuation.* The applicant should explain why continuation of the project is necessary to achieve the goals of the project, and how the continuation would benefit the participating courts or the courts community generally, by explaining, for example, how the original goals and objectives of the project would be unfulfilled if it were not continued; or how the value of the project would be enhanced by its continuation.

c. *Report of Current Project Activities.* The applicant should discuss the status of all activities conducted during the previous project period. Applicants should identify any activities that were not completed, and explain why.

d. *Evaluation Findings.* The applicant should present the key findings, impact, or recommendations resulting from the evaluation of the project, if available, and how they would be addressed during the proposed continuation. If the findings are not yet available, the applicant should provide the date by which they would be submitted to the Institute. Ordinarily, the Board will not consider an application for continuation funding until the Institute has received the evaluator's report.

e. *Tasks, Methods, Staff, and Grantee Capability.* The applicant should fully describe any changes in the tasks to be performed, the methods to be used, the products of the project, and how and to whom those products would be disseminated, as well as any changes in the assigned staff or the grantee's organizational capacity. Applicants should include, in addition, the criteria and methods by which the proposed continuation project would be evaluated.

f. *Task Schedule.* The applicant should present a detailed task schedule and timeline for the next project period.

g. *Other Sources of Support.* The applicant should indicate why other sources of support would be inadequate, inappropriate, or unavailable.

5. Budget and Budget Narrative

a. *Institute Funds.* The applicant should provide a complete budget and budget narrative conforming to the requirements set forth in VI.A.4. above. Changes in the funding level requested should be discussed in terms of corresponding increases or decreases in the scope of activities or services to be rendered. In addition, the applicant should estimate the amount of grant funds that would remain unobligated at the end of the current grant period.

b. *Matching Contribution.*

i. *State and local units of government* must provide match equaling at least 50% of the amount provided by the Institute in the first year of the project, 60% in the second year, 75% in the third year, 90% in the fourth year, and 100% in the fifth year.

For example, if the Institute awards a State court $100,000 for the first year of a grant, the court would be required to provide $50,000 in match. If the second-year grant is also $100,000, the court would be required to provide $60,000 in match. A State or local unit of government would have to provide at least 20% of the required match in the form of cash rather than in-kind support (*e.g.*, the value of staff time contributed to the project).

ii. *All other grantees* must provide match equaling at least 25% of the amount provided by the Institute in the first year of the project, 30% in the second year, 37.5% in the third year, 45% in the fourth year, and 50% in the fifth year. For example, if the Institute awards a non-profit organization $100,000 for the first year of a grant, the organization would be required to provide $25,000 in match. If the second year grant is also $100,000, the court would be required to provide $30,000 in

match. A non-profit organization must provide at least 10% of the required match in the form of cash.

iii. The Institute may waive the match and cash match requirements in certain circumstances. *See* section VIII.A.8.c.

6. References to Previously Submitted Material

A continuation application should not repeat information contained in a previously approved application or other previously submitted materials, but should provide specific references to such materials where appropriate.

7. Submission Requirements

The submission requirements set forth in section VI.A.5., other than the mailing deadline, apply to continuation applications.

D. Technical Assistance Grants

1. Purpose and Scope

Technical Assistance Grants are awarded to State and local courts to obtain the assistance of outside experts in diagnosing, developing, and implementing a response to a particular problem in a jurisdiction.

2. Application Procedures.

For a summary of the application procedures for Technical Assistance Grants, visit the Institute's Web site (*www.statejustice.org*) and click On-Line Tutorials, then Technical Assistance Grant.

In lieu of formal applications, applicants for Technical Assistance Grants may submit, at any time, an original and three copies of a detailed letter describing the proposed project. Letters from an individual trial or appellate court must be signed by the presiding judge or manager of that court. Letters from the State court system must be signed by the Chief Justice or State Court Administrator.

3. Application Format

Although there is no prescribed form for the letter nor a minimum or maximum page limit, letters of application should include the following information:

a. *Need for Funding.* What is the critical need facing the court? How would the proposed technical assistance help the court meet this critical need? Why cannot State or local resources fully support the costs of the required consultant services?

b. *Project Description.* What tasks would the consultant be expected to perform, and how would they be accomplished? Which organization or individual would be hired to provide the assistance, and how was this consultant selected? If a consultant has not yet been identified, what procedures and criteria would be used to select the consultant? (Applicants are expected to follow their jurisdictions' normal procedures for procuring consultant services.) What specific tasks would the consultant(s) and court staff undertake? What is the schedule for completion of each required task and the entire project? How would the court oversee the project and provide guidance to the consultant, and who at the court would be responsible for coordinating all project tasks and submitting quarterly progress and financial status reports?

If the consultant has been identified, the applicant should provide a letter from that individual or organization documenting interest in and availability for the project, as well as the consultant's ability to complete the assignment within the proposed time frame and for the proposed cost. The consultant must agree to submit a detailed written report to the court and the Institute upon completion of the technical assistance.

c. *Likelihood of Implementation.* What steps have been or would be taken to facilitate implementation of the consultant's recommendations upon completion of the technical assistance? For example, if the support or cooperation of specific court officials or committees, other agencies, funding bodies, organizations, or a court other than the applicant would be needed to adopt the changes recommended by the consultant and approved by the court, how would they be involved in the review of the recommendations and development of the implementation plan?

d. *Support for the Project from the State Supreme Court or its Designated Agency or Council.* Written concurrence on the need for the technical assistance must be submitted. This concurrence may be a copy of SJI Form B (see Appendix F) signed by the Chief Justice of the State Supreme Court or the Chief Justice's designee, or a letter from the State Chief Justice or designee. The concurrence may be submitted with the applicant's letter or under separate cover prior to consideration of the application. The concurrence also must specify whether the State Supreme Court would receive, administer, and account for the grant funds, if awarded, or would designate the local court or a specified agency or council to receive the funds directly.

4. Budget and Matching State Contribution

A completed Form E, *Line-Item Budget Form* (*see* appendix G), and budget narrative must be included with the letter requesting technical assistance. The estimated cost of the technical assistance services should be broken down into the categories listed on the budget form rather than aggregated under the Consultant/Contractual category.

The budget narrative should provide the basis for all project-related costs, including the basis for determining the estimated consultant costs, if compensation of the consultant is required (*e.g.,* the number of days per task times the requested daily consultant rate). Applicants should be aware that consultant rates above $300 per day must be approved in advance by the Institute, and that no consultant will be paid more than $900 per day from Institute funds. In addition, the budget should provide for submission of two copies of the consultant's final report to the Institute.

As with other awards to State or local courts, match must be provided in an amount equal to at least 50% of the grant amount requested, and 20% of the match provided must be cash. The Institute may waive the match and cash match requirements in certain circumstances. *See* section VIII.A.8.c.

Recipients of Technical Assistance Grants do not have to submit an audit but must maintain appropriate documentation to support expenditures. (*See* section VIII.A.3.)

5. Submission Requirements

Letters of application may be submitted at any time; however, all of the letters received during a calendar quarter will be considered at one time. Applicants submitting letters by September 26, 2003 will be notified of the Board's decision by December 5, 2003. Those submitting letters between September 27, 2003 and January 9, 2004 will be notified of the Institute's decision by April 2, 2004; those submitting letters between January 10 and February 27, 2004 will be notified by June 11, 2004; those submitting letters between February 28 and June 4, 2004 will be notified by August 27, 2004; and those submitting letters between June 5 and September 24, 2004 will be notified by December 10, 2004.

If the support or cooperation of agencies, funding bodies, organizations, or courts other than the applicant would be needed in order for the consultant to perform the required tasks, written assurances of such support or cooperation should accompany the application letter. Support letters also may be submitted under separate cover; however, to ensure that there is sufficient time to bring them to the

attention of the Board's Technical Assistance Committee, letters sent under separate cover must be received not less than three weeks prior to the Board meeting at which the technical assistance requests will be considered (*i.e.,* by October 15, 2003; and February 12, April 8, July 2, and October 14, 2004).

E. Judicial Branch Education Technical Assistance Grants

1. Purpose and Scope

Judicial Branch Education Technical Assistance (JBE TA) Grants are awarded to State and local courts to support: (1) The provision of expert strategic assistance designed to enable them to maintain judicial branch education programming during the current budget crisis; and/or (2) replication or modification of a model training program originally developed with Institute funds. Ordinarily, the Institute will support the adaptation of a curriculum once (*i.e.,* with one grant) in a given State.

JBE TA Grants may support consultant assistance in maintaining or developing systematic or innovative judicial branch educational programming. The assistance might include expert consultation in developing strategic plans to ensure the continued provision of judicial branch education programming despite fiscal constraints; development of improved methods for assessing the need for, and evaluating the quality and impact of, court education programs and their administration by State or local courts; faculty development; and/or topical program presentations. Such assistance may be tailored to address the needs of a particular State or local court or specific categories of court employees throughout a State and, in certain cases, in a region, if sponsored by a court.

2. Application Procedures

For a summary of the application procedures for Judicial Branch Education Technical Assistance Grants, visit the Institute's Web site (*www.statejustice.org*) and click on On-Line Tutorials, then Judicial Branch Education Technical Assistance Grant.

In lieu of formal applications, applicants should submit an original and three photocopies of a detailed letter.

3. Application Format

Although there is no prescribed format for the letter, or a minimum or maximum page limit, letters of application should include the following information:

a. For on-site consultant assistance:

(1) *Need for Funding.* What is the critical judicial branch educational need facing the court? How would the proposed technical assistance help the court meet this critical need? Why cannot State or local resources fully support the costs of the required consultant services?

(2) *Project Description.* What tasks would the consultant be expected to perform, and how would they be accomplished? Which organization or individual would be hired to provide the assistance, and how was this consultant selected? If a consultant has not yet been identified, what procedures and criteria would be used to select the consultant? (Applicants are expected to follow their jurisdictions' normal procedures for procuring consultant services.) What specific tasks would the consultant(s) and court staff undertake? What is the schedule for completion of each required task and the entire project? How would the court oversee the project and provide guidance to the consultant, and who at the court would be responsible for coordinating all project tasks and submitting quarterly progress and financial status reports?

If the consultant has been identified, the applicant should provide a letter from that individual or organization documenting interest in and availability for the project, as well as the consultant's ability to complete the assignment within the proposed time frame and for the proposed cost. The consultant must agree to submit a detailed written report to the court and the Institute upon completion of the technical assistance.

(3) *Likelihood of Implementation.* What steps have been or would be taken to facilitate implementation of the consultant's recommendations upon completion of the technical assistance? For example, if the support or cooperation of specific court officials or committees, other agencies, funding bodies, organizations, or a court other than the applicant would be needed to adopt the changes recommended by the consultant and approved by the court, how would they be involved in the review of the recommendations and development of the implementation plan?

(4) *Support for the Project from the State Supreme Court or its Designated Agency or Council.* Written concurrence on the need for the technical assistance must be submitted. This concurrence may be a copy of SJI Form B (see Appendix F) signed by the Chief Justice of the State Supreme Court or the Chief Justice's designee, or a letter from the State Chief Justice or designee. The concurrence may be submitted with the applicant's letter or under separate cover prior to consideration of the application. The concurrence also must specify whether the State Supreme Court would receive, administer, and account for the grant funds, if awarded, or would designate the local court or a specified agency or council to receive the funds directly.

b. For adaptation of a curriculum:

(1) *Project Description.* What is the title of the model curriculum to be adapted and who originally developed it with Institute funding? Why is this education program needed at the present time? What are the project's goals? What are the learning objectives of the adapted curriculum? What program components would be implemented, and what types of modifications, if any, are anticipated in length, format, learning objectives, teaching methods, or content? Who would be responsible for adapting the model curriculum? Who would the participants be, how many would there be, how would they be recruited, and from where would they come (*e.g.*, from across the State, from a single local jurisdiction, from a multi-State region)?

(2) *Need for Funding.* Why are sufficient State or local resources unavailable to fully support the modification and presentation of the model curriculum? What is the potential for replicating or integrating the adapted curriculum in the future using State or local funds, once it has been successfully adapted and tested?

(3) *Likelihood of Implementation.* What is the proposed timeline, including the project start and end dates? On what date(s) would the judicial branch education program be presented? What process would be used to modify and present the program? Who would serve as faculty, and how were they selected? What measures would be taken to facilitate subsequent presentations of the program? (Ordinarily, an independent evaluation of a curriculum adaptation project is not required; however, the results of any evaluation should be included in the final report.)

(4) *Expressions of Interest by Judges and/or Court Personnel.* Does the proposed program have the support of the court system leadership, and of judges, court managers, and judicial branch education personnel who are expected to attend? (Applicants may demonstrate this by attaching letters of support.)

(5) *Chief Justice's Concurrence.* Local courts should attach a concurrence form signed by the Chief Justice of the State

or his or her designee. (*See* Form B, appendix F.)

4. Budget and Matching State Contribution

Applicants should attach a copy of budget Form E (*see* appendix G) and a budget narrative (*see* A.4. in this section) that describes the basis for the computation of all project-related costs and the source of the match offered. As with other awards to State or local courts, match must be provided in an amount equal to at least 50% of the grant amount requested. Recipients of JBE TA grants are not required to provide a cash match. The Institute may waive the match requirements in certain circumstances. *See* section VIII.A.8.c.

5. Submission Requirements

Letters of application may be submitted at any time; however, all of the letters received during a calendar quarter will be considered at one time. Applicants submitting letters by September 26, 2003 will be notified of the Board's decision by December 5, 2003. Those submitting letters between September 27, 2003, and January 9, 2004 will be notified of the Institute's decision by April 2, 2004; those submitting letters between January 10 and February 27, 2004 will be notified by June 11, 2004; those submitting letters between March 1 and June 4, 2004 will be notified by August 27, 2004; and those submitting letters between June 5 and September 24, 2004 will be notified by December 10, 2004.

For curriculum adaptation requests, applicants should allow at least 60 days between the notification deadline and the date of the proposed program to allow sufficient time for needed planning. For example, a court that plans to conduct an education program in June 2004 should submit its application no later than January 9, 2004, in time for the Board's decision by April 2, 2004.

F. Scholarships

1. Purpose and Scope

The purposes of the Institute scholarship program are to enhance the skills, knowledge, and abilities of judges and court managers; enable State court judges and court managers to attend out-of-State educational programs sponsored by national and State providers that they could not otherwise attend because of limited State, local, and personal budgets; and provide States, judicial educators, and the Institute with evaluative information on a range of judicial and court-related education programs.

Scholarships will be granted to individuals only for the purpose of attending an educational program in another State. An applicant may apply for a scholarship for only one educational program during any one application cycle.

Scholarship funds may be used only to cover the costs of tuition and transportation expenses. Transportation expenses may include round-trip coach airfare or train fare. Scholarship recipients are strongly encouraged to take advantage of excursion or other special airfares (*e.g.*, reductions offered when a ticket is purchased 21 days in advance of the travel date) when making their travel arrangements. Recipients who drive to a program site may receive $.36/mile up to the amount of the advanced-purchase round-trip airfare between their homes and the program sites. Funds to pay tuition and transportation expenses in excess of $1,500 and other costs of attending the program—such as lodging, meals, materials, transportation to and from airports, and local transportation (including rental cars)—at the program site must be obtained from other sources or borne by the scholarship recipient. Scholarship applicants are encouraged to check other sources of financial assistance and to combine aid from various sources whenever possible.

A scholarship is not transferable to another individual. It may be used only for the course specified in the application unless the applicant's request to attend a different course that meets the eligibility requirements is approved in writing by the Institute. Decisions on such requests will be made within 30 days after the receipt of the request letter.

2. Eligibility Requirements

For a summary of the Scholarship award process, visit the Institute's Web site at *www.statejustice.org* and click on On-Line Tutorials, then Scholarship.

a. *Recipients.* Scholarships can be awarded only to full-time judges of State or local trial and appellate courts; full-time professional, State, or local court personnel with management responsibilities; and supervisory and management probation personnel in judicial branch probation offices. Senior judges, part-time judges, quasi-judicial hearing officers including referees and commissioners, administrative law judges, staff attorneys, law clerks, line staff, law enforcement officers, and other executive branch personnel are not eligible to receive a scholarship.

b. *Courses.* A Scholarship can be awarded only for a course presented in a State other than the one in which the applicant resides or works. The course must be designed to enhance the skills of new or experienced judges and court managers; address any of the topics listed in the Institute's Special Interest categories; or be offered by a recognized graduate program for judges or court managers. The annual or mid-year meeting of a State or national organization of which the applicant is a member does not qualify as an out-of-State educational program for scholarship purposes, even though it may include workshops or other training sessions.

Applicants are encouraged not to wait for the decision on a scholarship to register for an educational program they wish to attend.

3. Forms

a. Scholarship Application—FORM S–1 (Appendix H). The Scholarship Application requests basic information about the applicant and the educational program the applicant would like to attend. It also addresses the applicant's commitment to share the skills and knowledge gained with local court colleagues and to submit an evaluation of the program the applicant attends. The Scholarship Application must bear the original signature of the applicant. Faxed or photocopied signatures will not be accepted.

b. Scholarship Application Concurrence—FORM S–2 (Appendix H). Judges and court managers applying for Scholarships must submit the written concurrence of the Chief Justice of the State's Supreme Court (or the Chief Justice's designee) on the Institute's Judicial Education Scholarship Concurrence form (see Appendix H). The signature of the presiding judge of the applicant's court cannot be substituted for that of the Chief Justice or the Chief Justice's designee. Court managers, other than elected clerks of court, also must submit a letter of support from their immediate supervisors.

4. Submission Requirements

Scholarship applications must be submitted during the periods specified below:

October 6 and December 1, 2003, for programs beginning between January 1 and March 31, 2004;

January 5 and March 1, 2004 for programs beginning between April 1 and June 30, 2004;

April 5 and May 31, 2004 for programs beginning between July 1 and September 30, 2004;

July 6 and August 30, 2004 for programs beginning between October 1 and December 31, 2004; and

October 4 and November 29, 2004 for programs beginning between January 1 and March 31, 2005.

No exceptions or extensions will be granted. Applications sent prior to the beginning of an application period will be treated as having been sent one week after the beginning of that application period. All the required items must be received for an application to be considered. If the Concurrence form or letter of support is sent separately from the application, the postmark date of the last item to be sent will be used in applying the above criteria.

All applications should be sent by mail or courier (not fax or e-mail) to: Scholarship Program Coordinator, State Justice Institute, 1650 King Street, Suite 600, Alexandria, VA 22314.

VII. Application Review Procedures

A. Preliminary Inquiries

The Institute staff will answer inquiries concerning application procedures. The staff contact will be named in the Institute's letter acknowledging receipt of the application.

B. Selection Criteria

1. Project Grant and Continuation Grant Applications

a. All applications will be rated on the basis of the criteria set forth below. The Institute will accord the greatest weight to the following criteria:

(1) The soundness of the methodology;

(2) The demonstration of need for the project;

(3) The appropriateness of the proposed evaluation design;

(4) The applicant's management plan and organizational capabilities;

(5) The qualifications of the project's staff;

(6) The products and benefits resulting from the project, including the extent to which the project will have long-term benefits for State courts across the nation;

(7) The degree to which the findings, procedures, training, technology, or other results of the project can be transferred to other jurisdictions;

(8) The reasonableness of the proposed budget;

(9) The demonstration of cooperation and support of other agencies that may be affected by the project; and

(10) The proposed project's relationship to one of the Special Interest categories set forth in section II.A.

b. For continuation grant applications, the key findings and recommendations of evaluations and the proposed responses to those findings and recommendations also will be considered.

c. In determining which projects to support, the Institute will also consider whether the applicant is a State court, a national court support or education organization, a non-court unit of government, or other type of entity eligible to receive grants under the Institute's enabling legislation (*see* section IV.); the availability of financial assistance from other sources for the project; the amount and nature (cash and in-kind) of the applicant's match; the extent to which the proposed project would also benefit the Federal courts or help State courts enforce Federal constitutional and legislative requirements; and the level of appropriations available to the Institute in the current year and the amount expected to be available in succeeding fiscal years.

2. Technical Assistance Grant Applications

Technical Assistance Grant applications will be rated on the basis of the following criteria:

a. Whether the assistance would address a critical need of the court;

b. The soundness of the technical assistance approach to the problem;

c. The qualifications of the consultant(s) to be hired, or the specific criteria that will be used to select the consultant(s);

d. The court's commitment to act on the consultant's recommendations; and

e. The reasonableness of the proposed budget.

The Institute also will consider factors such as the level and nature of the match that would be provided, diversity of subject matter, geographic diversity, the level of appropriations available to the Institute in the current year, and the amount expected to be available in succeeding fiscal years.

3. Judicial Branch Education Technical Assistance Grant Applications

Judicial Branch Education Technical Assistance Grant applications will be rated on the basis of the following criteria:

a. For on-site consultant assistance:

(1) Whether the assistance would address a critical need of the court;

(2) The soundness of the technical assistance approach to the problem;

(3) The qualifications of the consultant(s) to be hired, or the specific criteria that will be used to select the consultant(s);

(4) The court's commitment to act on the consultant's recommendations; and

(5) The reasonableness of the proposed budget.

b. For curriculum adaptation projects:

(1) The goals and objectives of the proposed project;

(2) The need for outside funding to support the program;

(3) The appropriateness of the approach in achieving the project's educational objectives;

(4) The likelihood of effective implementation and integration of the modified curriculum into the State's or local jurisdiction's ongoing educational programming; and

(5) Expressions of interest by the judges and/or court personnel who would be directly involved in or affected by the project.

The Institute will also consider factors such as the reasonableness of the amount requested, compliance with match requirements, diversity of subject matter, geographic diversity, the level of appropriations available in the current year, and the amount expected to be available in succeeding fiscal years.

4. Scholarships

Scholarships will be awarded on the basis of:

a. The date on which the application and concurrence (and support letter, if required) were sent;

b. The unavailability of State or local funds to cover the costs of attending the program or scholarship funds from another source;

c. The absence of educational programs in the applicant's State addressing the topic(s) covered by the educational program for which the scholarship is being sought;

d. Geographic balance among the recipients;

e. The balance of scholarships among educational programs;

f. The balance of scholarships among the types of courts represented; and

g. The level of appropriations available to the Institute in the current year and the amount expected to be available in succeeding fiscal years.

The postmark or courier receipt will be used to determine the date on which the application form and other required items were sent.

C. Review and Approval Process

1. Project and Continuation Grant Applications

The Institute's Board of Directors will review the applications competitively. The Institute staff will prepare a narrative summary and a rating sheet assigning points for each relevant selection criterion for applications that fall within the scope of the Institute's grant program and merit serious consideration by the Board. The staff

will also prepare a list of those applications that, in the judgment of the Executive Director, propose projects that lie outside the scope of the Institute's program or are not likely to merit serious consideration by the Board. The staff will present the narrative summaries, rating sheets, and list of non-reviewed papers to the Board for its review. Board committees will review application summaries within assigned program areas and prepare recommendations for the full Board. The full Board of Directors will then decide which projects it will fund. The decision to fund a project is solely that of the Board of Directors.

The Chairman of the Board will sign approved awards on behalf of the Institute.

2. Technical Assistance and Judicial Branch Education Technical Assistance Grant Applications

The Institute staff will prepare a narrative summary of each application and a rating sheet assigning points for each relevant selection criterion. A committee of the Board of Directors will review the applications competitively. The Board of Directors has delegated its authority to approve Technical Assistance and Judicial Branch Education Technical Assistance Grants to the committee established for each program.

The Chairman of the Board will sign approved awards on behalf of the Institute.

3. Scholarships

A committee of the Institute's Board of Directors will review Scholarship applications quarterly. The Board of Directors has delegated its authority to approve Scholarships to the committee established for the program.

The Chairman of the Board will sign approved awards on behalf of the Institute.

D. Return Policy

Unless a specific request is made, unsuccessful applications will not be returned. Applicants are advised that Institute records are subject to the provisions of the Federal Freedom of Information Act, 5 U.S.C. 552.

E. Notification of Board Decision

1. The Institute will send written notice to applicants concerning all Board decisions to approve, defer, or deny their respective applications. For all applications (except Scholarships), the Institute also will convey the key issues and questions that arose during the review process. A decision by the Board to deny an application may not be appealed, but it does not prohibit resubmission of a proposal based on that application in a subsequent funding cycle. The Institute will also notify the State court administrator when grants are approved by the Board to support projects that will be conducted by or involve courts in that State.

2. The Institute intends to notify each Scholarship applicant of the Board committee's decision within 30 days after the close of the relevant application period.

F. Response to Notification of Approval

With the exception of those approved for Scholarships, applicants have 30 days from the date of the letter notifying them that the Board has approved their application to respond to any revisions requested by the Board. If the requested revisions (or a reasonable schedule for submitting such revisions) have not been submitted to the Institute within 30 days after notification, the approval may be rescinded and the application presented to the Board for reconsideration.

VIII. Compliance Requirements

The State Justice Institute Act contains limitations and conditions on grants, contracts, and cooperative agreements awarded by the Institute. The Board of Directors has approved additional policies governing the use of Institute grant funds. These statutory and policy requirements are set forth below.

A. Recipients of Project Grants

1. Advocacy

No funds made available by the Institute may be used to support or conduct training programs for the purpose of advocating particular nonjudicial public policies or encouraging nonjudicial political activities. 42 U.S.C. 10706(b).

2. Approval of Key Staff

If the qualifications of an employee or consultant assigned to a key project staff position are not described in the application or if there is a change of a person assigned to such a position, the recipient must submit a description of the qualifications of the newly assigned person to the Institute. Prior written approval of the qualifications of the new person assigned to a key staff position must be received from the Institute before the salary or consulting fee of that person and associated costs may be paid or reimbursed from grant funds.

3. Audit

Recipients of project grants must provide for an annual fiscal audit which includes an opinion on whether the financial statements of the grantee present fairly its financial position and its financial operations are in accordance with generally accepted accounting principles. (See section IX.K. of the Guideline for the requirements of such audits.) Scholarship recipients and recipients of Solutions Project State Court Information Collection Grants, Judicial Branch Education Technical Assistance Grants, and Technical Assistance Grants are not required to submit an audit, but they must maintain appropriate documentation to support all expenditures.

4. Budget Revisions

Budget revisions among direct cost categories that (i) transfer grant funds to an unbudgeted cost category or (ii) individually or cumulatively exceed five percent of the approved original budget or the most recently approved revised budget require prior Institute approval.

5. Conflict of Interest

Personnel and other officials connected with Institute-funded programs must adhere to the following requirements:

a. No official or employee of a recipient court or organization shall participate personally through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise in any proceeding, application, request for a ruling or other determination, contract, grant, cooperative agreement, claim, controversy, or other particular matter in which Institute funds are used, where, to his or her knowledge, he or she or his or her immediate family, partners, organization other than a public agency in which he or she is serving as officer, director, trustee, partner, or employee or any person or organization with whom he or she is negotiating or has any arrangement concerning prospective employment, has a financial interest.

b. In the use of Institute project funds, an official or employee of a recipient court or organization shall avoid any action which might result in or create the appearance of:

(1) Using an official position for private gain; or

(2) affecting adversely the confidence of the public in the integrity of the Institute program.

c. Requests for proposals or invitations for bids issued by a recipient of Institute funds or a subgrantee or subcontractor will provide notice to prospective bidders that the contractors who develop or draft specifications,

requirements, statements of work, and/or requests for proposals for a proposed procurement will be excluded from bidding on or submitting a proposal to compete for the award of such procurement.

6. Inventions and Patents

If any patentable items, patent rights, processes, or inventions are produced in the course of Institute-sponsored work, such fact shall be promptly and fully reported to the Institute. Unless there is a prior agreement between the grantee and the Institute on disposition of such items, the Institute shall determine whether protection of the invention or discovery shall be sought. The Institute will also determine how the rights in the invention or discovery, including rights under any patent issued thereon, shall be allocated and administered in order to protect the public interest consistent with ''Government Patent Policy'' (President's Memorandum for Heads of Executive Departments and Agencies, February 18, 1983, and statement of Government Patent Policy).

7. Lobbying

a. Funds awarded to recipients by the Institute shall not be used, indirectly or directly, to influence Executive Orders or similar promulgations by Federal, State or local agencies, or to influence the passage or defeat of any legislation by Federal, State or local legislative bodies. 42 U.S.C. 10706(a).

b. It is the policy of the Board of Directors to award funds only to support applications submitted by organizations that would carry out the objectives of their applications in an unbiased manner. Consistent with this policy and the provisions of 42 U.S.C. 10706, the Institute will not knowingly award a grant to an applicant that has, directly or through an entity that is part of the same organization as the applicant, advocated a position before Congress on the specific subject matter of the application.

8. Matching Requirements

All grantees other than scholarship recipients and individuals who receive ''think piece'' grants are required to provide match. See section III.L. for the definition of match. The amount and nature of required match depends on the type of organization receiving the grant and the duration of the Institute's support.

The grantee is responsible for ensuring that the total amount of match proposed is actually contributed. If a proposed contribution is not fully met, the Institute may reduce the award amount accordingly, in order to maintain the ratio originally provided for in the award agreement (see section IX.E.1.).

The Board of Directors considers the amount and nature of unrequired match contributed by applicants in making grant decisions. Cash match and non-cash match may be provided, subject to the requirements of subsections a. and b. below.

a. New Project Grants.

(1) *State and local units of government.* All awards to courts or other units of State or local government (not including publicly supported institutions of higher education) require a match from private or public sources of not less than 50% of the total amount of the Institute's award. For example, if a State court or executive branch agency receives a $100,000 grant from the Institute, it must provide a $50,000 match (50% of the $100,000 awarded by SJI). With the exception of Judicial Branch Education Technical Assistance Grants, at least 20% of the required match for a new grant ($10,000 in the example) must be provided in the form of cash rather than in-kind support (e.g., the value of staff time contributed to the project).

(2) *All other grantees.* All other grantees are required to contribute a match of 25% to a new SJI-funded project. For example, if a non-profit organization receives a $100,000 grant from SJI, it must provide a $25,000 match. A non-profit organization must provide at least 10% of the required match for a new grant ($2,500 in the example) in the form of cash.

b. Continuation Grants. All grantees are required to assume a greater share of project support over time.

(1) *State and local units of government.* State and local units of government are required to provide match equaling at least 50% of the amount provided by SJI in the first year of the project, 60% in the second year, 75% in the third year, 90% in the fourth year, and 100% in the fifth year. For example, if SJI awards a State court $100,000 for the first year of a grant, the court would be required to provide $50,000 in match. If the second-year grant is also $100,000, the court is required to provide $60,000 in match. A court that wishes to limit its second-year contribution to $50,000 may ask the Institute for a reduced amount, i.e., $83,333, in order to meet the 60% requirement.

(1) *All other grantees.* All other grantees are required to provide match equaling at least 25% of the amount provided by the Institute in the first year of the project, 30% in the second year, 37.5% in the third year, 45% in the fourth year, and 50% in the fifth year. For example, if the Institute awards a non-profit organization $100,000 for the first year of a grant, the organization must provide $25,000 in match. If the second-year grant is also $100,000, the grantee is required to provide $30,000 in match. An organization that wishes to limit its second-year contribution to $25,000 may ask the Institute for a reduced amount, i.e., $83,333, in order to meet the 30% requirement.

c. Waiver.

(1) *Match generally.*

(a) The match requirement for State and local units of government may be waived in exceptionally rare circumstances upon the request of the Chief Justice of the highest court in the State and approval by the Board of Directors. 42 U.S.C. 10705(d).

(b) The match requirement for all other grantees required to provide match may be waived in exceptionally rare circumstances upon the request of an appropriate official and approval by the Board of Directors

(2) *Cash match.* For all grantees required to provide cash match, the requirement may be waived upon the applicant's demonstration that providing the required cash match will cause the applicant a financial hardship.

(3) The Board of Directors encourages all applicants to provide the maximum amount of in-kind and cash match possible, even if a waiver is approved. The amount and nature of match are criteria in the grant selection process. *See* section VII.B.1.c.

9. Nondiscrimination

No person may, on the basis of race, sex, national origin, disability, color, or creed be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under any program or activity supported by Institute funds. Recipients of Institute funds must immediately take any measures necessary to effectuate this provision.

10. Political Activities

No recipient may contribute or make available Institute funds, program personnel, or equipment to any political party or association, or the campaign of any candidate for public or party office. Recipients are also prohibited from using funds in advocating or opposing any ballot measure, initiative, or referendum. Officers and employees of recipients shall not intentionally identify the Institute or recipients with any partisan or nonpartisan political activity associated with a political party or association, or the campaign of any

candidate for public or party office. 42 U.S.C. 10706(a).

11. Products

a. Acknowledgment, Logo, and Disclaimer.

(1) Recipients of Institute funds must acknowledge prominently on all products developed with grant funds that support was received from the Institute. The ''SJI'' logo must appear on the front cover of a written product, or in the opening frames of a video product, unless another placement is approved in writing by the Institute. This includes final products printed or otherwise reproduced during the grant period, as well as reprintings or reproductions of those materials following the end of the grant period. A camera-ready logo sheet is available from the Institute upon request.

(2) Recipients also must display the following disclaimer on all grant products: ''This [document, film, videotape, etc.] was developed under [grant/cooperative agreement] number SJI-[insert number] from the State Justice Institute. The points of view expressed are those of the [author(s), filmmaker(s), etc.] and do not necessarily represent the official position or policies of the State Justice Institute.''

b. Charges for Grant-Related Products/Recovery of Costs.

(1) When Institute funds fully cover the cost of developing, producing, and disseminating a product (*e.g.*, a report, curriculum, videotape, or software), the product should be distributed to the field without charge. When Institute funds only partially cover the development, production, or dissemination costs, the grantee may, with the Institute's prior written approval, recover its costs for developing, producing, and disseminating the material to those requesting it, to the extent that those costs were not covered by Institute funds or grantee matching contributions.

(2) Applicants should disclose their intent to sell grant-related products in the application. Grantees must obtain the written prior approval of the Institute of their plans to recover project costs through the sale of grant products. Written requests to recover costs ordinarily should be received during the grant period and should specify the nature and extent of the costs to be recouped, the reason that such costs were not budgeted (if the rationale was not disclosed in the approved application), the number of copies to be sold, the intended audience for the products to be sold, and the proposed sale price. If the product is to be sold for more than $25, the written request also should include a detailed itemization of costs that will be recovered and a certification that the costs were not supported by either Institute grant funds or grantee matching contributions.

(3) In the event that the sale of grant products results in revenues that exceed the costs to develop, produce, and disseminate the product, the revenue must continue to be used for the authorized purposes of the Institute-funded project or other purposes consistent with the State Justice Institute Act that have been approved by the Institute. See sections III.O. and IX.G. for requirements regarding project-related income realized during the project period.

c. Copyrights. Except as otherwise provided in the terms and conditions of an Institute award, a recipient is free to copyright any books, publications, or other copyrightable materials developed in the course of an Institute-supported project, but the Institute shall reserve a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the materials for purposes consistent with the State Justice Institute Act.

d. Distribution. In addition to the distribution specified in the grant application, grantees shall send:

(1) Fifteen (15) copies of each final product developed with grant funds to the Institute, unless the product was developed under either a Technical Assistance or a Judicial Branch Education Technical Assistance grant, in which case submission of 2 copies is required;

(2) An electronic version of the product in .html or .pdf format to the Institute; and

(3) One copy of each final product developed with grant funds to the library established in each State to collect materials prepared with Institute support. (A list of the libraries is contained in appendix C. Labels for these libraries are available on the Institute's Web site, *www.statejustice.org.*) Grantees that develop web-based electronic products must send a hard-copy document to the SJI-designated libraries and other appropriate audiences to alert them to the availability of the Web site or electronic product. Recipients of Judicial Branch Education Technical Assistance and Technical Assistance Grants are not required to submit final products to State libraries.

(5) A press release describing the project and announcing the results to a list of national and State judicial branch organizations provided by the Institute.

e. Institute Approval. No grant funds may be obligated for publication or reproduction of a final product developed with grant funds without the written approval of the Institute. Grantees shall submit a final draft of each written product to the Institute for review and approval. The draft must be submitted at least 30 days before the product is scheduled to be sent for publication or reproduction to permit Institute review and incorporation of any appropriate changes required by the Institute. Grantees must provide for timely reviews by the Institute of videotape or CD–ROM products at the treatment, script, rough cut, and final stages of development or their equivalents.

f. Original Material. All products prepared as the result of Institute-supported projects must be originally-developed material unless otherwise specified in the award documents. Material not originally developed that is included in such products must be properly identified, whether the material is in a verbatim or extensive paraphrase format.

12. Prohibition Against Litigation Support

No funds made available by the Institute may be used directly or indirectly to support legal assistance to parties in litigation, including cases involving capital punishment.

13. Reporting Requirements

a. Recipients of Institute funds other than Scholarships must submit Quarterly Progress and Financial Status Reports within 30 days of the close of each calendar quarter (that is, no later than January 30, April 30, July 30, and October 30). Two copies of each report must be sent. The Quarterly Progress Reports shall include a narrative description of project activities during the calendar quarter, the relationship between those activities and the task schedule and objectives set forth in the approved application or an approved adjustment thereto, any significant problem areas that have developed and how they will be resolved, and the activities scheduled during the next reporting period.

b. The quarterly Financial Status Report must be submitted in accordance with section IX.H.2. of this Guideline. A final project Progress Report and Financial Status Report shall be submitted within 90 days after the end of the grant period in accordance with section IX.L.1. of this Guideline.

14. Research

a. *Availability of Research Data for Secondary Analysis.* Upon request, grantees must make available for secondary analysis a diskette(s) or data tape(s) containing research and evaluation data collected under an Institute grant and the accompanying code manual. Grantees may recover the actual cost of duplicating and mailing or otherwise transmitting the data set and manual from the person or organization requesting the data. Grantees may provide the requested data set in the format in which it was created and analyzed.

b. *Confidentiality of Information.* Except as provided by Federal law other than the State Justice Institute Act, no recipient of financial assistance from SJI may use or reveal any research or statistical information furnished under the Act by any person and identifiable to any specific private person for any purpose other than the purpose for which the information was obtained. Such information and copies thereof shall be immune from legal process, and shall not, without the consent of the person furnishing such information, be admitted as evidence or used for any purpose in any action, suit, or other judicial, legislative, or administrative proceedings.

c. *Human Subject Protection.* All research involving human subjects shall be conducted with the informed consent of those subjects and in a manner that will ensure their privacy and freedom from risk or harm and the protection of persons who are not subjects of the research but would be affected by it, unless such procedures and safeguards would make the research impractical. In such instances, the Institute must approve procedures designed by the grantee to provide human subjects with relevant information about the research after their involvement and to minimize or eliminate risk or harm to those subjects due to their participation.

15. State and Local Court Applications

Each application for funding from a State or local court must be approved, consistent with State law, by the State's Supreme Court, or its designated agency or council. The Supreme Court or its designee shall receive, administer, and be accountable for all funds awarded on the basis of such an application. 42 U.S.C. 10705(b)(4).

16. Supplantation and Construction

To ensure that funds are used to supplement and improve the operation of State courts, rather than to support basic court services, funds shall not be used for the following purposes:

a. To supplant State or local funds supporting a program or activity (such as paying the salary of court employees who would be performing their normal duties as part of the project, or paying rent for space which is part of the court's normal operations);

b. to construct court facilities or structures, except to remodel existing facilities or to demonstrate new architectural or technological techniques, or to provide temporary facilities for new personnel or for personnel involved in a demonstration or experimental program; or

c. solely to purchase equipment.

17. Suspension of Funding

After providing a recipient reasonable notice and opportunity to submit written documentation demonstrating why fund termination or suspension should not occur, the Institute may terminate or suspend funding of a project that fails to comply substantially with the Act, the Guideline, or the terms and conditions of the award. 42 U.S.C. 10708(a).

18. Title to Property

At the conclusion of the project, title to all expendable and nonexpendable personal property purchased with Institute funds shall vest in the recipient court, organization, or individual that purchased the property if certification is made to and approved by the Institute that the property will continue to be used for the authorized purposes of the Institute-funded project or other purposes consistent with the State Justice Institute Act. If such certification is not made or the Institute disapproves such certification, title to all such property with an aggregate or individual value of $1,000 or more shall vest in the Institute, which will direct the disposition of the property.

B. Recipients of Judicial Branch Education Technical Assistance and Technical Assistance Grants

Recipients of Judicial Branch Education Technical Assistance and Technical Assistance Grants must comply with the requirements listed in section VIII.A. (except the requirements pertaining to audits in section VIII.A.3. and product dissemination in section VIII.A.11.d. and e.) and the reporting requirements below:

1. Judicial Branch Education Technical Assistance Grant Reporting Requirements

Recipients of Judicial Branch Education Technical Assistance Grants must:

a. Submit one copy of the manuals, handbooks, conference packets, or consultant's report developed under the grant at the conclusion of the grant period, along with a final report that includes any evaluation results and explains how the grantee intends to present the educational program in the future and/or implement the consultant's recommendations, as well as two copies of the consultant's report; and

b. complete a Technical Assistance Evaluation Form at the conclusion of the grant period, if appropriate.

2. Technical Assistance Grant Reporting Requirements

Recipients of Technical Assistance Grants must:

a. Submit to the Institute one copy of a final report that explains how it intends to act on the consultant's recommendations, as well as two copies of the consultant's written report; and

b. complete a Technical Assistance Evaluation Form at the conclusion of the grant period.

C. Scholarship Recipients

1. Scholarship recipients are responsible for disseminating the information received from the course to their court colleagues locally and, if possible, throughout the State (*e.g.*, by developing a formal seminar, circulating the written material, or discussing the information at a meeting or conference).

Recipients also must submit to the Institute a certificate of attendance at the program, an evaluation of the educational program they attended, and a copy of the notice of any scholarship funds received from other sources. A copy of the evaluation must be sent to the Chief Justice of the Scholarship recipient's State. A State or local jurisdiction may impose additional requirements on scholarship recipients.

2. To receive the funds authorized by a scholarship award, recipients must submit a Scholarship Payment Voucher (Form S3) together with a tuition statement from the program sponsor, and a transportation fare receipt (or statement of the driving mileage to and from the recipient's home to the site of the educational program).

Scholarship Payment Vouchers should be submitted within 90 days after the end of the course which the recipient attended.

3. Scholarship recipients are encouraged to check with their tax advisors to determine whether the scholarship constitutes taxable income under Federal and State law.

IX. Financial Requirements

A. Purpose

The purpose of this section is to establish accounting system requirements and offer guidance on procedures to assist all grantees, subgrantees, contractors, and other organizations in:

1. Complying with the statutory requirements for the award, disbursement, and accounting of funds;

2. complying with regulatory requirements of the Institute for the financial management and disposition of funds;

3. generating financial data to be used in planning, managing, and controlling projects; and

4. facilitating an effective audit of funded programs and projects.

B. References

Except where inconsistent with specific provisions of this Guideline, the following circulars are applicable to Institute grants and cooperative agreements under the same terms and conditions that apply to Federal grantees. The circulars supplement the requirements of this section for accounting systems and financial record-keeping and provide additional guidance on how these requirements may be satisfied. (Circulars may be obtained from OMB by calling 202–395–3080 or visiting the OMB Web site at *www.whitehouse.gov /OMB.*)

1. *Office of Management and Budget (OMB) Circular A–21,* Cost Principles for Educational Institutions.
2. *Office of Management and Budget (OMB) Circular A–87,* Cost Principles for State and Local Governments.
3. *Office of Management and Budget (OMB) Circular A–88* (revised), Indirect Cost Rates, Audit and Audit Follow-up at Educational Institutions.
4. *Office of Management and Budget (OMB) Circular A–102,* Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.
5. *Office of Management and Budget (OMB) Circular A–110,* Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations.
6. *Office of Management and Budget (OMB) Circular A–122,* Cost Principles for Non-profit Organizations.
7. *Office of Management and Budget (OMB) Circular A–128,* Audits of State and Local Governments.
8. *Office of Management and Budget (OMB) Circular A–133,* Audits of Institutions of Higher Education and Other Non-profit Institutions.

C. Supervision and Monitoring Responsibilities

1. Grantee Responsibilities

All grantees receiving awards from the Institute are responsible for the management and fiscal control of all funds. Responsibilities include accounting for receipts and expenditures, maintaining adequate financial records, and refunding expenditures disallowed by audits.

2. Responsibilities of State Supreme Court

a. Each application for funding from a State or local court must be approved, consistent with State law, by the State's Supreme Court, or its designated agency or council. (*See* section III.F.)

b. The State Supreme Court or its designee shall receive all Institute funds awarded to such courts; be responsible for assuring proper administration of Institute funds; and be responsible for all aspects of the project, including proper accounting and financial record-keeping by the subgrantee. These responsibilities include:

(1) *Reviewing Financial Operations.* The State Supreme Court or its designee should be familiar with, and periodically monitor, its subgrantees' financial operations, records system, and procedures. Particular attention should be directed to the maintenance of current financial data.

(2) *Recording Financial Activities.* The subgrantee's grant award or contract obligation, as well as cash advances and other financial activities, should be recorded in the financial records of the State Supreme Court or its designee in summary form. Subgrantee expenditures should be recorded on the books of the State Supreme Court or evidenced by report forms duly filed by the subgrantee. Matching contributions provided by subgrantees should likewise be recorded, as should any project income resulting from program operations.

(3) *Budgeting and Budget Review.* The State Supreme Court or its designee should ensure that each subgrantee prepares an adequate budget as the basis for its award commitment. The State Supreme Court maintain the detail of each project budget on file.

(4) *Accounting for Match.* The State Supreme Court or its designee will ensure that subgrantees comply with the match requirements specified in this Guideline (*see* section VIII.A.8.).

(5) *Audit Requirement.* The State Supreme Court or its designee is required to ensure that subgrantees meet the necessary audit requirements set forth by the Institute (*see* sections K. below and VIII.A.3.)

(6) *Reporting Irregularities.* The State Supreme Court, its designees, and its subgrantees are responsible for promptly reporting to the Institute the nature and circumstances surrounding any financial irregularities discovered.

D. Accounting System

The grantee is responsible for establishing and maintaining an adequate system of accounting and internal controls and for ensuring that an adequate system exists for each of its subgrantees and contractors. An acceptable and adequate accounting system:

1. Properly accounts for receipt of funds under each grant awarded and the expenditure of funds for each grant by category of expenditure (including matching contributions and project income);
2. Assures that expended funds are applied to the appropriate budget category included within the approved grant;
3. Presents and classifies historical costs of the grant as required for budgetary and evaluation purposes;
4. Provides cost and property controls to assure optimal use of grant funds;
5. Is integrated with a system of internal controls adequate to safeguard the funds and assets covered, check the accuracy and reliability of the accounting data, promote operational efficiency, and assure conformance with any general or special conditions of the grant;
6. Meets the prescribed requirements for periodic financial reporting of operations; and
7. Provides financial data for planning, control, measurement, and evaluation of direct and indirect costs.

E. Total Cost Budgeting and Accounting

Accounting for all funds awarded by the Institute must be structured and executed on a total project cost basis. That is, total project costs, including Institute funds, State and local matching shares, and any other fund sources included in the approved project budget serve as the foundation for fiscal administration and accounting. Grant applications and financial reports require budget and cost estimates on the basis of total costs.

1. Timing of Matching Contributions

Matching contributions need not be applied at the exact time of the obligation of Institute funds. Ordinarily, the full matching share must be obligated during the award period; however, with the written permission of

the Institute, contributions made following approval of the grant by the Institute's Board of Directors but before the beginning of the grant may be counted as match. Grantees that do not contemplate making matching contributions continuously throughout the course of a project, or on a task-by-task basis, are required to submit a schedule within 30 days after the beginning of the project period indicating at what points during the project period the matching contributions will be made. If a proposed cash or in-kind match is not fully met, the Institute may reduce the award amount accordingly to maintain the ratio of grant funds to matching funds stated in the award agreement.

2. Records for Match

All grantees must maintain records which clearly show the source, amount, and timing of all matching contributions. In addition, if a project has included, within its approved budget, contributions which exceed the required matching portion, the grantee must maintain records of those contributions in the same manner as it does Institute funds and required matching shares. For all grants made to State and local courts, the State Supreme Court has primary responsibility for grantee/subgrantee compliance with the requirements of this section. (*See* section IX.C.2. above.)

F. Maintenance and Retention of Records

All financial records, including supporting documents, statistical records, and all other information pertinent to grants, subgrants, cooperative agreements, or contracts under grants, must be retained by each organization participating in a project for at least three years for purposes of examination and audit. State Supreme Courts may impose record retention and maintenance requirements in addition to those prescribed in this section.

1. Coverage

The retention requirement extends to books of original entry, source documents supporting accounting transactions, the general ledger, subsidiary ledgers, personnel and payroll records, canceled checks, and related documents and records. Source documents include copies of all grant and subgrant awards, applications, and required grantee/subgrantee financial and narrative reports. Personnel and payroll records shall include the time and attendance reports for all individuals reimbursed under a grant, subgrant or contract, whether they are employed full-time or part-time. Time and effort reports are required for consultants.

2. Retention Period

The three-year retention period starts from the date of the submission of the final expenditure report.

3. Maintenance

Grantees and subgrantees are expected to see that records of different fiscal years are separately identified and maintained so that requested information can be readily located. Grantees and subgrantees are also obligated to protect records adequately against fire or other damage. When records are stored away from the grantee's/subgrantee's principal office, a written index of the location of stored records should be on hand, and ready access should be assured.

4. Access

Grantees and subgrantees must give any authorized representative of the Institute access to and the right to examine all records, books, papers, and documents related to an Institute grant.

G. Project-Related Income

Records of the receipt and disposition of project-related income must be maintained by the grantee in the same manner as required for the project funds that gave rise to the income and must be reported to the Institute. (*See* section IX.H.2. below.) The policies governing the disposition of the various types of project-related income are listed below.

1. Interest

A State and any agency or instrumentality of a State, including institutions of higher education and hospitals, shall not be held accountable for interest earned on advances of project funds. When funds are awarded to subgrantees through a State, the subgrantees are not held accountable for interest earned on advances of project funds. Local units of government and nonprofit organizations that are grantees must refund any interest earned. Grantees shall ensure minimum balances in their respective grant cash accounts.

2. Royalties

The grantee/subgrantee may retain all royalties received from copyrights or other works developed under projects or from patents and inventions, unless the terms and conditions of the grant provide otherwise.

3. Registration and Tuition Fees

Registration and tuition fees may be considered as cash match with the prior written approval of the Institute. Estimates of registration and tuition fees, and any expenses to be offset by the fees, should be included in the application budget forms and narrative.

4. Income From the Sale of Grant Products

If the sale of products occurs during the project period, the income may be treated as cash match with the prior written approval of the Institute. The costs and income generated by the sales must be reported on the Quarterly Financial Status Reports and documented in an auditable manner. Whenever possible, the intent to sell a product should be disclosed in the application or reported to the Institute in writing once a decision to sell products has been made. The grantee must request approval to recover its product development, reproduction, and dissemination costs as specified in section VIII.A.11.b.

5. Other

Other project income shall be treated in accordance with disposition instructions set forth in the grant's terms and conditions.

H. Payments and Financial Reporting Requirements

1. Payment of Grant Funds

The procedures and regulations set forth below are applicable to all Institute grant funds and grantees.

a. *Request for Advance or Reimbursement of Funds.* Grantees will receive funds on a ''check-issued'' basis. Upon receipt, review, and approval of a Request for Advance or Reimbursement by the Institute, a check will be issued directly to the grantee or its designated fiscal agent. A request must be limited to the grantee's immediate cash needs. The Request for Advance or Reimbursement, along with the instructions for its preparation, will be included in the official Institute award package.

b. *Continuation Awards.* For purposes of submitting Requests for Advance or Reimbursement, recipients of continuation grants should treat each grant as a new project and number the requests accordingly (*i.e.,* on a grant rather than a project basis). For example, the first request for payment from a continuation grant would be number 1, the second number 2, etc. (*See* Appendix B, Answers to Grantees' Frequently Asked Questions, for further guidance.)

c. *Termination of Advance and Reimbursement Funding.* When a grantee organization receiving cash advances from the Institute:

(1) Demonstrates an unwillingness or inability to attain program or project goals, or to establish procedures that will minimize the time elapsing between cash advances and disbursements, or cannot adhere to guideline requirements or special conditions;

(2) engages in the improper award and administration of subgrants or contracts; or

(3) is unable to submit reliable and/or timely reports; the Institute may terminate advance financing and require the grantee organization to finance its operations with its own working capital. Payments to the grantee shall then be made by check to reimburse the grantee for actual cash disbursements. In the event the grantee continues to be deficient, the Institute may suspend reimbursement payments until the deficiencies are corrected.

d. *Principle of Minimum Cash on Hand.* Grantees should request funds based upon immediate disbursement requirements. Grantees should time their requests to ensure that cash on hand is the minimum needed for disbursements to be made immediately or within a few days.

2. Financial Reporting

a. *General Requirements.* To obtain financial information concerning the use of funds, the Institute requires that grantees/subgrantees submit timely reports for review.

b. Two copies of the Financial Status Report are required from all grantees, other than scholarship recipients, for each active quarter on a calendar-quarter basis. This report is due within 30 days after the close of the calendar quarter. It is designed to provide financial information relating to Institute funds, State and local matching shares, project income, and any other sources of funds for the project, as well as information on obligations and outlays. A copy of the Financial Status Report, along with instructions for its preparation, is included in each official Institute Award package. If a grantee requests substantial payments for a project prior to the completion of a given quarter, the Institute may request a brief summary of the amount requested, by object class, to support the Request for Advance or Reimbursement.

c. *Additional Requirements for Continuation Grants.* Grantees receiving continuation grants should number their quarterly Financial Status Reports on a grant rather than a project basis. For example, the first quarterly report for a continuation grant award should be number 1, the second number 2, etc.

3. Consequences of Non-Compliance with Submission Requirement

Failure of the grantee to submit required financial and progress reports may result in suspension or termination of grant payments.

I. Allowability of Costs

1. General

Except as may be otherwise provided in the conditions of a particular grant, cost allowability is determined in accordance with the principles set forth in *OMB Circulars A–21,* Cost Principles Applicable to Grants and Contracts with Educational Institutions; *A–87,* Cost Principles for State and Local Governments; and *A–122,* Cost Principles for Non-profit Organizations. No costs may be recovered to liquidate obligations incurred after the approved grant period. Circulars may be obtained from OMB by calling 202–395–3080 or visiting the OMB Web site at *www.whitehouse.gov/OMB.*

2. Costs Requiring Prior Approval

a. *Pre-agreement Costs.* The written prior approval of the Institute is required for costs considered necessary but which occur prior to the start date of the project period.

b. *Equipment.* Grant funds may be used to purchase or lease only that equipment essential to accomplishing the goals and objectives of the project. The written prior approval of the Institute is required when the amount of automated data processing (ADP) equipment to be purchased or leased exceeds $10,000 or software to be purchased exceeds $3,000.

c. *Consultants.* The written prior approval of the Institute is required when the rate of compensation to be paid a consultant exceeds $300 a day. Institute funds may not be used to pay a consultant more than $900 per day.

d. *Budget Revisions.* Budget revisions among direct cost categories that (i) transfer grant funds to an unbudgeted cost category or (ii) individually or cumulatively exceed five percent (5%) of the approved original budget or the most recently approved revised budget require prior Institute approval. *See* section X.A.1.

3. Travel Costs

Transportation and per diem rates must comply with the policies of the grantee. If the grantee does not have an established written travel policy, then travel rates must be consistent with those established by the Institute or the Federal Government. Institute funds may not be used to cover the transportation or per diem costs of a member of a national organization to attend an annual or other regular meeting of that organization.

4. Indirect Costs

These are costs of an organization that are not readily assignable to a particular project but are necessary to the operation of the organization and the performance of the project. The cost of operating and maintaining facilities, depreciation, and administrative salaries are examples of the types of costs that are usually treated as indirect costs. Although the Institute's policy requires all costs to be budgeted directly, it will accept indirect costs if a grantee has an indirect cost rate approved by a Federal agency as set forth below. However, recoverable indirect costs are limited to no more than 75% of a grantee's direct personnel costs (salaries plus fringe benefits). Grantees may apply unrecoverable indirect costs to meet their required matching contributions, including the required level of cash match. *See* sections III.L. and VI.A.4.k.

a. *Approved Plan Available.*

(1) A copy of an indirect cost rate agreement or allocation plan approved for a grantee during the preceding two years by any Federal granting agency on the basis of allocation methods substantially in accord with those set forth in the applicable cost circulars must be submitted to the Institute.

(2) Where flat rates are accepted in lieu of actual indirect costs, grantees may not also charge expenses normally included in overhead pools, e.g., accounting services, legal services, building occupancy and maintenance, etc., as direct costs.

b. *Establishment of Indirect Cost Rates.* To be reimbursed for indirect costs, a grantee must first establish an appropriate indirect cost rate. To do this, the grantee must prepare an indirect cost rate proposal and submit it to the Institute within three months after the start of the grant period to assure recovery of the full amount of allowable indirect costs. The rate must be developed in accordance with principles and procedures appropriate to the type of grantee institution involved as specified in the applicable OMB Circular.

c. *No Approved Plan.* If an indirect cost proposal for recovery of indirect costs is not submitted to the Institute within three months after the start of the grant period, indirect costs will be irrevocably disallowed for all months prior to the month that the indirect cost proposal is received.

J. Procurement and Property Management Standards

1. Procurement Standards

For State and local governments, the Institute has adopted the standards set forth in Attachment O of *OMB Circular A–102.* Institutions of higher education, hospitals, and other non-profit organizations will be governed by the standards set forth in Attachment O of *OMB Circular A–110.*

2. Property Management Standards

The property management standards as prescribed in Attachment N of *OMB Circulars A–102* and *A–110* apply to all Institute grantees and subgrantees except as provided in section VIII.A.18. All grantees/subgrantees are required to be prudent in the acquisition and management of property with grant funds. If suitable property required for the successful execution of projects is already available within the grantee or subgrantee organization, expenditures of grant funds for the acquisition of new property will be considered unnecessary.

K. Audit Requirements

1. Implementation

Each recipient of a Project Grant (other than a State court receiving an information collection grant in connection with the Solutions Project) must provide for an annual fiscal audit. This requirement also applies to a State or local court receiving a subgrant from the State Supreme Court. The audit may be of the entire grantee or subgrantee organization or of the specific project funded by the Institute. Audits conducted in accordance with the Single Audit Act of 1984 and *OMB Circular A–128,* or *OMB Circular A–133,* will satisfy the requirement for an annual fiscal audit. The audit must be conducted by an independent Certified Public Accountant, or a State or local agency authorized to audit government agencies. Grantees must send two copies of the audit report to the Institute. Grantees that receive funds from a Federal agency and satisfy audit requirements of the cognizant Federal agency must submit two copies of the audit report prepared for that Federal agency to the Institute in order to satisfy the provisions of this section.

2. Resolution and Clearance of Audit Reports

Timely action on recommendations by responsible management officials is an integral part of the effectiveness of an audit. Each grantee must have policies and procedures for acting on audit recommendations by designating officials responsible for: follow-up; maintaining a record of the actions taken on recommendations and time schedules; responding to and acting on audit recommendations; and submitting periodic reports to the Institute on recommendations and actions taken.

3. Consequences of Non-Resolution of Audit Issues

Ordinarily, the Institute will not make a new grant award to an applicant that has an unresolved audit report involving Institute awards. Failure of the grantee to resolve audit questions may also result in the suspension or termination of payments for active Institute grants to that organization.

L. Close-Out of Grants

1. Grantee Close-Out Requirements

Within 90 days after the end date of the grant or any approved extension thereof (*see* section IX.L.2. below), the following documents must be submitted to the Institute by grantees (other than scholarship recipients):

a. *Financial Status Report.* The final report of expenditures must have no unliquidated obligations and must indicate the exact balance of unobligated funds. Any unobligated/unexpended funds will be deobligated from the award by the Institute. Final payment requests for obligations incurred during the award period must be submitted to the Institute prior to the end of the 90-day close-out period. Grantees on a check-issued basis, who have drawn down funds in excess of their obligations/expenditures, must return any unused funds as soon as it is determined that the funds are not required. In no case should any unused funds remain with the grantee beyond the submission date of the final Financial Status Report.

b. *Final Progress Report.* This report should describe the project activities during the final calendar quarter of the project and the close-out period, including to whom project products have been disseminated; provide a summary of activities during the entire project; specify whether all the objectives set forth in the approved application or an approved adjustment have been met and, if any of the objectives have not been met, explain why not; and discuss what, if anything, could have been done differently that might have enhanced the impact of the project or improved its operation.

These reporting requirements apply at the conclusion of every grant other than a scholarship, even when the project will continue under a continuation grant.

2. Extension of Close-out Period

Upon the written request of the grantee, the Institute may extend the close-out period to assure completion of the grantee's close-out requirements. Requests for an extension must be submitted at least 14 days before the end of the close-out period and must explain why the extension is necessary and what steps will be taken to assure that all the grantee's responsibilities will be met by the end of the extension period.

X. Grant Adjustments

All requests for programmatic or budgetary adjustments requiring Institute approval must be submitted by the project director in a timely manner (ordinarily 30 days prior to the implementation of the adjustment being requested). All requests for changes from the approved application will be carefully reviewed for both consistency with this Guideline and the enhancement of grant goals and objectives.

A. Grant Adjustments Requiring Prior Written Approval

There are several types of grant adjustments that require the prior written approval of the Institute. Examples of these adjustments include:

1. Budget revisions among direct cost categories that (a) transfer grant funds to an unbudgeted cost category or (b) individually or cumulatively exceed five percent (5%) of the approved original budget or the most recently approved revised budget. See section IX.I.2.d.

For continuation grants, funds from the original award may be used during the new grant period and funds awarded through a continuation grant may be used to cover project-related expenditures incurred during the original award period, with the prior written approval of the Institute.

2. A change in the scope of work to be performed or the objectives of the project (*see* D. below in this section).

3. A change in the project site.

4. A change in the project period, such as an extension of the grant period and/or extension of the final financial or progress report deadline (*see* E. below).

5. Satisfaction of special conditions, if required.

6. A change in or temporary absence of the project director (*see* F. and G. below).

7. The assignment of an employee or consultant to a key staff position whose qualifications were not described in the application, or a change of a person assigned to a key project staff position (*see* section VIII.A.2.).

8. A change in or temporary absence of the person responsible for managing and reporting on the grant's finances.

9. A change in the name of the grantee organization.

10. A transfer or contracting out of grant-supported activities (*see* H. below).

11. A transfer of the grant to another recipient.

12. Preagreement costs (*see* section IX.I.2.a.).

13. The purchase of automated data processing equipment and software (*see* section IX.I.2.b.).

14. Consultant rates (*see* section IX.I.2.c.).

15. A change in the nature or number of the products to be prepared or the manner in which a product would be distributed.

B. Requests for Grant Adjustments

All grantees must promptly notify their SJI program managers, in writing, of events or proposed changes that may require adjustments to the approved project design. In requesting an adjustment, the grantee must set forth the reasons and basis for the proposed adjustment and any other information the program manager determines would help the Institute's review.

C. Notification of Approval/Disapproval

If the request is approved, the grantee will be sent a Grant Adjustment signed by the Executive Director or his designee. If the request is denied, the grantee will be sent a written explanation of the reasons for the denial.

D. Changes in the Scope of the Grant

Major changes in scope, duration, training methodology, or other significant areas must be approved in advance by the Institute. A grantee may make minor changes in methodology, approach, or other aspects of the grant to expedite achievement of the grant's objectives with subsequent notification of the SJI program manager.

E. Date Changes

A request to change or extend the grant period must be made at least 30 days in advance of the end date of the grant. A revised task plan should accompany a request for a no-cost extension of the grant period, along with a revised budget if shifts among budget categories will be needed. A request to change or extend the deadline for the final financial report or final progress report must be made at least 14 days in advance of the report deadline (*see* section IX.L.2.).

F. Temporary Absence of the Project Director

Whenever an absence of the project director is expected to exceed a continuous period of one month, the plans for the conduct of the project director's duties during such absence must be approved in advance by the Institute. This information must be provided in a letter signed by an authorized representative of the grantee/subgrantee at least 30 days before the departure of the project director, or as soon as it is known that the project director will be absent. The grant may be terminated if arrangements are not approved in advance by the Institute.

G. Withdrawal of/Change in Project Director

If the project director relinquishes or expects to relinquish active direction of the project, the Institute must be notified immediately. In such cases, if the grantee/subgrantee wishes to terminate the project, the Institute will forward procedural instructions upon notification of such intent. If the grantee wishes to continue the project under the direction of another individual, a statement of the candidate's qualifications should be sent to the Institute for review and approval. The grant may be terminated if the qualifications of the proposed individual are not approved in advance by the Institute.

H. Transferring or Contracting Out of Grant-Supported Activities

No principal activity of a grant-supported project may be transferred or contracted out to another organization without specific prior approval by the Institute. All such arrangements must be formalized in a contract or other written agreement between the parties involved. Copies of the proposed contract or agreement must be submitted for prior approval of the Institute at the earliest possible time. The contract or agreement must state, at a minimum, the activities to be performed, the time schedule, the policies and procedures to be followed, the dollar limitation of the agreement, and the cost principles to be followed in determining what costs, both direct and indirect, will be allowed. The contract or other written agreement must not affect the grantee's overall responsibility for the direction of the project and accountability to the Institute.

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David I. Tevelin,

Executive Director.

Appendix A—Recommendations to Grant Writers

Over the past 17 years, the Institute staff has reviewed almost 4,000 proposals. On the basis of those reviews, inquiries from applicants, and the views of the Board, the Institute offers the following recommendations to help potential applicants present workable, understandable proposals that can meet the funding criteria set forth in this Guideline.

The Institute suggests that applicants make certain that they address the questions and issues set forth below when preparing an application. Applications should, however, be presented in the format specified in section VI. of the Guideline.

1. What Is the Subject or Problem You Wish To Address?

Describe the subject or problem and how it affects the courts and the public. Discuss how your approach will improve the situation or advance the state of the art or knowledge, and explain why it is the most appropriate approach to take. When statistics or research findings are cited to support a statement or position, the source of the citation should be referenced in a footnote or a reference list.

2. What Do You Want To Do?

Explain the goal(s) of the project in simple, straightforward terms. The goals should describe the intended consequences or expected overall effect of the proposed project (*e.g.*, to enable judges to sentence drug-abusing offenders more effectively, or to dispose of civil cases within 24 months), rather than the tasks or activities to be

conducted (*e.g.*, hold 3 training sessions, or install a new computer system).

To the greatest extent possible, an applicant should avoid a specialized vocabulary that is not readily understood by the general public. Technical jargon does not enhance a paper, nor does a clever but uninformative title.

3. How Will You Do It?

Describe the methodology carefully so that what you propose to do and how you would do it are clear. All proposed tasks should be set forth so that a reviewer can see a logical progression of tasks, and relate those tasks directly to the accomplishment of the project's goal(s). When in doubt about whether to provide a more detailed explanation or to assume a particular level of knowledge or expertise on the part of the reviewers, provide the additional information. A description of project tasks also will help identify necessary budget items. All staff positions and project costs should relate directly to the tasks described. The Institute encourages applicants to attach letters of cooperation and support from the courts and related agencies that will be involved in or directly affected by the proposed project.

4. How Will You Know It Works?

Include an evaluation component that will determine whether the proposed training, procedure, service, or technology accomplished the objectives it was designed to meet. Applications should present the criteria that will be used to evaluate the project's effectiveness; identify program elements that will require further modification; and describe how the evaluation will be conducted, when it will occur during the project period, who will conduct it, and what specific measures will be used. In most instances, the evaluation should be conducted by persons not connected with the implementation of the procedure, training, service, or technique, or the administration of the project.

The Institute has also prepared a more thorough list of recommendations to grant writers regarding the development of project evaluation plans. Those recommendations are available from the Institute upon request.

5. How Will Others Find Out About It?

Include a plan to disseminate the results of the training, research, or demonstration beyond the jurisdictions and individuals directly affected by the project. The plan should identify the specific methods that will be used to inform the field about the project, such as the publication of law review or journal articles, or the distribution of key materials. A statement that a report or research findings ''will be made available to'' the field is not sufficient. The specific means of distribution or dissemination as well as the types of recipients should be identified. Reproduction and dissemination costs are allowable budget items.

6. What Are the Specific Costs Involved?

The budget in an application should be presented clearly. Major budget categories such as personnel, benefits, travel, supplies, equipment, and indirect costs should be identified separately. The components of ''Other'' or ''Miscellaneous'' items should be specified in the application budget narrative, and should not include set-asides for undefined contingencies.

7. What, If Any, Match Is Being Offered?

Courts and other units of State and local government (not including publicly-supported institutions of higher education) are required to contribute a match of at least 50 percent of the funds requested from the Institute for a new grant. Except in the case of Judicial Branch Education Technical Assistance grants, at least 20% of the required match must be in the form of cash. All other applicants must contribute a match of 25% to a new SJI-funded project, and at least 10% of that match must be in the form of cash.

The match requirement works as follows: If, for example, a State court system receives a $100,000 grant from the Institute, it must provide a $50,000 match; at least 20% of the required match for a new grant ($10,000 in the example) must be in the form of cash rather than in-kind support (*e.g.*, the value of staff time contributed to the project). If a non-profit organization receives a $100,000 grant from SJI, it must provide a $25,000 match, and at least 10% of that match ($2,500 in the example) must be in the form of cash.

Cash match includes funds directly contributed to the project by the applicant, or by other private or authorized public sources; income generated from tuition fees or the sale of project products during the grant period; and funds dedicated to the project by the grantee's assumption of approved indirect costs.

Non-cash match refers to in-kind contributions by the applicant, or other private or authorized public sources. This includes, for example, the monetary value of time contributed by existing personnel or members of an advisory committee (but not the time spent by participants in an educational program attending program sessions). The nature of the match (cash or in-kind) should be explained, and the tasks and line items for which costs will be covered wholly or in part by match should be specified.

The Institute may waive the match and cash match requirements in certain circumstances. *See* section VIII.A.8.c.

8. Which of the Two Budget Forms Should Be Used?

Section VI.A.1.c. of the SJI Grant Guideline encourages use of the spreadsheet format of Form C1 if the application requests $100,000 or more. Form C1 also works well for projects with discrete tasks, regardless of the dollar value of the project. Form C, the tabular format, is preferred for projects lacking a number of discrete tasks, or for projects requiring less than $100,000 of Institute funding. Generally, use the form that best lends itself to representing most accurately the budget estimates for the project.

9. How Much Detail Should Be Included in the Budget Narrative?

The budget narrative of an application should provide the basis for computing all project-related costs, as indicated in section VI.A.4. of the Guideline. To avoid common shortcomings of application budget narratives, applicants should include the following information:

Personnel estimates that accurately provide the amount of time to be spent by personnel involved with the project and the total associated costs, including current salaries for the designated personnel (*e.g.*, Project Director, 50% for one year, annual salary of $50,000 = $25,000). If salary costs are computed using an hourly or daily rate, the annual salary and number of hours or days in a work-year should be shown.

Estimates for supplies and expenses supported by a complete description of the supplies to be used, the nature and extent of printing to be done, anticipated telephone charges, and other common expenditures, with the basis for computing the estimates included (*e.g.*, 100 reports × 75 pages each × .05/page = $375.00). Supply and expense estimates offered simply as ''based on experience'' are not sufficient.

In order to expedite Institute review of the budget, make a final comparison of the amounts listed in the budget narrative with those listed on the budget form. In the rush to complete all parts of the application on time, there may be many last-minute changes; unfortunately, when there are discrepancies between the budget narrative and the budget form or the amount listed on the application cover sheet, it is not possible for the Institute to verify the amount of the request. A final check of the numbers on the form against those in the narrative will preclude such confusion.

10. What Travel Regulations Apply to the Budget Estimates?

Transportation costs and per diem rates must comply with the policies of the applicant organization, and a copy of the applicant's travel policy should be submitted as an appendix to the application. If the applicant does not have a travel policy established in writing, then travel rates must be consistent with those established by the Institute or the Federal Government (a copy of the Institute's travel policy is available upon request). The budget narrative should state which policies apply to the project.

The budget narrative also should include the estimated fare, the number of persons traveling, the number of trips to be taken, and the length of stay. The estimated costs of travel, lodging, ground transportation, and other subsistence should be listed and explained separately. It is preferable for the budget to be based on the actual costs of traveling to and from the project or meeting sites. If the points of origin or destination are not known at the time the budget is prepared, an average airfare may be used to estimate the travel costs. For example, if it is anticipated that a project advisory committee will include members from around the country, a reasonable airfare from a central point to the meeting site, or the average of airfares from each coast to the meeting site, may be used. Applicants should arrange travel so as to be able to take advantage of advanced-purchase price discounts whenever possible.

11. May Grant Funds Be Used To Purchase Equipment?

Generally, grant funds may be used to purchase only the equipment that is necessary to demonstrate a new technological application in a court, or that is otherwise essential to accomplishing the objectives of the project. The budget narrative must list the equipment to be purchased and explain why the equipment is necessary to the success of the project. The Institute's written prior approval is required when the amount of computer hardware to be purchased or leased exceeds $10,000, or the software to be purchased exceeds $3,000.

12. To What Extent May Indirect Costs Be Included in the Budget Estimates?

If an indirect cost rate has been approved by a Federal agency within the last two years, an indirect cost recovery estimate may be included in the budget. Recoverable indirect costs are limited to no more than 75% of a grantee's direct personnel costs (salaries plus fringe benefits). Grantees may apply unrecoverable indirect costs to meet their required matching contributions, including the required level of cash match. A copy of the approved indirect cost rate agreement should be submitted as an appendix to the application.

If an applicant does not have an approved rate agreement and cannot budget directly for all costs, an indirect cost rate proposal should be prepared in accordance with section IX.I.4. of the Guideline, based on the applicant's audited financial statements for the prior fiscal year. (Applicants lacking an audit should budget all project costs directly.)

13. What Meeting Costs May Be Covered With Grant Funds?

SJI grant funds may cover the reasonable cost of meeting rooms, necessary audio-visual equipment, meeting supplies, and working meals.

14. Does the Budget Truly Reflect All Costs Required To Complete the Project?

After preparing the program narrative portion of the application, applicants may find it helpful to list all the major tasks or activities required by the proposed project, including the preparation of products, and note the individual expenses, including personnel time, related to each. This will help to ensure that, for all tasks described in the application (*e.g.*, development of a videotape, research site visits, distribution of a final report), the related costs appear in the budget and are explained correctly in the budget narrative.

Appendix B—Answers to Grantees' Frequently Asked Questions

The Institute's staff works with grantees to help assure the smooth operation of the project and compliance with the Guideline. On the basis of monitoring more than 1,000 grants, the Institute staff offers the following suggestions to aid grantees in meeting the administrative and substantive requirements of their grants.

1. After the Grant Has Been Awarded, When Are the First Quarterly Reports Due?

Quarterly Progress Reports and Financial Status Reports must be submitted within 30 days after the end of every calendar quarter—*i.e.*, no later than January 30, April 30, July 30, and October 30—regardless of the project's start date. The reporting periods covered by each quarterly report end 30 days before the respective deadline for the report. When an award period begins December 1, for example, the first quarterly progress report describing project activities between December 1 and December 31 will be due on January 30. A Financial Status Report should be submitted even if funds have not been obligated or expended.

By documenting what has happened over the past three months, quarterly progress reports provide an opportunity for project staff and Institute staff to resolve any questions before they become problems, and make any necessary changes in the project time schedule, budget allocations, etc. The quarterly progress report should describe project activities, their relationship to the approved timeline, and any problems encountered and how they were resolved, and outline the tasks scheduled for the coming quarter. It is helpful to attach copies of relevant memos, draft products, or other requested information. An original and one copy of a quarterly progress report and attachments should be submitted to the Institute.

Additional quarterly progress report or Financial Status Report forms may be obtained from the grantee's Program Manager at SJI, or photocopies may be made from the supply received with the award.

2. Do Reporting Requirements Differ for Continuation Grants?

Recipients of continuation grants are required to submit quarterly progress and Financial Status Reports on the same schedule and with the same information as recipients of grants for single new projects.

A continuation grant should be considered as a separate phase of the project. The reports should be numbered on a grant rather than project basis. Thus, the first quarterly report filed under a continuation grant should be designated as number one, the second as number two, and so on, through the final progress and Financial Status Reports due within 90 days after the end of the grant period.

3. What Information About Project Activities Should Be Communicated to SJI?

In general, grantees should provide prior notice of critical project events such as advisory board meetings or training sessions so that the Institute Program Manager can attend, if possible. If methodological, schedule, staff, budget allocations, or other significant changes become necessary, the grantee should contact the Program Manager prior to implementing any of these changes, so that possible questions may be addressed in advance. Questions concerning the financial requirements, quarterly financial reporting, or payment requests should be addressed to the Institute's Grants Financial Manager listed in the award letter.

It is helpful to include the grant number assigned to the award on all correspondence to the Institute.

4. Why Are Special Conditions Attached To the Award Document?

Special conditions may be imposed to establish a schedule for reporting certain key information, assure that the Institute has an opportunity to offer suggestions at critical stages of the project, and provide reminders of pertinent Guideline requirements. Accordingly, it is important for grantees to check the special conditions carefully and discuss with their Program Managers any questions or problems they may have with the conditions. Most concerns about timing, response time, and the level of detail required can be resolved in advance through a telephone conversation. The Institute's primary concern is to work with grantees to assure that their projects accomplish their objectives, not to enforce rigid bureaucratic requirements. However, if a grantee fails to comply with a special condition or with other grant requirements, the Institute may, after proper notice, suspend payment of grant funds or terminate the grant.

Sections VIII., IX., and X. of the Grant Guideline contain the Institute's administrative and financial requirements. Institute Finance Division staff are always available to answer questions and provide assistance regarding these provisions.

5. What Is a Grant Adjustment?

A Grant Adjustment is the Institute's form for acknowledging the satisfaction of special conditions, or approving changes in grant activities, schedule, staffing, sites, or budget allocations requested by the project director. It also may be used to correct errors in grant documents or deobligate funds from the grant.

6. What Schedule Should Be Followed in Submitting Requests for Reimbursements or Advance Payments?

Requests for reimbursements or advance payments may be made at any time after the project start date and before the end of the 90-day close-out period. However, the Institute follows the U.S. Treasury's policy limiting advances to the minimum amount required to meet immediate cash needs. Given normal processing time, grantees should not seek to draw down funds for periods greater than 30 days from the date of the request.

7. Do Procedures for Submitting Requests for Reimbursement or Advance Payment Differ for Continuation Grants?

The basic procedures are the same for any grant. A continuation grant should be considered as a separate phase of the project. Payment requests should be numbered on a grant rather than a project basis. The first request for funds from a continuation grant should be designated as number one, the second as number two, and so on through the final payment request for that grant.

8. If Things Change During the Grant Period, Can Funds Be Reallocated From One Budget Category to Another?

The Institute recognizes that some flexibility is required in implementing a project design and budget. Thus, grantees may shift funds among direct cost budget categories. When any one reallocation or the cumulative total of reallocations is expected to allocate funds to a previously unbudgeted cost category or to exceed five percent (5%) of the approved project budget, a grantee must specify the proposed changes, explain the reasons for the changes, and request prior Institute approval.

The same standard applies to continuation grants. In addition, prior written Institute approval is required to shift leftover funds from the original award to cover activities to be conducted under the continuation award, or to use continuation grant monies to cover costs incurred during the original grant period.

9. What Is the 90-Day Close-out Period?

Following the last day of the grant, a 90-day period is provided to allow for all grant-related bills to be received and posted, and grant funds drawn down to cover these expenses. No obligations of grant funds may be incurred during this period. The last day on which an expenditure of grant funds can be obligated is the end date of the grant period. Similarly, the 90-day period is not intended as an opportunity to finish and disseminate grant products. This should occur before the end of the grant period.

During the 90 days following the end of the award period, all monies that have been obligated should be expended. All payment requests must be received by the end of the 90-day ''close-out period.'' Any unexpended monies held by the grantee that remain after the 90-day follow-up period must be returned to the Institute. Any funds remaining in the grant that have not been drawn down by the grantee will be deobligated.

10. Are Funds Granted by SJI ''Federal'' Funds?

The State Justice Institute Act provides that, except for purposes unrelated to this question, ''the Institute shall not be considered a department, agency, or instrumentality of the Federal Government.'' 42 U.S.C. 10704(c)(1). Because SJI receives appropriations from Congress, some grantee auditors have reported SJI grant funds as ''Other Federal Assistance.'' This classification is acceptable to SJI but is not required.

11. If SJI Is Not a Federal Agency, Do OMB Circulars Apply With Respect to Audits?

Unless they are inconsistent with the express provisions of the SJI Grant Guideline, Office of Management and Budget (OMB) Circulars A–110, A–21, A–87, A–88, A–102, A–122, A–128, and A–133 are incorporated into the Grant Guideline by reference. Because the Institute's enabling legislation specifically requires the Institute to ''conduct, or require each recipient to provide for, an annual fiscal audit'' (*see* 42 U.S.C. 10711(c)(1)), the Grant Guideline sets forth options for grantees to comply with this statutory requirement. (*See* section IX.K.)

SJI will accept audits conducted in accordance with the Single Audit Act of 1984 and OMB Circulars A–128 or A–133 to satisfy the annual fiscal audit requirement. Grantees that are required to undertake these audits in conjunction with Federal grants may include SJI funds as part of the audit even if the receipt of SJI funds would not require such audits. This approach gives grantees an option to fold SJI funds into the governmental audit rather than to undertake a separate audit to satisfy SJI's Guideline requirements.

In sum, educational and nonprofit organizations that receive payments from the Institute that are sufficient to meet the applicability thresholds of OMB Circular A–133 must have their annual audit conducted in accordance with Government Auditing Standards issued by the Comptroller General of the United States rather than with generally accepted auditing standards. Grantees in this category that receive amounts below the minimum threshold referenced in Circular A–133 must also submit an annual audit to SJI, but they would have the option to conduct an audit of the entire grantee organization in accordance with generally accepted auditing standards; include SJI funds in an audit of Federal funds conducted in accordance with the Single Audit Act of 1984 and OMB Circulars A–128 or A–133; or conduct an audit of only the SJI funds in accordance with generally accepted auditing standards. (*See* Guideline section IX.K.) Circulars may be obtained from OMB by calling 202–395–3080 or visiting the OMB Web site at *www.whitehouse.gov/OMB.*

12. Does SJI Have a CFDA Number?

Auditors often request that a grantee provide the Institute's Catalog of Federal Domestic Assistance (CFDA) number for guidance in conducting an audit in accordance with Government Accounting Standards.

Because SJI is not a Federal agency, it has not been issued such a number, and there are no additional compliance tests to satisfy under the Institute's audit requirements beyond those of a standard governmental audit.

Moreover, because SJI is not a Federal agency, SJI funds should not be aggregated with Federal funds to determine if the applicability threshold of Circular A–133 has been reached. For example, if in fiscal year 2001 grantee ''X'' received $10,000 in Federal funds from a Department of Justice (DOJ) grant program and $20,000 in grant funds from SJI, the minimum A–133 threshold would not be met. The same distinction would preclude an auditor from considering the additional SJI funds in determining what Federal requirements apply to the DOJ funds.

Grantees who are required to satisfy either the Single Audit Act or OMB Circulars A–128 or A–133, and who include SJI grant funds in those audits, need to remember that because of its status as a private non-profit corporation, SJI is not on routing lists of cognizant Federal agencies. Therefore, the grantee needs to submit a copy of the audit report prepared for such a cognizant Federal agency directly to SJI. The Institute's audit requirements may be found in section IX.K. of the Grant Guideline.

Appendix C—SJI Libraries: Designated Sites and Contacts

Alabama

Supreme Court Library

Mr. Timothy A. Lewis
State Law Librarian
Alabama Supreme Court Bldg. 300 Dexter Avenue
Montgomery, AL 36104
(334) 242–4347

Alaska

Anchorage Law Library

Ms. Cynthia S. Fellows
State Law Librarian
Alaska Court Libraries 820 W. Fourth Ave.
Anchorage, AK 99501
(907) 264–0583

Arizona

Supreme Court Library

Ms. Lani Orosco
Arizona Supreme Court
Supreme Court Library 1501 W. Washington, Suite 445
Phoenix, AZ 85007
(602) 542–5028 e-mail: *lorosco@supreme.sp.state.az.us*

Arkansas

Administrative Office of the Courts

Mr. James D. Gingerich
Director
Administrative Office of the Courts
Supreme Court of Arkansas
Justice Building
Little Rock, AR 72201
(501) 682–9400

California

Administrative Office of the Courts

Mr. William C. Vickrey
Administrative Director of the Courts
Administrative Office of the Courts 455 Golden Gate Avenue
San Francisco, CA 94107
(415) 865–4200

Colorado

Supreme Court Library

Ms. Linda Gruenthal
Deputy Supreme Court Law Librarian
Colorado State Judicial Building 2 East 14th Avenue
Denver, CO 80203
(303) 864–4522

Connecticut

State Library

Ms. Denise D. Jernigan
State Librarian
Connecticut State Library 231 Capital Avenue
Hartford, CT 06106
(860) 566–2516

Delaware

Administrative Office of the Courts

Mr. Michael E. McLaughlin
Deputy Director
Administrative Office of the Courts

Carvel State Office Building 820 North French Street 11th Floor
P.O. Box 8911
Wilmington, DE 19801
(302) 577–8481

District of Columbia

Executive Office, District of Columbia Courts

Ms. Anne B. Wicks
Executive Officer
District of Columbia Courts
500 Indiana Avenue, N.W., Suite 1500
Washington, D.C. 20001
(202) 879–1700

Florida

Administrative Office of the Courts

Ms. Elisabeth H. Goodner
State Courts Administrator
Florida Supreme Court Building
500 South Duval Street
Tallahassee, FL 32399–1900
(850) 922–5081 e-mail:
osca@flcourts.org

Georgia

Administrative Office of the Courts

Mr. David Ratley
Director
Administrative Office of the Courts
47 Trinity Avenue, Suite 414
Atlanta, GA 30334
(404) 656–5171

Hawaii

Supreme Court Library

Ms. Ann Koto
State Law Librarian
The Supreme Court Law Library
417 South King St., Room 119
Honolulu, HI 96813
(808) 539–4965

Idaho

AOC Judicial Education Library/State Law Library

Ms. Beth Peterson
State Law Librarian
Idaho State Law Library
Supreme Court Building
451 West State St.
Boise, ID 83720
(208) 334–3316

Illinois

Supreme Court Library

Ms. Brenda Larison
Supreme Court of Illinois Library
200 East Capitol Avenue
Springfield, IL 62701–1791
(217) 782–2425

Indiana

Supreme Court Library

Mr. Dennis Lager
Supreme Court Librarian
Supreme Court Library
State House, Room 316
Indianapolis, IN 46204
(317) 232–2557

Iowa

Administrative Office of the Court

Dr. Jerry K. Beatty
Executive Director
Judicial Education & Planning
Office of the State Court Administrator
State Capital Building
Des Moines, IA 50319–0001
(515) 281–8279

Kansas

Supreme Court Library

Mr. Fred Knecht
Law Librarian
Kansas Supreme Court Library
301 West 10th Street
Topeka, KS 66612
(913) 296–3257

Kentucky

State Law Library

Ms. Marge Jones
State Law Librarian
State Law Library
State Capital, Room 200-A
Frankfort, KY 40601
(502) 564–4848

Louisiana

State Law Library

Ms. Carol Billings
Director
Louisiana Law Library
301 Loyola Avenue
New Orleans, LA 70112
(504) 568–5705

Maine

State Law and Legislative Reference Library

Ms. Lynn E. Randall
State Law Librarian
43 State House Station
Augusta, ME 04333
(207) 287–1600

Maryland

State Law Library

Mr. Michael S. Miller
Director
Maryland State Law Library
Court of Appeal Building
361 Rowe Boulevard
Annapolis, MD 21401
(410) 260–1430

Massachusetts

Middlesex Law Library

Ms. Sandra Lindheimer
Librarian
Middlesex Law Library
Superior Court House
40 Thorndike Street
Cambridge, MA 02141
(617) 494–4148

Michigan

Michigan Judicial Institute

Dawn F. McCarty
Interim Director
Michigan Judicial Institute
222 Washington Square North
P.O. Box 30205
Lansing, MI 48909
(517) 334–7805

Minnesota

State Law Library (Minnesota Judicial Center)

Mr. Marvin R. Anderson
State Law Librarian
Supreme Court of Minnesota
25 Constitution Avenue
St. Paul, MN 55155
(612) 297–2084

Mississippi

Mississippi Judicial College

Mr. Leslie Johnson
Director
University of Mississippi
P.O. Box 8850
University, MS 38677
(601) 232–5955

Montana

State Law Library

Ms. Judith Meadows
State Law Librarian
State Law Library of Montana
215 North Sanders
Helena, MT 59620
(406) 444–3660

Nebraska

Administrative Office of the Courts

Mr. Joseph C. Steele
State Court Administrator
Administrative Office of the Courts/Probation
State Capitol Building, Room 1220
Post Office Box 98910
Lincoln, NE 68509–8910
(402) 471–3730

Nevada

National Judicial College

Mr. Randall Snyder
Law Librarian
National Judicial College
Judicial College Building
University of Nevada
Reno, NV 89550
(775) 784–6747

New Hampshire

New Hampshire Law Library

Ms. Christine Swan
Law Librarian
New Hampshire Law Library
Supreme Court Building
One Noble Drive
Concord, NH 03301–6160
(603) 271–3777

New Jersey

New Jersey State Library

Ms. Marjorie Garwig
Supervising Law Librarian
New Jersey State Law Library
185 West State Street
P.O. Box 520
Trenton, NJ 08625–0250
(609) 292–6230

New Mexico

Supreme Court Library

Mr. Thaddeus Bejnar

Librarian
Supreme Court Library
Post Office Drawer L
Santa Fe, NM 87504
(505) 827–4850

New York

Supreme Court Library

Ms. Barbara Briggs
Principal Law Librarian
New York State Supreme Court Law Library
Onondaga County Court House
401 Montgomery Street
Syracuse, NY 13202
(315) 435–2063

North Carolina

Supreme Court Library
Mr. Thomas P. Davis
Librarian
North Carolina Supreme Court Library
P.O. Box 28006
2 East Morgan Street
Raleigh, NC 27601
(919) 733–3425

North Dakota

Supreme Court Library

Ms. Marcella Kramer
Assistant Law Librarian
Supreme Court Law Library
600 East Boulevard Avenue, Dept. 182
2nd Floor, Judicial Wing
Bismarck, ND 58505–0540
(701) 328–2229

Northern Mariana Islands

Supreme Court of the Northern Mariana Islands

Honorable Miguel Sablan Demapan
Chief Justice
Supreme Court of the Commonwealth of the Northern Mariana Islands
P.O. Box 2165 CK
Saipan, MP 96950
(670) 236–9700

Ohio

Supreme Court Library

Mr. Paul S. Fu
Law Librarian
Supreme Court Law Library
Supreme Court of Ohio
30 East Broad Street
Columbus, OH 43266–0419
(614) 466–2044

Oklahoma

Administrative Office of the Courts

Mr. Howard W. Conyers
Administrative Director of the Courts
1915 North Stiles, Suite 305
Oklahoma City, OK 73105
(405) 521–2450

Oregon

Administrative Office of the Courts

Ms. Kingsley W. Click
State Court Administrator
Office of the State Court Administrator
Supreme Court Building
Salem, OR 97310
(503) 986–5900

Pennsylvania

State Library of Pennsylvania

Ms. Barbara Miller
Collection Management Librarian
State Library of Pennsylvania
Office of Commonwealth Libraries
Bureau of State Library ''Collection Management
333 Market Street
Harrisburg, PA 17126–1745
(717) 787–5718
barbmiller@state.pa.us

Puerto Rico

Office of Court Administration

Alfredo Rivera-Mendoza, Esq.
Director, Area of Planning and Management
Office of Court Administration
P.O. Box 917
Hato Rey, PR 00919

Rhode Island

Roger Williams University

Ms. Gail Winson
Director of the Library
Roger Williams University
School of Law Library 10 Metacom Avenue
Bristol, RI 02809

South Carolina

Coleman Karesh Law Library (University of South Carolina School of Law)

Mr. Steve Hinckley
Library Director
Coleman Karesh Law Library
U. S. C. Law Center
University of South Carolina
Columbia, SC 29208
(803) 777–5944

South Dakota

State Law Library

Librarian
500 East Capitol
Pierre, South Dakota 57501
(605) 773–4898

Tennessee

Tennessee State Law Library

Honorable Cornelia A. Clark
Director
Administrative Office of the Courts
Tennessee Supreme Court
511 Union
Nashville, TN 37243–0607
(615) 741–2687

Texas

State Law Library

Ms. Kay Schleuter
Director, State Law Library
P.O. Box 12367
Austin, TX 78711
(512) 463–1722

U.S. Virgin Islands

Library of the Territorial Court of the Virgin Islands (St. Thomas)

Librarian
The Library
Territorial Court of the Virgin Islands
Post Office Box 70
Charlotte Amalie, St. Thomas
U.S. Virgin Islands 00804

Utah

Utah State Judicial Administration Library

Ms. Debbie Christiansen
Utah State Judicial Administration Library
Administrative Office of the Courts 450 South State
P.O. Box 140241
Salt Lake City, UT 84114–0241
(801) 533–6371

Vermont

Supreme Court of Vermont

Mr. Paul J. Donovan
Law Librarian
Department of Libraries
109 State Street
Montpelier, VT 05609
(802) 828–3278

Virginia

Administrative Office of the Courts

Mr. Robert N. Baldwin
State Court Administrator
Supreme Court of Virginia
100 North Ninth Street, 3rd Floor
Richmond, VA 23219
(804) 786–6455

Washington

Washington State Law Library

Ms. Deborah Norwood
State Law Librarian
Washington State Law Library
Temple of Justice
P.O. Box 40751
Olympia, WA 98504–0751
(360) 357–2136

West Virginia

Administrative Office of the Courts

Ms. Kathleen Gross
Deputy Director of Judicial Education
West Virginia Supreme Court of Appeals
State Capitol
1900 Kanawha Boulevard East
Building 1, Room E–100
Charleston, WV 25305
(304) 558–0145

Wisconsin

State Law Library

Ms. Jane Colwin
Director of Public Services
State Law Library
310 E. State Capitol
P.O. Box 7881
Madison, WI 53707
(608) 261–2340

Wyoming

Wyoming State Law Library

Ms. Kathleen B. Carlson
Law Librarian
Wyoming State Law Library
Supreme Court Building
2301 Capitol Avenue
Cheyenne, WY 82002
(307) 777–7509

NATIONAL

American Judicature Society

Mr. John Edwards
Opperman Hall
Drake University Law School
2507 University Avenue
Des Moines, IA 50311–4504
(515) 271–2141
e-mail: *John.Edwards@drake.edu*

National Center for State Courts

Ms. Peggy Rogers
Acquisitions/Serials Librarian
300 Newport Avenue
Williamsburg, VA 23187–8798
(757) 259–1857

JERITT

Dr. Maureen E. Conner
Executive Director
The JERITT Project
1407 S. Harrison
Suite 330 Nisbet
East Lansing, MI 48823–5239
(517) 353–8603
(517) 432–3965 (fax)
e-mail: *connerm@msu.edu*
website: *http://jeritt.msu.edu*

Appendix D—Illustrative List of Technical Assistance Grants

The following list presents examples of the types of technical assistance for which State and local courts can request Institute funding. Please check with the JERITT project (*http://jeritt.msu.org* or 517/353–8603) for more information about these and other SJI-supported technical assistance projects.

Application of Technology

Technology Plan (Office of the South Dakota State Court Administrator: SJI–99–066).

Children and Families in Court

Expanded Unified Family Court (Ventura County, CA, Superior Court: SJI–01–122).
Trial Court Performance Standards for the Unified Family Court of Delaware (Family Court of Delaware: SJI–98–205).

Court Planning, Management, and Financing

Job Classification and Pay Study of the New Hampshire Courts (New Hampshire Administrative Office of the Courts: SJI–98–011).
A Model for Building and Institutionalizing Judicial Branch Strategic Planning (12th Judicial Circuit, Sarasota, FL: SJI–98–266).
Strategic Planning (Fourth Judicial District Court, Hennepin County, MN: SJI–99–221).
Differentiated Case Management for the Improvement of Civil Case Processing in the Trial Courts of Texas (Texas Office of Court Administration: SJI–99–222).

Dispute Resolution and the Courts

Evaluating the New Mexico Court of Appeals Mediation Program (New Mexico Supreme Court: SJI–00–122).

Improving Public Confidence in the Courts

Mississippi Task Force on Gender Fairness in the Courts (Mississippi Administrative Office of the Courts: SJI–00–108).
Analysis of the Juror Debriefing Project (King County, WA, Superior Court: SJI–00–049).

Improving the Court's Response to Family Violence

New Hampshire Fatality Reviews (New Hampshire Administrative Office of the Courts: SJI–99–142).

Education and Training for Judges and Other Court Personnel

Iowa Supreme Court Advisory Committee on Judicial Branch Education (Iowa State Court Administrator's Office: SJI–01–200).

Appendix E—Illustrative List of Model Curricula

The following list includes examples of model SJI-supported curricula that State judicial educators may wish to adapt for presentation in education programs for judges and other court personnel with the assistance of a Judicial Branch Education Technical Assistance Grant. Please refer to section VI.F. for information on submitting a letter of application for a Judicial Branch Education Technical Assistance Grant. A list of all SJI-supported education projects is available on the SJI Web site *(http://www.statejustice.org).* Please also check with the JERITT project *(http://jeritt.msu.edu* or 517/353–8603) and your State SJI-designated library (*see* appendix C) for more information about these and other SJI-supported curricula that may be appropriate for in-State adaptation.

Alternative Dispute Resolution

Judicial Settlement Manual (National Judicial College: SJI–89–089).
Improving the Quality of Dispute Resolution (Ohio State University College of Law: SJI–93–277).
Comprehensive ADR Curriculum for Judges (American Bar Association: SJI–95–002).
Domestic Violence and Custody Mediation (American Bar Association: SJI–96–038).

Court Coordination

Bankruptcy Issues for State Trial Court Judges (American Bankruptcy Institute: SJI–91–027).
Intermediate Sanctions Handbook: Experiences and Tools for Policymakers (Center for Effective Public Policy: IAA–88–NIC–001).
Regional Conference Cookbook: A Practical Guide to Planning and Presenting a Regional Conference on State-Federal Judicial Relationships (U.S. Court of Appeals for the 9th Circuit: SJI–92–087).
Bankruptcy Issues and Domestic Relations Cases (American Bankruptcy Institute: SJI–96–175).

Court Management

Managing Trials Effectively: A Program for State Trial Judges (National Center for State Courts/National Judicial College: SJI–87–066/067, SJI–89–054/055, SJI–91–025/026).
Caseflow Management Principles and Practices (Institute for Court Management/National Center for State Courts: SJI–87–056).
A Manual for Workshops on Processing Felony Dispositions in Limited Jurisdiction Courts (National Center for State Courts: SJI–90–052).
Managerial Budgeting in the Courts; Performance Appraisal in the Courts; Managing Change in the Courts; Court Automation Design; Case Management for Trial Judges; Trial Court Performance Standards (Institute for Court Management/National Center for State Courts: SJI–91–043).
Strengthening Rural Courts of Limited Jurisdiction and *Team Training for Judges and Clerks* (Rural Justice Center: SJI–90–014, SJI–91–082).
Integrating Trial Management and Caseflow Management (Justice Management Institute: SJI–93–214).
Leading Organizational Change (California Administrative Office of the Courts: SJI–94–068).
Managing Mass Tort Cases (National Judicial College: SJI–94–141).
Employment Responsibilities of State Court Judges (National Judicial College: SJI–95–025).
Caseflow Management; Resources, Budget, and Finance; Visioning and Strategic Planning; Leadership; Purposes and Responsibilities of Courts; Information Management Technology; Human Resources Management; Education, Training, and Development; Public Information and the Media from ''NACM Core Competency Curriculum Guidelines'' (National Association for Court Management: SJI–96–148).
Dealing with the Common Law Courts: A Model Curriculum for Judges and Court Staff (Institute for Court Management/National Center for State Courts: SJI–96–159).
Caseflow Management from ''Innovative Educational Programs for Judges and Court Managers'' (Justice Management Institute: SJI–98–041).

Courts and Communities

Reporting on the Courts and the Law (American Judicature Society: SJI–88–014).
Victim Rights and the Judiciary: A Training and Implementation Project (National Organization for Victim Assistance: SJI–89–083).
National Guardianship Monitoring Project: Trainer and Trainee's Manual (American Association of Retired Persons: SJI–91–013).
Access to Justice: The Impartial Jury and the Justice System and *When Implementing the Court-Related Needs of Older People and Persons with Disabilities:* An Instructional Guide (National Judicial College: SJI–91–054).
You Are the Court System: A Focus on Customer Service (Alaska Court System: SJI–94–048).
Serving the Public: A Curriculum for Court Employees (American Judicature Society: SJI–96–040).
Courts and Their Communities: Local Planning and the Renewal of Public Trust and Confidence: A California Statewide Conference (California Administrative Office of the Courts: SJI–98–008).
Charting the Course of Public Trust and Confidence in Our Courts (Mid-Atlantic

Association for Court Management: SJI–98–208).

Trial Court Judicial Leadership Program: Judges and Court Administrators Serving the Courts and Community (National Center for State Courts: SJI–98–268).

Public Trust and Confidence (Arizona Courts Association: SJI–99–063).

Diversity, Values, and Attitudes

Troubled Families, Troubled Judges (Brandeis University: SJI–89–071).

The Crucial Nature of Attitudes and Values in Judicial Education (National Council of Juvenile and Family Court Judges: SJI–90–058).

Enhancing Diversity in the Court and Community (Institute for Court Management/National Center for State Courts: SJI–91–043).

Cultural Diversity Awareness in Nebraska Courts from Native American Alternatives to Incarceration Project (Nebraska Urban Indian Health Coalition: SJI–93–028).

Race Fairness and Cultural Awareness Faculty Development Workshop (National Judicial College: SJI–93–063).

A Videotape Training Program in Ethics and Professional Conduct for Nonjudicial Court Personnel and The Ethics Fieldbook: Tool For Trainers (American Judicature Society: SJI–93–068).

Court Interpreter Training Course for Spanish Interpreters (International Institute of Buffalo: SJI–93–075).

Doing Justice: Improving Equality Before the Law Through Literature-Based Seminars for Judges and Court Personnel (Brandeis University: SJI–94–019).

Multi-Cultural Training for Judges and Court Personnel (St. Petersburg Junior College: SJI–95–006).

Ethical Standards for Judicial Settlement: Developing a Judicial Education Module (American Judicature Society: SJI–95–082).

Code of Ethics for the Court Employees of California (California Administrative Office of the Courts: SJI 95–245).

Workplace Sexual Harassment Awareness and Prevention (California Administrative Office of the Courts: SJI 96–089).

Just Us On Justice: A Dialogue on Diversity Issues Facing Virginia Courts (Virginia Supreme Court: SJI–96–150).

When Bias Compounds: Insuring Equal Treatment for Women of Color in the Courts (National Judicial Education Program: SJI 96–161).

When Judges Speak Up: Ethics, the Public, and the Media (American Judicature Society: SJI–96–152).

Family Violence and Gender-Related Violent Crime

National Judicial Response to Domestic Violence: Civil and Criminal Curricula (Family Violence Prevention Fund: SJI–87–061, SJI–89–070, SJI–91–055).

Domestic Violence: A Curriculum for Rural Courts (Rural Justice Center: SJI–88–081).

Judicial Training Materials on Spousal Support; Judicial Training Materials on Child Custody and Visitation (Women Judges' Fund for Justice: SJI–89–062).

Understanding Sexual Violence: The Judicial Response to Stranger and Nonstranger Rape and Sexual Assault (National Judicial Education Program: SJI–92–003, SJI–98–133 [video curriculum]).

Domestic Violence & Children: Resolving Custody and Visitation Disputes (Family Violence Prevention Fund: SJI–93–255).

Adjudicating Allegations of Child Sexual Abuse When Custody Is In Dispute (National Judicial Education Program: SJI 95–019).

Handling Cases of Elder Abuse: Interdisciplinary Curricula for Judges and Court Staff (American Bar Association: SJI–93–274).

Health and Science

A Judge's Deskbook on the Basic Philosophies and Methods of Science: Model Curriculum (University of Nevada, Reno: SJI–97–030).

Judicial Education for Appellate Court Judges

Career Writing Program for Appellate Judges (American Academy of Judicial Education: SJI–88–086).

Civil and Criminal Procedural Innovations for Appellate Courts (National Center for State Courts: SJI–94–002).

Judicial Branch Education: Faculty and Program Development

The Leadership Institute in Judicial Education and The Advanced Leadership Institute in Judicial Education (University of Memphis: SJI–91–021).

''Faculty Development Instructional Program'' from Curriculum Review (National Judicial College: SJI–91–039).

Resource Manual and Training for Judicial Education Mentors (National Association of State Judicial Educators: SJI–95–233).

Institute for Faculty Excellence in Judicial Education (National Council of Juvenile and Family Court Judges: SJI–96–042; University of Memphis: SJI–01–202).

Orientation, Mentoring, and Continuing Professional Education of Judges and Court Personnel

Legal Institute for Special and Limited Jurisdiction Judges (National Judicial College: SJI–89–043, SJI–91–040).

Pre-Bench Training for New Judges (American Judicature Society: SJI–90–028).

A Unified Orientation and Mentoring Program for New Judges of All Arizona Trial Courts (Arizona Supreme Court: SJI–90–078).

Court Organization and Structure (Institute for Court Management/National Center for State Courts: SJI–91–043).

New Employee Orientation Facilitators Guide (Minnesota Supreme Court: SJI–92–155).

Magistrates Correspondence Course (Alaska Court System: SJI–92–156).

Bench Trial Skills and Demeanor: An Interactive Manual (National Judicial College: SJI 94–058).

Ethical Issues in the Election of Judges (National Judicial College: SJI–94–142).

Caseflow Management; Resources, Budget, and Finance; Visioning and Strategic Planning; Leadership; Purposes and Responsibilities of Courts; Information Management Technology; Human Resources Management; Education, Training, and Development; Public Information and the Media from ''NACM Core Competency Curriculum Guidelines'' (National Association for Court Management: SJI–96–148).

Innovative Approaches to Improving Competencies of General Jurisdiction Judges (National Judicial College: SJI–98–001).

Caseflow Management from ''Innovative Educational Programs for Judges and Court Managers'' (Justice Management Institute: SJI–98–041).

Juveniles and Families in Court

Fundamental Skills Training Curriculum for Juvenile Probation Officers (National Council of Juvenile and Family Court Judges: SJI–90–017).

Child Support Across State Lines: The Uniform Interstate Family Support Act from Uniform Interstate Family Support Act: Development and Delivery of a Judicial Training Curriculum (ABA Center on Children and the Law: SJI–94–321).

Juvenile Justice at the Crossroads: Literature-Based Seminars for Judges, Court Personnel, and Community Leaders (Brandeis University: SJI–99–150).

Strategic and Futures Planning

Minding the Courts into the Twentieth Century Judicial SJ–89–029).

An Approach to Long-Range Strategic Planning in the Courts (Center for Public Policy Studies: SJI–91–045).

Substance Abuse

Good Times, Bad Times: Drugs, Youth, and the Judiciary (Professional Development and Training Center, Inc.: SJI–095).

Gaining Momentum: A Model Curriculum for Drug Courts (Florida Office of the State Courts Administrator: SJI–94–291).

Judicial Response to Substance Abuse: Children, Adolescents, and Families (National Council of Juvenile and Family Court Judges: SJI–95–030).

Judicial Education on Substance Abuse (American Judges Association and National Center for State Courts: SJI–01–210).

BILLING CODE 6820–SC–P

Appendix F

STATE JUSTICE INSTITUTE
APPLICATION

1. APPLICANT
a. Applicant Name _____
b. Organizational Unit _____
c. Street/P.O. Box _____
d. City _____
e. State _____ f. Zip Code _____
g. Phone Number _____
h. Fax Number _____
i. Web Site Address _____
j. Name & Phone Number of Contact Person _____
k. Title _____
l. E-Mail Address _____

2. TYPE OF APPLICANT *(Circle appropriate letter)*
a. State court
b. National organization operating in conjunction with State court
c. National State court support organization
d. College or university
e. Other non-profit organization or agency
f. Individual
g. Corporation or partnership
h. Other unit of government
i. Other _____ *(specify)*

3. PROPOSED START DATE _____

4. PROJECT DURATION (Months) _____

5. EMPLOYER IDENTIFICATION # _____

6. IF THIS APPLICATION HAS BEEN SUBMITTED TO OTHER FUNDING SOURCES, PLEASE PROVIDE THE FOLLOWING INFORMATION:
Source _____
Date Submitted _____
Amount Sought _____
Disposition (if any) or Current Status _____

7. ENTITY TO RECEIVE FUNDS *(if different from above)*
a. Organizational Name _____
b. Organizational Unit _____
c. Street/P.O. Box _____
d. City _____
e. State _____ f. Zip Code _____
g. Phone Number _____
h. Fax Number _____
i. Web Site Address _____
j. Name & Phone Number of Contact Person _____
k. Title _____
l. E-Mail Address _____

8. a. AMOUNT REQUESTED FROM SJI $_____
b. AMOUNT OF MATCH
Cash match $_____
Non-cash match $_____
c. TOTAL MATCH $_____
d. TOTAL PROJECT COST $_____

9. TITLE OF PROPOSED PROJECT

10. CONGRESSIONAL DISTRICT OF: _____
Name of Representative; District Number

Project (if different than applicant): _____
Name of Representative; District Number

11. CERTIFICATION
On behalf of the applicant, I hereby certify that to the best of my knowledge the information in this application is true and complete. I have read the attached assurances (Form D) and understand that if this application is approved for funding, the award will be subject to those assurances. I certify that the applicant will comply with the assurances if the application is approved, and that I am lawfully authorized to make these representations on behalf of the applicant.

SIGNATURE OF RESPONSIBLE OFFICIAL OF APPLICANT _____ TITLE _____ DATE _____
(For applications from State and local courts, Form B, Certificate of State Approval, must be attached.)

FOR INSTITUTE USE ONLY

12. a. APPLICATION NUMBER _____ b. CONCEPT PAPER NUMBER _____ c. GRANT NUMBER _____	13. DATE RECEIVED	14. DATE OF ACTION

Form A 09/00

STATE JUSTICE INSTITUTE

INSTRUCTIONS FOR SJI APPLICATION FORM A

1. a-1 Legal **name of applicant** (court, entity or individual); **name of the organizational unit**, if any, that will conduct the project; complete **address** of applicant, including phone and fax numbers and web site address; and name, phone number, title, and e-mail address of a **contact person** who can provide further information about this application.

2. a **State court** includes all appellate, general jurisdiction, limited jurisdiction, and special jurisdiction courts, as well as all offices that are supervised by or report for administrative purposes to the chief or presiding justice or judge, or his or her designee.

2. b **National organizations operating in conjunction with State court** include national non-profit organizations controlled by, operating in conjunction with, and serving the State courts.

2. c **National state court organizations** include national non-profit organizations with the primary mission of supporting, serving, or educating judges and other personnel of the judicial branch of State government.

2. d **College or university** includes all institutions of higher education.

2. e **Other non-profit organization or agency** includes those non-profit organizations and private agencies not included in sub-paragraphs (b)-(d).

2. f **Individual** means a person not applying in conjunction with or on behalf of an entity identified in one of the other categories.

2. g **Corporation or partnership** includes for-profit and not-for-profit entities not falling within one of the other categories.

2. h **Other unit of government** includes any governmental agency, office, or organization that is not a State or local court.

3. **The proposed start date** of the project should be the earliest feasible date on which the applicant will be able to begin project activities following the date of award.

4. **Project duration** refers to the number of months the applicant estimates will be needed to complete all project tasks after the proposed start date.

5. **Employer Identification #** as assigned by the Internal Revenue Service.

6. If this application or an application requesting support for the same project or an essentially similar project has been previously submitted to another funding source (Federal or private), enter the name of the **source**, the **date** of the submission, the **amount** of funding sought, and the **disposition** (if any).

7. a-1 **The entity to receive funds** is the court or organization that will receive, administer, and account for any monies awarded. If the applicant is a State or local court, the entity to receive funds would be the State's Supreme Court or its agency or council designated in accordance with 42 U.S.C. 10705(b) (4). **Applicants should complete this block only if the entity that will receive the funds is different from the applicant.**

8. a Insert the **amount requested** from the State Justice Institute to conduct the project.

8. b The **amount of match** is the amount, if any, to be contributed to the project by the applicant, a unit of State or local government, a Federal agency, or private sources. See 42 U.S.C. 10705 (d).

Cash match refers to funds directly contributed by the applicant, a unit of State or local government, a Federal agency, or private sources to support the project.

Non-cash match refers to in-kind contributions by the applicant, a unit of State or local government, or private sources to support the project.

8. c **Total match** refers to the sum of the cash and in-kind contributions to the project.

8. d **Total project cost** represents the sum of the amount requested from the Institute and all match contributions to the project.

9. The **title of the proposed project** should reflect the objectives of the activities to be conducted.

10. Enter the name of the applicant's Congressional Representative and the number of the applicant's **Congressional district,** along with the number of the Congressional district(s) in which most of the project activities will take place and the name(s) of the Representatives from those districts. If the project activities are not site-specific (for example, a series of training workshops that will bring together participants from around the State, the country, or from a particular region), enter *Statewide*, *national*, or *regional*, as appropriate, in the space provided.

11. **Signature** and title of a duly authorized representative of the applicant and the **date** the application was signed.

FORM B
(Instructions on Reverse Side)
Revised 10/93

STATE JUSTICE INSTITUTE

Certificate of State Approval

The _____
Name of State Supreme Court or Designated Agency or Council

has reviewed the application entitled _____

_____

prepared by _____,
Name of Applicant

approves its submission to the State Justice Institute, and

❑ agrees to receive and administer and be accountable for all funds awarded by the Institute pursuant to the application.

❑ designates _____.
Name of Designated Trial or Appellate Court or Agency

_____ _____
Signature *Date*

_____
Name

_____
Title

INSTRUCTIONS - FORM B

The State Justice Institute Act requires that:

Each Application for funding by a state or local court shall be approved, consistent with State law, by the State's Supreme Court, or its designated agency or council, which shall receive, administer, and be accountable for all funds awarded by the Institute to such courts. 42 U.S.C. 10705(b) (4).

FORM B should be signed by the Chief Judge or Chief Justice of the State Supreme Court, or by the director of the designated agency or chair of the designated council. If the designated agency or council differs from the designee listed in Appendix I to the State Justice Institute Grant Guideline, evidence of the new or additional designation should be attached.

The term "State Supreme Court" refers to the court of last resort of a State. "Designated agency or council" refers to the office or judicial body which is authorized under State law or by delegation from the State Supreme Court to approve applications for funds and to receive, administer and be accountable for those funds.

STATE JUSTICE INSTITUTE

PROJECT BUDGET

(TABULAR FORMAT)

Applicant: _____

Project Title _____

For Project Activity from _____ **to** _____

Total Amount Requested for Project from SJI $ _____

ITEM	SJI FUNDS	STATE FUNDS	FEDERAL FUNDS	APPLICANT FUNDS	OTHER FUNDS	IN-KIND SUPPORT	TOTAL
Personnel							
Fringe Benefits							
Consultant / Contractual							
Travel							
Equipment							
Supplies							
Telephone							
Postage							
Printing / Photocopying							
Audit							
Other (specify)							
Direct Costs							
Indirect Costs							
Total							

Remarks:

Form C 5/95 *(Instructions on reverse side)*

91853

STATE JUSTICE INSTITUTE

PAGE _____ OF _____

PROJECT BUDGET

(SPEADSHEET FORMAT)

Applicant: _____

Project Title _____

For Project Activity from _____ **to** _____

Total Amount Requested for Project from SJI $ _____

(See instruction regarding column headings)

ITEM							
Personnel							
Fringe Benefits							
Consultant / Contractual							
Travel							
Equipment							
Supplies							
Telephone							
Postage							
Printing / Photocopying							
Audit							
Other (specify)							
Direct Costs							
Indirect Costs (%)							
SJI Total							
STATE FUNDS							
FEDERAL FUNDS							
APPLICANT FUNDS							
OTHER FUNDS							
IN-KIND FUNDS							
Total							

Form C1 5/95 *(Instructions on reverse side)*

91854

Application Budget

Applicants may submit the proposed project budgets either in the tabular format of Form C or in a spreadsheet format similar to Form C1. Applicants requesting more than $100,000 are encouraged to use the spreadsheet format. If the proposed project period is for more than 12 months, separate totals should be submitted for each succeeding twelve-month period or portion thereof beyond month 12.

In addition to Form C or C1, Applicants must provide a detailed budget narrative providing an explanation of the basis for the estimates in each budget category (See Guidelines section VII.D). If the applicant is requesting indirect costs and has an indirect cost rate that has been approved by a Federal agency, the basis for that rate together with a copy of the letter or other official document stating that it has been approved should be attached.

If funds from other sources have been requested either as match or to support other aspects of the project, the source, current status of the request, and anticipated decision date must be provided.

COLUMN HEADINGS: For Budget Form C1 columns should be labeled consecutively by tasks, e.g., TASK #1, TASK #2, etc. At the end of each twelve month period or portion thereof beyond month 12 the following four columns must include: SJI FUNDS; MATCH; OTHER; TOTAL. Entries in these columns should include the line-item totals by source of funding per the column headings.

STATE JUSTICE INSTITUTE

ASSURANCES

The applicant hereby assures and certifies that it possesses legal authority to apply for the award, and that if funds are awarded by the State Justice Institute pursuant to this application, it will comply with all applicable provisions of law and the regulations, policies, guidelines and requirements of the Institute as they relate to the acceptance and use of Institute funds pursuant to this application. The applicant further assures and certifies with respect to this application, that:

1. No person will, on the basis of race, sex, national origin, disability, color, or creed be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under any program or activity supported by Institute funds, and that the applicant will immediately take any measures necessary to effectuate this assurance.

2. In accordance with 42 U.S.C. 10706(a), funds awarded to the applicant by the Institute will not be used, directly or indirectly, to influence the issuance, amendment, or revocation of any Executive order or similar promulgation by Federal, State or local agencies, or to influence the passage or defeat of any legislation or constitutional amendment by any Federal, State or local legislative body.

3. In accordance with 42 U.S.C. 10706(a) and 10707(c):

   a. It will not contribute or make available Institute funds, project personnel, or equipment to any political party or association, to the campaign of any candidate for public or party office, or to influence the passage or defeat of any ballot measure, initiative, or referendum;

   b. No officer or employee of the applicant will intentionally identify the Institute or the applicant with any partisan or nonpartisan political activity or the campaign of any candidate for public or party office; and,

   c. No officer or employee of the applicant will engage in partisan political activity while engaged in work supported in whole or in part by the Institute.

4. In accordance with 42 U.S.C. 10706(b), no funds awarded by the Institute will be used to support or conduct training programs for the purpose of advocating particular nonjudicial public policies or encouraging nonjudicial political activities.

5. In accordance with 42 U.S.C. 10706(d), no funds awarded by the Institute will be used to supplant State or local funds supporting a program or activity; to construct court facilities or structures, except to remodel existing facilities or to demonstrate new architectural or technological techniques, or to provide temporary facilities for new personnel or for personnel involved in a demonstration or experimental program; or to solely purchase equipment for a court system.

6. It will provide for an annual fiscal audit of the project.

7. It will give the Institute, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award.

8. In accordance with 42 U.S.C. 10708 (b) (as amended), research or statistical information that is furnished during the course of the project and that is identifiable to any specific individual, shall not be used or revealed for any purpose other than the purpose for which it was obtained. Such information and copies thereof shall be immune from legal process, and shall not be offered as evidence or used for any purpose in any action suit, or other judicial, legislative, or administrative proceeding without the consent of the person who furnished the information.

9. All research involving human subjects will be conducted with the informed consent of those subjects and in a manner that will ensure their privacy and freedom from risk or harm and the protection of persons who are not subjects of the research but would be affected by it, unless such procedures and safeguards would make the research impractical. In such instances, the Institute must approve procedures designed by the grantee to provide human subjects with relevant information about the research after their involvement and to minimize or eliminate risk or harm to those subjects due to their participation.

10. All products prepared as the result of the project will be originally-developed material unless otherwise specifically provided for in the award documents, and that material not originally developed that is included in such projects must by properly identified, whether the material is in a verbatim or extensive paraphrase format.

11. No funds will be obligated for publication or reproduction of a final product developed with Institute funds without the written approval of the Institute. The recipient will submit a final draft of each such product to the Institute for review and approval prior to submitting that product for publication or reproduction.

12. The following statement will be prominently displayed on all products prepared as a result of the project:
    This [document, film, videotape, etc.] was developed under a [grant, cooperative agreement, contract] from the State Justice Institute. Points of view expressed herein are those of the [author(s), filmmaker(s), etc.] and do not necessarily represent the official position or policies of the State Justice Institute.

13. THE "SJI" logo will appear on the front cover of a written product or in the opening frames of a video production produced with SJI funds, unless another placement is approved in writing by the Institute.

14. Except as otherwise provided in the terms and conditions of an Institute award, the recipient is free to copyright any books, publications, or other copyrightable materials developed in the course of an Institute-supported project, but the Institute shall reserve a royalty-free, non-exclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the materials for purposes consistent with the State Justice Institute Act.

15. It will submit quarterly progress and financial reports within 30 days of the close of each calendar quarter during the funding period (that is, no later than January 30, April 30, July 30, and October 30); that progress reports will include a narrative description of project activities during the calendar quarter, the relationship between those activities and the task schedule and objectives set forth in the approved application or an approved adjustment thereto, any significant problem areas that have developed and how they will be resolved, and the activities scheduled during the next reporting period; and that financial reports will contain the information requested on the financial report form included in the award documents.

16. At the conclusion of the project, title to all expendable and nonexpendable personal property purchased with Institute funds shall vest in the court, organization or individual that purchased the property if certification is made to the Institute that the property will continue to be used for the authorized purposes of the Institute-funded project or other purposes consistent with the State Justice Institute Act, as approved by the Institute. If such certification is not made or the Institute disapproves such certification, title to all such property with an aggregate or individual value of $1,000 or more shall vest in the Institute, which will direct the disposition of the property.

17. The person signing the application is authorized to do so on behalf of the applicant and to obligate the applicant to comply with the assurances enumerated above.

DISCLOSURE OF LOBBYING ACTIVITIES

The State Justice Institute Act prohibits grantees from using funds awarded by the Institute to directly or indirectly influence the passage or defeat of any legislation by Federal, State of local legislative bodies. 42 U.S.C. 10706 (a). It also is the policy of the Institute to award funds only to support applications submitted by organizations that would carry out the objectives of their applications in an unbiased manner.

Consistent with this policy and the provisions of 42 U.S.C. 10706 (a), the Institute will not knowingly award a grant to an applicant that has, directly or through an entity that is part of the same organization as the applicant, advocated a position before Congress on the specific subject matter of the application. As a means of implementing that prohibition, SJI requires organizations submitting applications to the Institute to disclose whether they, or another entity that is part of the same organization as the applicant, have advocated a position before Congress on any issue, and to identify the specific subjects of their lobbying efforts. This form must be submitted with your application.

Name of Applicant: _____

Title of Application: _____

_____

☐ **Yes** ☐ **No** **Has the applicant (or an entity that is part of the same organization as the applicant) directly or indirectly advocated a position before Congress on any issue within the past five years?**

SPECIFIC SUBJECTS OF LOBBYING EFFORTS

If you answered **YES** above, please list the specific subjects on which your organization (or another entity that is part of your organization) has directly or indirectly advocated a position before Congress within the past five years. If necessary, you may continue on the back of this form or on an attached sheet.

Subject	Year

STATEMENT OF VERIFICATION

I declare under penalty of perjury that the information contained in this disclosure statement is correct and that I am authorized to make this verification on behalf of the applicant.

_____ _____

Signature **Name (Typed)**

_____

Title **Date**

Appendix G

(Form E)

STATE JUSTICE INSTITUTE

LINE-ITEM BUDGET FORM

For Judicial Branch Education Technical Assistance and
Technical Assistance Grant Requests*

Category	SJI Funds	Cash Match	In-Kind Match
Personnel	$_____	$_____	$_____
Fringe Benefits	$_____	$_____	$_____
Consultant/Contractual	$_____	$_____	$_____
Travel	$_____	$_____	$_____
Equipment	$_____	$_____	$_____
Supplies	$_____	$_____	$_____
Telephone	$_____	$_____	$_____
Postage	$_____	$_____	$_____
Printing/Photocopying	$_____	$_____	$_____
Audit	$_____	$_____	$_____
Other	$_____	$_____	$_____
Indirect Costs (%)	$_____	$_____	$_____
TOTAL	$_____	$_____	$_____

PROJECT TOTAL $_____

Financial assistance has been or will be sought for this project from the following other sources:

_____

_____

* Judicial Branch Education Technical Assistance Grant requests and Technical Assistance Grant requests should also include a budget narrative explaining the basis for each line-item listed above.

Appendix H

SJI Scholarship Application

This application does not serve as a registration for the course. Please contact the education provider.

APPLICANT INFORMATION:

1. Applicant Name: _____
(Last) (First) (MI)

2. Position: _____

3. Name of Court: _____

4. Address: _____
Street/P.O. Box

_____
City State Zip Code

5. Telephone No. _____

6. Congressional District: _____

PROGRAM INFORMATION:

7. Course Name: _____

8. Course Dates: _____

9. Course Provider: _____

10. Location Offered: _____

ESTIMATED EXPENSES:

(Please note, scholarships are limited to tuition and transportation expenses to and from the site of the course up to a maximum of $1,500.)

Tuition: $ _____ Transportation: $ _____

(Airfare, train fare, or if you plan to drive, an amount equal to the approximate distance and mileage rate.)

Amount Requested: $ _____

Are you seeking/have you received a scholarship for this course from another source?

❑ Yes ❑ No. If so, please specify the source(s) and amounts(s) _____

_____.

Form S1 (9/98)

SJI SCHOLARSHIP APPLICATION PAGE 2

ADDITIONAL INFORMATION:

Please attach a current resume or professional summary, and provide the information requested below. (You may attach additional pages if necessary.)

1. Please describe your need to acquire the skills and knowledge taught in this course.

2. Please describe how will taking this course benefit you, your court, and the State's courts generally.

3. Is there an educational program currently available through your State on this topic?

4. Are State or local funds available to support your attendance at the proposed course? If so, what amount(s) will be provided?

5. How long have you served as a judge or court manager? _____

6. How long do you anticipate serving as a judge or court manager, assuming reelection or reappointment?

   ❑ 0–1 year ❑ 2–4 years ❑ 5–7 years ❑ 8–10 years ❑ 11+ years

7. What continuing professional education programs have you attended in the past year? Please indicate which were mandatory (M) and which were non-mandatory (V).

STATEMENT OF APPLICANT'S COMMITMENT

If a scholarship is awarded, I will share the skills and knowledge I have gained with my court colleagues locally, and if possible, Statewide, and I will submit an evaluation of the educational program to the State Justice Institute and to the Chief Justice of my State.

_____ Signature

_____ Date

Please return this form and Form S-2 to:

Scholarship Coordinator, State Justice Institute, 1650 King Street, Suite 600, Alexandria Virginia 22314

SJI Scholarship Application

Concurrence

I. _____.
Name of Chief Justice (or Chief Justice's Designee)

have reviewed the application for a scholarship to attend the program entitled

_____.

prepared by _____.
Name of Applicant

and concur in its submission to the State Justice Institute. The applicant's participation in the program would benefit the State; the applicant's absence to attend the program would not present an undue hardship to the court; public funds are not available to enable the applicant to attend this course; and receipt of a scholarship would not diminish the amount of funds made available by the State for judicial branch education.

_____
Signature

_____
Name

_____
Title

_____
Date

Form S2 (9/98)

[FR Doc. 03–24592 Filed 10–2–03; 8:45 am]
BILLING CODE 6820–SC–C

Federal Register

Friday,
October 3, 2003

Part IV

Housing and Urban Development

24 CFR Parts 598 and 599

Designation of Round III Urban Empowerment Zones and Renewal Communities; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 598 and 599

[Docket No. FR–4663–F–07]

RIN 2506–AC09

Designation of Round III Urban Empowerment Zones and Renewal Communities

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Final rule.

SUMMARY: This final rule adopts without change an interim rule that governs the designation of Round III Urban Empowerment Zones (EZs) and Renewal Communities (RCs) nominated by states and local governments. The designation of an area as an EZ or an RC provides special federal income tax treatment as an incentive for businesses to locate within the area.

DATES: Effective Date: November 3, 2003.

FOR FURTHER INFORMATION CONTACT: For EZ/EC issues, Lisa Hill, and for RC issues, John Haines, at the Department of Housing and Urban Development, Room 7130, 451 Seventh Street, SW., Washington, DC 20410–7000, telephone (202) 708–6339 (this is not a toll-free telephone number). Individuals with speech or hearing impairments may access these numbers via TTY by calling the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

The Omnibus Consolidated and Emergency Supplemental Appropriations Act for Fiscal Year 2001 (Omnibus Act) (Pub. L. 106–554, 114 Stat. 2763, approved December 21, 2000) enacted into law the provisions of a number of bills of the 106th Congress. One of the bills enacted into law as part of the Omnibus Act is H.R. 5662, the Community Renewal Tax Relief Act of 2000 (CRTR Act).

Section 111 of the CRTR Act added a new subsection (h), which authorized the designation of nine Round III Empowerment Zones (EZs) to section 1391 of Subchapter U of Chapter 1 of the Internal Revenue Code of 1986 (IRC). Subchapter U governs the designation and treatment of Empowerment Zones, Enterprise Communities, and Rural Development Investment Areas and provided authorization (though separate legislative enactments) for the designation of Round I EZs in 1993 and Round II EZs in 1997. The CRTR Act requires seven of the Round III EZs to be designated in urban areas by the Secretary of HUD and the remaining two Round III EZs to be designated in rural areas by the Secretary of Agriculture. The CRTR Act also conforms and enhances the tax incentives for Round I and Round II EZs and makes the new Round III EZs eligible for these incentives. The availability of the tax incentives is extended to December 31, 2009, for all EZs.

Section 101 of the CRTR Act added a new Subchapter X, consisting of sections 1400E through 1400J, to Chapter 1 of the IRC. Subchapter X governs the designation of, and tax incentives for, Renewal Communities (RCs) within which special tax incentives would be available. At least 12 of the 40 RC designations authorized by the CRTR Act must be in rural communities. Unlike the EZ program, which splits the designation responsibility between HUD and the Department of Agriculture for urban and rural areas respectively, all RC designations are to be made by HUD.

On July 9, 2001 (66 FR 35850), HUD published an interim rule to implement the designation requirements for Round III EZs and for RCs and requested public comment on the rule. HUD received four public comments, which are discussed in section III, Public Comments, of this preamble.

II. Changes in the Final Rule

The Department has determined to adopt the July 9, 2001, interim rule as a final rule without change.

III. Public Comments

Four municipalities submitted comments on the interim rule. The issues raised in the comments, all of them concerning the RC rule at 24 CFR part 599, followed by HUD's response, are set out under separate subject headings in this section of the preamble.

Too Small Areas

Because the nominated areas will be ranked solely on statistical criteria, there is nothing to prevent small areas from winning designation. The selection formula should give added weight to areas with larger populations.

HUD response: The statutory authorization for the designation of RCs, at section 1400E(c)(2)(C) of the IRC, establishes maximum and minimum population limits as eligibility requirements for RC designation. The criteria that may be used to designate RCs is also specifically limited to those provided in section 1400E. Although the population of an area must be within the statutory limits for the area to be considered for RC designation, population size is not included as one of the selection criteria provided in section 1400E. Therefore, HUD must determine that an area meets the population eligibility threshold, but HUD is not permitted to use population size in the selection formula.

Awarding RC Designation in a City With an EZ

If a city that already contains an EZ applies for an RC designation for an area that does not contain any census tracts from the EZ, it could receive the RC designation and also retain its EZ. This opportunity is unfair to a community that needs and deserves one of the designations.

HUD response: Section 1400E does not permit EZs and RCs to overlap by even a single census tract. Section 1400E(e) specifically provides that, ''[T]he designation * * * of any area as an empowerment zone or enterprise community shall cease to be in effect as of the date that the designation of any portion of such area as a renewal community takes effect.'' Beyond this limitation, the statute does not impose any restrictions on the availability of both EZs and RCs to qualifying areas within a community.

Including No- or Low-Population Tracts

A census tract with very low or no population may be critical for inclusion to create an effective RC, yet it would be ineligible unless it meets the 20 percent poverty criterion. This may result in inadequate land for business growth. HUD should allow inclusion of census tracts that are predominantly industrial or transportation uses if they are adjacent to tracts that meet the 20 percent poverty standard and if fewer than 50 households were counted in determining the poverty percentage.

HUD response: Although the authorizing statute for the EZ program specifically included, at 26 U.S.C. 1391(g)(3)(A)(ii), a provision permitting such treatment of census tracts with small populations, no such provision was included in the authorizing statute for the RC program. HUD hesitates to adopt such requirements absent the specific legislative authority.

Using Employment Tax Credits Cross-Boundary

The employment tax credits should be available for an employee that works in one EZ or RC and lives in another. This would include allowing an employer to claim the RC employment tax credit if both an EZ and an RC are involved. HUD and the Internal Revenue Service

(IRS) should issue the rulings that are necessary to confirm that these interpretations are correct.

HUD response: While HUD is responsible for the designation of RCs, the implementation and administration of the tax incentives for these areas is the responsibility of the Internal Revenue Service.

Regulation Protecting Health and Safety or Preventing Public Nuisance

The program requires the nominating governments to commit to ''economic growth promotion requirements.'' Specifically, they certify that they will repeal, reduce, or not enforce legal restrictions on certain types of business activities. The certifications do not apply to the extent that the regulation of businesses and occupations is necessary for, and well-tailored to, the protection of health and safety or if a public nuisance is involved, and the certifications may be limited to exclude specific businesses and occupations. The commenter recommended that HUD should allow the local governments broad discretion in determining what is a public nuisance.

HUD response: What constitutes a public nuisance is a determination to be made by the community at the local level.

Using CDBG Funds To Implement Renewal Communities

HUD should allow jurisdictions with designated RCs to use funds from the CDBG program, or, if applicable, EZ funds, for promotion and administration of RC responsibilities, perhaps with an annual cap of, say, $2.00 per RC resident.

HUD response: HUD is considering this suggestion, and will issue appropriate guidance to grantees.

Retaining One State's EZ Designation

Philadelphia and Camden request that Camden be allowed to retain its EZ status even if Philadelphia is awarded designation of an RC that includes census tracts from the Philadelphia-Camden EZ. They point out that the EZ is in two states and two cities, and each state/city combination has entered into a separate Memorandum of Agreement with HUD to implement their portions of the Round I EZ.

HUD response: As discussed above, section 1400E(e) of the IRC mandates that if any portion of an area designated as an EZ is given RC designation, the entire EZ designation ceases to be in effect. HUD has no authority to permit a different result.

IV. Findings and Certifications

Paperwork Reduction Act

The information collection requirements contained in 24 CFR parts 598 and 599 have been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB control numbers 2506–0148 and 2506–0173, respectively. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

Environmental Impact

A Finding of No Significant Impact with respect to the environment was made for this rule at the interim rule stage in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. Because this final rule adopts the interim rule without change, the Finding of No Significant Impact continues to apply. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW., Washington, DC 20410–0500.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule will not have a significant economic impact on a substantial number of small entities as distinguished from large entities. The rule does not place any mandates on small entities. It merely authorizes them to seek designation as Renewal Communities as authorized by statute, and the burdens placed on applicants derive from the statute.

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on state and local governments and is not required by statute, or preempts state law, unless the relevant requirements of section 6 of the Executive Order are met. This rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Unfunded Mandates

Executive Order 12875 calls for federal agencies to refrain, to the extent feasible and permitted by law, from promulgating any regulation that is not required by statute that would create a mandate on a state, local, or Tribal government, unless the agency provides funds for complying with the mandate or the agency first consults with affected state, local, and Tribal governments. Title II of the Unfunded Mandates Reform Act of 1995 (12 U.S.C. 1501) established requirements for federal agencies to assess the effects of their regulatory actions on state, local, and Tribal governments, and the private sector.

This rule does not impose any federal mandates on any state, local, or Tribal governments, or the private sector within the meaning of the Unfunded Mandates Reform Act of 1995, because it does not mandate any particular action. The rule only authorizes states, localities, and tribes to apply for designation of areas within their jurisdiction as Empowerment Zones or Renewal Communities, which permits special tax treatment of business activities within the areas.

Regulatory Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866, (entitled ''Regulatory Planning and Review''). OMB determined that this rule is a ''significant regulatory action,'' as defined in section 3(f) of the Order (although not economically significant, as provided in section 3(f)(1) of the Order). Any changes made to the rule after its submission to OMB are identified in the docket file, which is available for public inspection in the Regulations Division, Room 10276, Office of General Counsel, 451 Seventh Street, SW, Washington, DC 20410–0500.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance Program number assigned to these programs is 14.244.

List of Subjects

24 CFR Part 598

Community development, Economic development, Empowerment zones, Housing, Indians, Intergovernmental relations, Reporting and record keeping requirements, Urban renewal.

24 CFR Part 599

Community development, Economic development, Renewal communities, Housing, Indians, Intergovernmental relations, Reporting and recordkeeping requirements, Urban renewal.

PART 598—URBAN EMPOWERMENT ZONES: ROUND TWO AND THREE DESIGNATIONS

PART 599—RENEWAL COMMUNITIES

■ Accordingly, the interim rule amending 24 CFR part 598 and adding 24 CFR part 599, which was published at 66 FR 35850 on July 9, 2001, is adopted as final without change.

Dated: August 11, 2003.

Roy A. Bernardi,

Assistant Secretary for Community Planning and Development.

[FR Doc. 03–25041 Filed 10–2–03; 8:45 am]

BILLING CODE 4210–29–P

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Federal Register

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CFR PARTS AFFECTED DURING OCTOBER

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LIST OF PUBLIC LAWS

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